LANDHOLDING,

AND THE

RELATION OF LANDLORD AND TENANT


सत्यमेव जयते

LANDHOLDING,

AND THE

RELATION OF

LANDLORD AND TENANT,

IN VARIOUS COUNTRIES.

BY C. D. FIELD, M.A., LL.D.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW, AND OF HER MAJESTY'S BENGAL CIVIL SERVICE:

A JUDGE OF THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL:

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PREFACE TO THE SECOND EDITION.

SINCE the publication of the first edition of this book, "The Bengal Tenancy Act" has been passed by the Legislative Council of India. Some four years were given to the preparation of this measure before its introduction into Council in March 1883: and it was for two years in the hands of the Council before it became law on the 14th March 1885. Whatever difference of opinion there may be as to the merits of the Act itself, it must be admitted that the whole subject received full, careful and earnest examination and consideration before the bill in its final and amended form was passed into law. In the course of this examination many specious propositions were advanced, submitted to experienced opinion, tested (where possible) by facts, and ultimately abandoned: and much was given up by the advocates of extreme views in order to conciliation and compromise. If it can be truly said that what now remains satisfies neither party, there may be some truth in the explanation that this is because the Act gives neither party too much—of what fairly belongs to the other. What will be the ultimate result of the operation of the Act, it is impossible to forecast. It will no doubt give rise to a good deal of litigation. Every new law—more especially in India—does. If the result of that litigation be to settle rights upon a more certain basis, the effect will be so far satisfactory. I think that the Act deserves a fair trial, and in all probability its operation will not be so disastrous to landlords as some of them apprehend. I have in the present edition given the whole of the Act as an *Appendix*, and I have added some notes and explanations which may make its provisions more intelligible as well to the popular reader as to those who will have to administer it. The latter may also be assisted by the *Index* to the *Law of Landlord and Tenant in Bengal*, the object of which will be found fully explained at page 972.

CALCUTTA,
August 1st, 1885.

C. D. FIELD.


सत्यमेव जयते

PREFACE.

I came out to India towards the close of the year 1860, a little more than a year after a new Act had come into operation, which was intended to regulate and improve the relations between Landlords and Tenants in the extensive and populous provinces comprised in the Bengal Presidency. During the early years of my service I was called upon to take a large share in the working of this Act and in the trial of suits between landlords and tenants. My work led me to take a deep interest in the subject, which daily came before me in many ways and forms ; and I thus entered on a careful study of the land-laws of the country in which my duties lay, and an examination of the previous history of *Zemindars* and *Raiyats*. During a period of some nineteen years' active and varied service, I held office in most of the important districts of Lower Bengal, and exercised almost all the multifarious jurisdictions which can by law be conferred upon Judicial or Revenue Officers. I was thus enabled to add the practical information derivable from experience to the other information derived from reading, which gradually extended to the systems of other countries.

In 1879, I was appointed by the Bengal Government to prepare a *Digest of the Law of Landlord and Tenant* in the Provinces under the administration of that Government ; and subsequently it devolved upon me as a member of the Bengal Rent Commission (relieved of other duties in order to the execution of this special task) to draw up the Report of the Commission and prepare the Consolidating and Amending Bill,

which has since 1880 been under the consideration of Government, and which will for some time to come occupy the attention of the Legislature. To such knowledge as I possessed when engaged in these duties, I have since been enabled to add nearly three years' experience as a Judge of the highest Court in India, together with some further study of a subject, in which, under the circumstances just stated, I must naturally take a deep interest.

It has occurred to me that I might render useful service by placing before the public the information which I have gradually collected ; and this I have endeavoured to do in the following pages written during the brief intervals of leisure, which I have been able to snatch from the discharge of public duties.

I have naturally treated at greater length the land-laws of those countries of which I have had personal knowledge or experience. The account of other countries, as to which I have written upon information derived from sources other than these, must contain many inaccuracies, and will, doubtless, exhibit many defects to the eyes of those who have practical acquaintance with the systems which I have attempted to describe upon mediate information. Of the importance of personal knowledge upon the subject of which I have ventured to treat, no one can be more sensible than myself; but, seeing that this subject is too extensive to be traversed by the actual experience of any single individual, I here labour under a disability from which no one who attempts the same task can expect to be free. If those who, by the light of superior knowledge, are able to discover errors or deficiencies in my account of these other systems are willing to assist me in correcting those errors and amending those deficiencies, they will, by communicating with me through my publishers, place me personally under a great obligation, and will also, I

venture to think, render a service to the great Community by contributing to the more accurate knowledge of a subject, the importance of which to the people of every country it is scarcely possible to overestimate.

While the last of these pages are passing through the press, there has been introduced into the Legislative Council of the Government of India a Bill based to a considerable extent on the Draft and Report of the Rent Commission. There has been some expectation that the publication of the present work would be delayed in order to include a review of the proposed measure. Any such review would, however, be out of place in a work, the main object of which is to give an exposition of past or existing facts. Personally, moreover, I feel myself at present precluded from any public criticism of a measure, which is as yet under the consideration of the Government and the Legislature.

C. D. FIELD.

CALCUTTA,

The 3rd March, 1883.


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CHAPTER I.

The Tenure of Land in Early Times and under the Roman Empire—The Feudal System in Europe.

§ 1. The processes by which property in land has been created, and the rules and customs by which its disposition and enjoyment have been regulated, at different times, in different countries, amongst different nations, exhibit very remarkable diversities. The causes of these diversities are to be sought in the varieties and peculiarities of race, climate, character, circumstance, mental and physical development, which have operated in unequal combination and with unequal force. To investigate these causes would be a difficult, if not impossible, task; and little or no benefit would accrue from its most successful performance. But great advantage is derivable from an examination of the economic results produced by the different modes of disposition and enjoyment. The Statesman and the Legislator may learn much wisdom by investigating the effects of different systems of land-law upon national progress and prosperity; and this wisdom may be put to practical use by discouraging or even forbidding principles of disposition or methods of enjoyment, which have been found prejudicial to the common welfare; and by encouraging or introducing those methods and principles, which experience has shown to be conducive to the wealth and welfare and happiness of the community. To use the language of metaphor, no practical advantage can follow from any attempt to discover why the watersprings burst forth from the mountain side, or issue from the glacier's base, or bubble up from the bosom of the plain. The sources

Advantages of a Comparative Investigation of the Land-Laws of different Countries.

whence the water comes do not affect its utility for purposes of domestic use, or irrigation, or mill-power—and these sources cannot be influenced or altered by human skill; but the distribution of the flowing streams greatly affects the well-being of the countries through which they pass; and the labour of man, guided by scientific knowledge, can largely increase the benefit to the inhabitants by altering the natural channels and regulating the distribution of this indispensable element.

Early Property in Land—Its creation and development—A portion of the Produce as a Tax, or Tribute, or Rent.

§ 2. In those early days when men were few on the face of the earth, they led a nomadic life, and moved with their flocks and herds from place to place, as inclination or the search for fresh pastures led them. Their agricultural labours were limited to the raising of a few cereals, which the virgin soil produced with rich return; and the occupation of the land seldom extended beyond the period necessary for one sowing and reaping. This temporary occupation was the first species of property in land; and disturbance by eviction being unknown required no measures of repression. As population increased, and men became associated for mutual advantage and protection, the nomadic life became less convenient, and so less usual; and little communities of men, selecting desirable localities, settled down in fixed habitations. Each member of the community took, by mutual agreement, a site for his house and a plot for cultivation, while the flocks and herds depastured the unassigned and unbounded waste. These flocks and herds constituted the greater portion of the wealth[1] of the community; and agriculture was of secondary importance. Each individual cultivated merely enough of land to supply his own wants. The wants of others had not yet created commerce and exportation; and the production of more than was needful for the requirements of the community (including some store laid by to meet a possible year of drought) would have been labour lost. As

[1] 'Pecunia' from 'pecus.' 'Cattle' = 'capita,' 'capitalia,' 'cattalia,' 'chattel.'

the number of the community increased, the production of a larger quantity of food became necessary, and cultivation gradually extended until the whole of the arable waste was allotted to the members of the settlement. The final stage in this part of the history of the community was the adjustment of the boundary between its territory and that of the neighbouring communities. This was done sometimes amicably, and sometimes after many a fray and by the prevalence of superior force. When the individual community[2] had fulfilled this portion of its history, a clear property in land, originating in occupation and continued possession, had been created. This proprietary right at first resided in the community rather than the individual; but common property soon developed into separate property in obedience to an irresistible tendency of social progress. While the individual community remained independent of any superior or paramount power, its members had theoretically equal rights; and no one paid or delivered any portion of the produce of the land to a superior in order to purchase protection or forbearance, or to defray the cost of Government. Communities soon began to associate, either willingly for purposes of protection, or unwillingly as the result of subjugation by those whom superior physical strength inclined to the pursuit of arms. The governing or paramount authority, whether voluntarily selected or involuntarily imposed, had to be maintained by the contributions of its subjects; and in early times, when money was unknown, and the only wealth consisted of flocks and herds and the produce of the earth, those contributions were naturally made in kind, by delivering so many head of cattle or a certain proportion of the ripened crops and fruits. The earliest form in which the cultivator of the soil had to part with a portion of the produce of his labour was in the shape of a *tax*, or

[2] The origin and development of the Village Community, which are touched upon above, are (as the reader may be aware) treated in a very full and interesting manner in Sir H. Maine's "*Village Communities*" and "*Early History of Institutions*," and in M. Emile de Laveleye's "*Primitive Property*."

tribute, to the governing or conquering power. As society further developed, and individuals came to have a controlling power over the land—a power to allow or forbid others to occupy and cultivate it—they too received a share of the fruits and profits in kind, and afterwards in money; and this share has come to be termed *rent*, but rent is usually the outcome of a later stage of development. Amid the vicissitudes and inequalities of progress, which history presents to our view, the tax has sometimes been levied, and sometimes the rent, and occasionally both the tax and the rent, while the happiness or misery of the cultivators of the soil has, in a very great measure, depended upon the arbitrary excess or judicious moderation with which the levy has been made by the superior entitled to make it.

§ 3. What has been just said may be illustrated by facts taken from the actual history of various countries. The Roman citizen, in the days of the Republic, owned and cultivated his own land, and there is no indication that he paid either tax or rent for it. The great Dictator, who was called from the plough to preside over the destinies of his country, was probably, in this respect, like other members of the Roman people (*populus*). When Rome conquered the other Italian States, it seized a portion of the lands of each, which it either occupied with a colony as a garrison, or sold or let in farm. When the Roman arms extended their conquests beyond Italy, the same course was pursued, and vast areas of land thus became the common property of the Roman people. The student of Roman history knows what contests raged between the patricians and plebeians as to the occupation and assignment of this land (*ager publicus*—like the *folk-land* of the Saxons), and the various Agrarian Laws by which the Tribunes secured to the *plebs* a share in these State domains. Those lands, which were not assigned to colonists or others, were allowed to be cultivated by private individuals, who paid to the Government a part of the yearly produce,—namely, a *tenth* (*decumæ*) of the produce

Landholding in the Roman Empire—Land-tax—Rent.

of arable land, and a *fifth* of the produce of oliveyards and vineyards. In the times of the Empire long occupation came to be regarded as giving a right to retain possession so long as this revenue (*vectigal*) was paid to the State. In some conquered countries, lands which were not appropriated by the conquerors were allowed to be retained by their owners on condition of paying a similar tribute. The collection of this revenue was let or farmed to certain persons (*publicani*),[3] who contracted for payment to the State usually in money, though occasionally in grain. We here find the conquering nation using its power to exact a tax or tribute from the occupants of the land. Rent in various forms was the result of a later development of Roman society. The access of wealth and luxury soon produced its usual effects, and Roman citizens became too proud to undergo the manual labour of agriculture. The possession of innumerable slaves offered a ready substitute; but the task of superintending and controlling their labours soon became distasteful to men occupied with schemes of military or political ambition, or disinclined by luxury to the cares of management. Thus many wealthy Romans let their lands to tenants, who paid a rent either in money or by delivering a fixed portion of the produce.[4] Another mode by which the Roman proprietor

[3] The *Ejaradar* of Behar is the modern antitype of the Roman *Publicanus*. The Mahomedan, like the Roman, Government farmed out the land-revenue and the other branches of taxation: and the modern Collector imitates the Roman Censor, by putting up to auction the revenue of Estates held by Government, the Excise, and other State incomings.

[4] These tenants were the *coloni*, as to whose exact condition there has been so much dispute. They were not slaves, but their position contained many assimilations to slavery. They were attached to the soil, and in this, as in other respects, resembled the more modern *serfs* or *villeins*. Cato gives a table of the proportion which the *colonus* ought to pay according to the nature of the crop and the fertility of the soil, but he gives us no information as to the manner in which the cost of cultivation was borne by the *colonus* and his landlord. *Coloni* sometimes occupied the same farm from father to son for generations, and they thus acquired a sort of hereditary interest in the soil. The amount of the yearly rent was fixed by custom, and could not be raised. If the landowner attempted to raise it, the *colonus* had for his protection a right of action against him (Cod. xi, tit. 47, s. 5).

of land obtained a rent was by the contract of *emphyteusis*, whereby, without abandoning his proprietary right, he gave to another a real right to the land, in consideration of a certain annual return in money or produce. The grantee was entitled to the possession of the land and to the produce thereof. He could make changes in the substance by reclaiming waste, by building, planting, and other operations, provided he did not deteriorate the property. His right was heritable and transferable[5]; but, in case of alienation to a stranger, his landlord had the right of pre-emption, and might also object to an improper transferee. A fine (*laudemium*) was payable to the landlord upon every alienation, and this fine was fixed by Justinian at the fifteenth part of the price or value of the lands. The contract was sometimes for a term or for a life or lives, but usually in perpetuity. The lessee, or *emphyteuta*, was liable to the payment of a fixed yearly *canon*, or quit-rent, and also of all rates, taxes, and other burdens. The *emphyteusis* was terminated by the destruction of the land, by merger, by the expiration of the term (if any), by the death of the *emphyteuta* without heirs,[6] by prescription and renunciation, by penalty upon the *emphyteuta* for allowing the land to deteriorate, or by nonpayment of the rent or *canon* for three years.[7]

§ 4. When the German and other tribes successfully invaded the Roman Empire, they imitated the example of the Romans, and in accordance with the *then* well-recog-

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[5] The *patni* tenure in Bengal resembles *emphyteusis* in many important respects.

[6] On failure of heirs, a *patni* tenure escheats to Government.

[7] *Emphyteusis* was adopted in many countries of Europe after the fall of the Roman Empire, and is to be found in some of them at the present day,—*e.g.*, in Portugal and parts of Prussia.—See *The Reports on the Tenure of Land in the Countries of Europe*, Part I, pp. 176, 177, 187, 235, 458. The rent could not be raised in Portugal, a provision to this effect having been introduced by Marquis Pombal; and the legal means for the recovery of the rent was an application for judicial permission to sell the perpetual tenant's right over the land. The rent of *patni* and other similar tenures may be recovered by a similar procedure in Bengal.

nized law of nations confiscated a portion of the territory which they conquered. The lands so confiscated were permanently occupied by the conquerors. The Vandals seized all the best lands. The Visigoths and Burgundians appropriated two-thirds. The Franks occupied a large portion, though we do not know with what share exactly they contented themselves. The conquering occupants, who thus acquired lands ready cleared and fit for cultivation, paid neither land-tax nor rent. A certain equality between members was a principle of the military confederation to which they belonged; and though differences of grade necessary for military organization might make a difference in the extent of the share allotted to each, there was no difference in the right which each acquired in his share. This military confederation soon became an association for the purposes of Government. Personal prowess or force of character gave prominence to individual leaders.[8] The power of the kings increased. The Crown was supported by fiscal lands reserved for it in the general distribution[9] or upon the conquest of fresh territory. Commercial wealth did not then exist, and no revenue was supplied by a system of taxation such as modern civilization has in-

Appropriation of Lands by the Celtic Races, who broke up the Roman Empire—Rise of the Feudal System.

[8] As to the manner in which leaders or chiefs arose, and their position became confirmed and strengthened, see Maine's *Village Communities*, pp. 144—146.

[9] The distribution was at first made annually, lest the thoughts of the conquerors should be diverted from war to agriculture; lest luxury and enervation should result from the erection of permanent dwellings, and too great attention to the comforts and superfluities of life. But, in course of time, when the stream of migration had spent its force, when peaceable possession had introduced new habits, and some permanency of occupation was found necessary to successful agriculture, an annual disturbance and resettlement became inconvenient and distasteful, and the feuds were in consequence granted for *life*. Upon the death of the possessor, if he left children capable of performing the services, they naturally had a sort of claim to succeed, and it was regarded as a sort of hardship that they should be rejected. Rejection became unusual, and in process of time feuds became *hereditary*. The office of Zemindar in India, which in its origin was granted for life only, became hereditary in a somewhat similar manner. It does not appear that the old Indian Rajahs or Governments had lands in the nature of Crown Lands. Their revenue was derived from the share of the produce, which all cultivators of the soil were bound to contribute.

vented. Portions of these fiscal lands were granted to favourites of the Crown under the name of *benefices*—at first precariously and at pleasure, subsequently for life; and then according to the usual tendency they became hereditary.[1] The beneficiaries of the Crown, the local representatives of authority, were entrusted with some of the duties of Government, and in consequence they increased in power and importance. In those disturbed and uncivilized times the most important function of Government was resistance to hostile attack and protection from rapine. There were no regular armies, no courts of justice, no civil police. Effectual protection was in general to be obtained only from some powerful lord, who, while he acknowledged the Crown as paramount and superior, was the visible local representative of governing authority. The allodial[2] proprietor, not strong enough to defend himself and his property, and unable to obtain protection without submission and service, was forced to *commend*[3] himself to a feudal lord,

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[1] A *Jagir* is in Indian Constitutional History the only grant similar to a benefice; but it was an assignment not of the *land* itself, but of the *revenue* to which the State was entitled—See Mr. Shore's *Minute on the Rights and Privileges of Jagirdars, dated 2nd April* 1788.

[2] Allodial land, or land held in absolute possession without acknowledging a superior lord, is contradistinguished from beneficiary or feudal land (feudal = *od*, estate; and *feo*, wages, pay). The term *allodium* is variously derived from *all* and *odh*, property; from *loos*, lot; and from *odal*, Icel., or *odel*, Dan. Sw., a patrimonial estate. According to Coke, there is no allodial land in England. *Lakheraj* land in India is *allodial*, but the contradistinction of holding under a lord is wanting.

[3] For an account of the custom of personal commendation by which the allodial proprietor came to occupy a position similar to that of the beneficiary grantee, see *Hallam's Middle Ages*, Vol. I, p. 164. The allodialist surrendered his lands and received them back on feudal conditions; or, acknowledging himself the suzerain's vassal, confessed an original grant never made, or made a stipulated payment of money to insure their defence. The above view of the origin and rise of the Feudal System is that of Hallam, which is now generally accepted. According to Blackstone the system was much more deliberately introduced, and in a much more perfect form by the conquering Celtic tribes. "It was brought by them from their own countries and conti-
"nued in their respective colonies as the most likely means to secure their
"new acquisitions; and to that end large districts or parcels of land were
"allotted by the conquering general to the superior officers of the army, and

accepting vassalage in return for protection. The usage of necessity thus became the law of the land, and every man was bound to attach himself to some lord, the freeman having, however, the privilege of choosing his own suzerain.

§ 5. The Feudal System was fully established in Europe at the close of the Tenth or beginning of the Eleventh Century. Land held in feudal tenure was termed a *fief*. The ceremonies by which a fief was created were homage, fealty, and investiture. The future vassal did *homage*, kneeling, placing his hands between those of the lord, promising to become his *man*, to serve him with life and limb and worldly honor, faithfully and loyally, in consideration of the lands held under him. An oath of *fealty*, or fidelity, was then taken; and this was followed by the investiture or actual conveyance of the land, possession being given actually upon the ground (livery of seisin) either by the lord or his deputy; or symbolically, by delivering a turf, a stone or a branch. The vassal was bound to render military and other services to his lord, who also received the benefit of (1) reliefs, (2) *primer seisin*, (3) fines upon alienation, (4) escheats and forfeitures, (5) aids, (6) wardship, and (7) marriage. A *relief* was a sum of money paid to the lord by every person who, being of full age, took a fief as heir by descent.[4] *Primer seisin* was the right which the

Incidents of Feudal Tenure—Proper Feuds—Improper Feuds—Grant of Fiefs on Lucrative Conditions.

"by them dealt out again in smaller parcels or allotments to the inferior "officers and most deserving soldiers . . . . . Allotments thus acquired "naturally engaged such as accepted them to defend them, and, as they all "sprang from the same right of conquest, no part could subsist independent "of the whole; wherefore all givers, as well as receivers, were mutually "bound to defend each other's possessions. But as that could not effectually "be done in a tumultuous irregular way, government, and to that purpose "subordination, was necessary."—*Blackstone's Commentaries, Book II, Chap.* 4. That the system, when introduced into England, had reached a more perfect form of development, there can be no doubt; but it appears more probable that it was gradually developed on the Continent than that, when first established there, it had reached the degree of maturity described by Blackstone.

[4] In the times of the Mahomedan Empire in India, the person who succeeded to a *zemindari* by inheritance had to pay a *peiskush* to the Emperor, and a *nazarana* to the Nazim; see Note in *Harington's Analysis on the Mode of*

king, and no other lord, had to receive a year's profits of the lands from the heir, if of full age, of a tenant who died seised of a knight's fee. A vassal could not *alienate* his fief without his lord's consent; and when the lord consented, he was entitled to a certain part of the price or value by way of *fine* on the alienation.[5] If the vassal died without heirs, his fief *escheated* or reverted to his lord. This also happened when the fief was *forfeited* on account of the vassal's delinquency or breach of fealty. The lord was entitled to *aids* under certain circumstances,—*e. g.*, to ransom his person if he were taken captive; to make his eldest son a knight; to give a marriage portion to his eldest daughter; to fit out an expedition to the Holy Land. The exigencies upon which aids might be demanded were not very well defined, and where the lord was powerful, this right was too often exercised unreasonably and oppressively.[6] By virtue of his right of *wardship* the lord had the custody of the minor heir of a fief, and during the minority received to his own use the profits of the estate. This right was sometimes assigned or let in farm. The lord was entitled to tender a suitable match to his infant ward, and the infant could not refuse without forfeiting the value of the *marriage*,—*i. e.*, as much as any one would give for the alliance and its advantages. An infant, who married without his or her guardian's consent, forfeited double this value. Such were the incidents of a proper feud, held on terms of military service, bestowed without price upon a vassal capable of serving personally in the field. But this institution invented in disturbed times for granting land by those

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Investing a Zemindar. The British Government has never required any payment or present from an heir taking a *zemindari* by inheritance, and in the case of subordinate tenures, which did not exist before British rule, this practice has not been introduced.

[5] A fine upon the alienation of a *zemindari* has never been usual in India, but fines upon the transfer of all subordinate tenures in Bengal are common and usual.

[6] The practice of levying *abwabs* presents something similar in India. These were the *aids* and *subsidies* of the Mahomedan Government.

who had a disposing power over it upon conditions then essential and necessary, was soon, by the ingenious perversion of the lawyers, adapted to meet the altered requirements of a new state of society; and feuds (termed *improper feuds*) began to be granted for a price without reference to military service. Even where military service was the original condition of the grant, this service was, by mutual consent, commuted for a money payment. The services upon which these improper feuds were granted, were occasionally ludicrous,[7] sometimes honorary,[8] but most frequently lucrative. In other words, one class had the right to admit whom they pleased to cultivate and use the land. As land is the chief source of production, they soon found that they could exercise this right with great profit to themselves, as increasing population created a demand for the production of more food; and they naturally proceeded to exercise it for their own benefit. Those who had received from the lord paramount grants of land too large for personal and individual management, divided them into portions, which they granted to be held of them-

[7] For example, that the tenant should keep a certain number of peacocks. Amusing instances in England will be found in *Blount's Tenures*, of which a recent edition has been published by Mr. Hazlitt,—*e.g.*, that the tenant should keep a sparhawk; lift up his right hand yearly on Christmas Day towards the king; teach one hare-dog of the king; pay a yearly rent of one red rose garland and one barbed arrow with two rose-buds; pay three grains of pepper yearly; pay two shillings and four pence, a pair of gloves and a half pound of cummin-seed; pay a pair of white gloves; pay a snowball at midsummer, and a red rose at Christmas (44); service of one horse-comb (67); perform altogether and once a leap, a puff, and a fart before our sovereign lord the king (154); hang upon a piece of forked wood the red deer that died of the murrain in the king's forest of Exmore (162); present a gammon of bacon on the point of a lance (175); service of a pair of tongs (183); find a penny for the king for an oblation, if he should come to hear mass (214); to *eat* in lieu of all services (259); pay two white hares annually at the feast of John the Baptist (276); bring two white capons before the king and say to him—"behold my lord these two white capons which you shall have another time but not now" (281); find a mad bull six weeks before Christmas (291). The figures in the parentheses in this and the following notes refer to the pages of Blount by Hazlitt.

[8] For example, titles of nobility.

selves on conditions similar to those on which they held of their superior lords; and the process of *subinfeudation* thus introduced became very common, and led to remarkable and important results. The services on which these improper fiefs and sub-fiefs were held in Continental Countries were multiform. We find agricultural services varying from trifling burdens to forced labour and serfdom; and occasionally land was held partly on these services, and partly on rent service rendered in money or in kind. The commonest mechanical arts were carried on by persons, who held lands on condition of working at their craft for their patrons. In fine, the lord depended upon feudal tenure for the provisions that supplied his table—for the wood that burnt on his hearth—for the labour that cultivated his home farm—for the service of his domestics—for the ministrations of luxury—and even for the enjoyments of vice.[9]

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[9] The custom of merchetta, or having the first night with the tenant's newly-married wife, was very common. This right was in England commuted for *maiden-rent*, in some places for a hogshead of cider. Other tenures, by which the lord's sensuality was provided for, though not common in England, were not unknown. For example, William Hoppeshort held half a yard-land in the town of Bockhampton in Berks by the service of keeping for the king six damsels, to wit, whores. Pimp-tenure, which this was called, is one of the headings in Jacob's Law Dictionary.

The greater independence of the French nobles produced a much greater variety of customs on the Continent than ever came into existence in England. A collection of 285 customs prevailing amongst continental nations was made in the Sixteenth Century. Charles VII. made an ordinance for the formation of a general code of Customary Law (*pays coutumiers*) by ascertaining the customs of each district. The work was completed in the reign of Charles IX.

The *ghatwali* tenures, in parts of Bengal, granted for a species of military service to be rendered by keeping the *ghats* or mountain passes, by which the Mahratta and other invaders poured down on the plains, differ from fiefs in this that they involved no personal connection of lord and vassal. Many of the *chakeran* (*chakar*, a servant) holdings involved services like those of the improper feuds, but here also the personal relation is wanting.

CHAPTER II.

The Tenure of Land, and the Relation of Landlord and Tenant in England.

§ 6. Whether Feudal Tenures existed in England before the Conquest is a question which has been much debated, and which it is difficult to determine categorically. Similar phases are to be found in the development of the most different societies, and in all probability the right solution of this question is, that tenures bearing in many respects a strong resemblance to feudal tenures had come into existence amongst the Anglo-Saxons before the Norman invasion. Be this as it may, certain it is that the Feudal System was completely established in England during the first two reigns after the Conquest. There was, however, one remarkable difference between feudalism in England and feudalism in France. In the latter country, the king had direct authority over his own immediate vassals only. The tenants of those vassals swore fealty and paid allegiance, not to the king, but to their own immediate lords, the king's vassals. In England, William insisted on receiving the fealty of all landholders, both those who held in chief and their tenants. This was one of the causes which prevented the English lords from effectually asserting that independence of the Crown which their brethren on the continent maintained. The introduction of the feudal system into England was effected (1) by the Conqueror's confiscating the lands of all those who opposed him, and granting these lands to his followers upon feudal conditions; and (2) by requiring the Saxon owners who had been allowed to retain their lands, to take the oath of fealty and so

The Feudal System in England. Improper Feuds usual—Subinfeudation—Effect of the Commercial Spirit.

become feudal tenants of the Crown. Improper feuds were not unusual, and many such were created even by the Conqueror himself.[1] Feudal tenancies, both proper and impro-

[1] William the Conqueror gave the manor of Bosham in Sussex in feefarm rendering yearly forty-two pounds of silver in solid metal for all service (32). The tenant in capite of the hundred of Bures in Essex paid eighteen pounds at the Exchequer (49). There are numerous instances of land held direct of the king on condition of performing certain services,—*e. g.*, repairing the iron-works of the king's ploughs (115); turning the spit at his coronation (122); cutting out the linen cloths of the king and queen (228); conducting the king's treasure (188, 214, 215); supplying provisions and other articles,—*e. g.*, one night's entertainment when the king passed that way (126), forty-one pints of honey (173), nine bushels of chestnuts (221), a gallon of honey (228), finding litter in the king's chamber when he came to Havering (256), finding coals to make the king's crown and his royal ornaments (280).

Grand Sergeanty was where a man held his lands of the king by services to be done, not generally in war, but in his own proper person to the king,—*e. g.*, to carry the king's banner or lance; to be his marshal; to carry his sword before him at his coronation; be his butler (60); or baker (80); or vintner (227); lardiner and caterer (199, 232); or carver (161); or naperer (67, 201); hold his stirrup; hold his head between Dover and Whitsond as often as he passed over sea towards Whitsond (86); serve the king in his dispensary (262); be marshal of the *meretrices* or hired women servants and dismember condemned malefactors (119, 278); be the king's chamberlain (123, 166, 240); be the lord high steward of England (296); great chamberlain of England (108); chamberlain of the king's Exchequer (111); doorkeeper of the Exchequer (120); Knight-Marshal (145); hold the towel and basins at the king's coronation (158); take wolves, foxes, wild cats, and other vermin in six counties (190); carry the king's writs through England for forty days (217); keep a gray hound or hare hound of the king (289).

Grand Sergeanty.

The tenure of *Petit Sergeanty* was where a man held land of the king by the service of rendering to him annually some *small implement of war*. "It bears a great resemblance to grand serjeanty," says Blackstone, "for as the one is a personal service, so the other is a *rent* or render, both tending to some purpose relative to the king's person." Examples are: to pay yearly three fletched arrows feathered with eagle's feathers (93); find one *balistar* or cross-bowman (156); find one footman with lance and skull-cap (318); find a valet in the king's army for forty days (161); or an esquire (216); pay yearly one hundred barbed arrows (255); be ostler in the king's army (121).

Petit Sergeanty.

But we find Sergeanty applied also to services to be rendered to the king wholly unconnected with war,—*e. g.*, to scald the king's hogs (49); pay him one grey cloak (56); find him two white cups at dinner on the day of his coronation (67); provide him a hot simnel every day for dinner (79); shoe the king's palfrey (91); present the king yearly with a pair of scarlet hose (90); carry to the king twenty-four pasties of herrings at their first coming in (59); find straw for the king's bed, and pay him three eels or two green geese when

per, became hereditary in England as they had become on the continent. Subinfeudation prevailed from the beginning, and was largely practised. The impecuniosity of the

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he visits A (12); find dry wood for the great chamber of the castle of Brug against the king's coming (38); find one ship (47); find one bow and three barbed arrows for the king when he hunts in the forest of Dartmoor (96); keep the king's hawks or falcons (100, 136, 156, 157, 194, 254, 256, 265); bear a marshal's wand in the king's household (119); carry one seam of oats at his proper cost to the king's horses (122); keep the prisoners committed to the fleet (123); keep the doors of the king's wardrobe (125); keep watch about the king (137); take wolves (137); keep the laundresses (126, 138); be catchpoll or bailiff (145, 155); keep the park (151); keep the door of the king's pantry (183); of his butlery (184); keep the king's money stamp (198); make baskets for the king (199); find a horse-comb or currycomb (206); render four white capons when the king comes to Arundel (208); measure the ditches and works of the king (214); keep the king's palace at Westminster (219); find a towel to wipe the king's hands when he hunts in the forest of Witchwood (220); find one servant to hold the ropes in the queen's ship when she passes the sea to Normandy (238); feed two poor persons for the souls of the king's ancestors (239); keep the king's lame dogs when he hunts in his forest of Blakemore (248); be the king's forester in the forest of Deane (264); keep the king's larder (268); be the king's goldsmith (273); bear a rod before the Justices in Eyre (287); keep one palfrey in the king's stable at the king's cost (290); conduct the king's treasure to London (292, 303); keep one small brache or hound of the king (293); serve as steward at Christmas, Easter, and Whitsuntide (294); carry the king's writs one day's journey from the Castle of Gloucester at his own proper charge, and further at the king's charge (295); pay one gallon of wine yearly (296); carry a truss of hay to the king's necessary-house (300); keep the Hay of Hereford (317); keep the gate called Woodgate at Woodstock when the king stays there.

For instances of labour and other services renderable to mesne lords, see *Blount's Tenures by Hazlitt*, *pp.* 40, 47, 55, 97, 117, 123, 136, 146, 153, 161, 165, 220, 227, 236, 237, 256, 305. One yard-land in Brayles in the County of Warwick was held under the Earl of Warwick on payment of seven bushels of oats yearly and a hen, and working for the lord, from Michaelmas to Lammas, every other day except Saturday; from Lammas to Michaelmas two days in the week; and to come to the lord's reap with all his household except his wife and shepherd; to carry two cart-loads and a half of the lord's hay and seven cart-loads of stones for three days, and gather nuts for three days; to plough thrice a year, &c., and with the rest of the tenants to give twelve marks yearly to the lord at Michaelmas by way of aid, and not marry their daughters, nor make their sons priests without licence from the lord (37). This is a good instance of mixed services common on the Continent. For instances of rents payable to mesne lords in corn, provisions or other articles, see the same work, *pp.* 66, 100, 101, 108, 109, 115, 153, 167, 188, 218, 228, 232.

Conqueror's followers, and the comparative immunity from war and foreign invasion afforded to England by her insular position, exercised a conjoint influence upon these subordinate grants; and rent-service in money or other lucrative return became common and usual.[2] The Commercial Spirit, which has so remarkably influenced the history of England, showed itself at a very early period, and affected not only tenures in chief or those held immediately of the Crown, but all subordinate tenures. One of the most important results of this spirit was the right of alienation which came to be an incident of all subordinate tenures. As regards tenures in chief, the principle of alienability was established later and without much difficulty: and every tenant of an estate in fee-simple can now dispose of his estate by act *inter vivos* as well as by will.[3]

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[2] "The feudatories," says Blackstone, "being under frequent incapacities of cultivating and manuring their own lands, soon found it necessary to commit part of them to inferior tenants, obliging them to such returns in service, corn, cattle, or money, as might enable the chief feudatories to attend their military duties without distraction, which returns, or *reditus*, were the original of rents; and by these means the feudal polity was greatly extended, these inferior feudatories (who held what are called in the Scotch law '*rere-fiefs*') being under similar obligations of fealty, to do suit of court, to answer the stipulated renders or rent-service, and to promote the welfare of their immediate superiors or lords. But this at the same time demolished the ancient simplicity of feuds; and an inroad being once made on their constitution, it subjected them in a course of time to great varieties and innovations. Feuds began to be bought and sold, and deviations were made from the old fundamental rules of tenure and succession."—*Book II, Chap.* 4. The king was Lord Paramount. Feudatories, who were vassals to those above them and lords to those below them, were termed *Mesne* or Middle Lords. The lowest tenant in the gradation was called Tenant *Paravail*, being he who was supposed to make avail or profit of the land.

[3] An estate in *fee-simple (feudum simplex)* is an estate which the tenant holds to *him and his heirs*. In other words, not only the *heirs of his body*, but *collateral* relations may inherit. This is the greatest estate known to the law of England. An estate given to a man and the *heirs of his body* was called an estate in *fee-tail* (*feudum talliatum*, *i.e.*, a fee cut down, limited to the direct heirs of the grantee's body), and was the creature of the Statute *De Donis Conditionalibus*. At the close of the reign of Henry III. (A.D. 1272) it had become established that, in whatever form the grants were made, the existence of an expectant heir enabled the tenant to alienate, not only

Statute De Donis Conditionalibus.

§ 7. In Domesday Book, *liberi homines* (free men) and *socmen* are entered as occupying the freehold properties (*liberum tenementum*), and *villani* and *bordarii* as occupying the copyholds (*villenagium*). There does not appear to have been much difference between the *liberi homines* and the *socmen*,[4] but as to their exact origin, and how some men came to belong to this class, and others to the class

Tenure in Free and Common Socage.

as against his heirs, but also as against the lord. The Barons, seeing their reversion thus cut off, procured the passing of the Statute just mentioned in the 13th year of the following reign (Edward I., A.D. 1285). This Statute enacted that the will of the donor according to the deed should henceforth be observed, so that they, to whom the tenement was given, should have no power to alien it, whereby it should fail to remain unto their own issue after their death, or to revert unto the donor or his heirs if issue should fail. This Statute, by prohibiting alienation, *limited* the transferability of the estate to the heirs of the grantee. The operation of the Statute was destroyed by *Taltarum's* case (A.D. 1473); and the power of alienating an estate-tail was again introduced, and has since continued. The exercise of this power was simplified by an Act of Parliament (3 & 4 Will. IV., cap. 74), passed in 1833.

The alienability of estates in fee-simple was facilitated by the Barons themselves. They found the practice of subinfeudation disadvantageous to them in many ways, but especially in this that they were deprived of many advantages,—*e.g.*, marriage and wardship, which, upon the creation of a subtenure, went not to them but to their tenants, the immediate lords of the subtenants. Then again the services reserved on the original grant were considered entire and indivisible; and the Baron's tenant occasionally by subinfeudation deprived himself of the means of rendering or did not retain enough to enable him to render the services due to his superior lord. In order to remedy these mischiefs, the Barons procured the passing of the Statute *Quia Emptores* in the 18th year of Edward I. (A.D. 1290). This Statute enacted that, from thenceforth, it should be lawful for every freeman to sell at his own pleasure his lands and tenements or part thereof, so nevertheless that the feoffee (purchaser) should hold the same lands or tenements of the same chief lord of the fee, and by the same services and customs, as his feoffor (vendor) held them before. In the case of sale of a part, it provided for the apportionment of the services. The effect of this Statute was to substitute *alienation* for *subinfeudation*, as regarded estates in fee-simple.

Statute of Quia Emptores.

An estate in fee-simple, an estate-tail, and an estate for the life either of the grantee or of another, were *freehold* estates, being all worthy the acceptance of a *free* man, which a less estate was not.

Freehold Estates.

[4] Almost all the *liberi homines* and *socmen* of Domesday Book belong to the Danish countries. Socmen, socage is variously derived from *soca*, an old Latin word for a plough, and from *soc*, Saxon, for liberty, privilege; Blackstone prefers the latter. The former, which makes *socage* mean plough-service, derives probability from the fact that the tenure originally consisted of services in husbandry which were afterwards by consent changed into an annual rent.

of *villani* and *bordarii*, there is much doubt, and has been much discussion. Mr. Hallam thinks the *socmen* to be Ceorls,[5] more fortunate than the rest, who had acquired some freehold land, or to whose ancestors it had possibly been allotted in the original settlement. Mr. Blackstone considers the socage tenures to be the relics of Saxon liberty, retained by those who had neither forfeited them to the king, nor had been obliged to exchange them for tenure of knight-service. This is very probable, for we know that some Saxon estates escaped confiscation altogether; and in the case of those which were confiscated, the confiscation directly affected the principal tenants only; and it is quite possible that the subordinate tenants may have retained their former condition substantially unaltered. This may have been effected in many instances by pecuniary arrangements; and where the former services were lucrative, we may well suppose them to have been more acceptable to the new lords than services strictly feudal were likely to be.[6] Whatever may have been the origin of *free and*

[5] Saxon freemen were divided in *eorls* and *ceorls* = gentle and simple, gentlemen and yeomen. Ceorl is translated by *villanus* throughout Domesday Book.

[6] Mr. Freeman observes that William was at no time of his reign inclined to make changes simply for the sake of change—that this appears alike in the process by which the lands of Englishmen were restored to them and in the process by which the lands of Englishmen were transferred to the hands of strangers. In neither case did William make any change either in the tenure or in the extent of property beyond what was needed for carrying out his immediate purpose; that "what was law in the days of Edward, remained law in the days of William."—*History of the Norman Conquest of England*, Vol. V, pp. 21, 49. Mr. Freeman, indeed, contests the position that William the Conqueror introduced the feudal system into England. He observes—and the truth of his observation is proved by Continental history—that the principle of the feudal system was that every tenant-in-chief of the Crown should make himself as nearly a sovereign prince as he could, that his under-tenants should owe allegiance and obedience to their immediate lord only, and not to the royal or imperial head—that the principle of William's legislation was that every man should plight his allegiance to the king—that the tendency of feudalism was to a divided land with a weak central government, or no central government at all—that he checked this and every tendency which could lower the King of England to a level with the feudal kings of the mainland, and strengthened every tendency which could help him in establishing a strong central government over an united realm; and to this end he preserved the

common socage, there is no doubt that it denoted a tenure by any certain and determinate service. It is constantly put in opposition to chivalry or knight-service where the *render* was precarious and uncertain. Littleton (whose

ancient laws and institutions, because they could be easily turned into the best instruments for compassing his object. Of any feudal system, as a *form of government*, William was therefore not the introducer but the mightiest and most successful enemy. Then as to feudalism regarded as a *system of land-tenure*, which does not necessarily imply any weakness on the part of the central power, William did not systematically introduce any new kind of tenures—tendencies in a feudal direction had been busily at work long before his coming, and the Conquest hastened and completed these, the effect of his confiscations and grants being to bring the tenure of land, the holding of land as a grant from a lord, into a prominence which it had never held before—that in this way the same reign which most effectually hindered the growth of feudalism in its political aspect, most effectually strengthened it as a form of land-tenure. Mr. Freeman further maintains that the system of military tenures and the oppressive consequences which flowed from them, were the work of Randolf Flambard in the days of William Rufus. In his way of looking at things the king was not merely the head of the Commonwealth, acting on behalf of the Commonwealth, but was also a personal lord with certain personal rights over his tenants, of which it was his personal interest to make the most in every way. These views were by Flambard pushed to their logical results and worked into an harmonious system of oppression. The king personally stepped into the place of the Commonwealth, of which he was the head—the ancient *folkland* became *terra regis*—the king became supreme landlord and all land was held by his grant—kingship passed from an office into a possession—the kingdom was a great estate, out of which all smaller estates were carved—the king as landlord asserted his right to various dues, which came to him strictly in his character of landlord, and which had nothing to do with his character as chief of the Commonwealth—dues of exactly the same kind were exacted by the king's tenants from those to whom in their character of landlords they also had made grants. It suited the policy of both Williams to strengthen the feudal principle so far as it concerned land-tenure, and from this new theory of the tenure of land and the incidents arising out of it, they filled their purses as landlords rather than as political chiefs, and out of the relation of landlord there grew sources of royal wealth unheard of before.—*Freeman's History of the Norman Conquest*, Vol. V, pp. 366–383. Sir Francis Palgrave observes that "the relation of vassalage, originally personal, became annexed to the tenure of land" (*English Commonwealth*, I, 505); and he says that Domesday Book contains no record of any new duties or services of any kind. The two first Williams and Henry I. had a very large income. Stephen began the process of impoverishment by endowing his fiscal earldoms out of Crown revenue and lavishing royal demesne on natives and aliens. From this impoverishment the Crown never recovered. —*Stubbs's Constitutional History of England*, I, 605.

view Blackstone quotes and adopts) defines it to be, where the tenant holds his tenement of the lord by any *certain* service, in lieu of all other services, so that they be not services of chivalry or knight-service; and says that whatever is not tenure in chivalry is tenure in socage. The tenure must, therefore, have been certain in order to be denominated socage—as to hold by fealty and twenty shillings; or by homage, fealty, and twenty shillings rent; or by homage and fealty without rent; or by fealty and certain corporal service, as ploughing the lord's land for three days; or by fealty only without any other service.[7]

Villeins—Villein Tenure—Copyholds.

§ 8. The *villani* or villeins of Domesday Book are supposed to be practically identical with the *ceorls*[8] of the Saxon period preceding. As to their exact condition, there is, however, considerable doubt and there are many different opinions. It is probably impossible to define exactly the rights and liabilities of this class, and for this

[7] The following examples of socage tenures are to be found in Mr. Hazlitt's edition of Blount's Tenures:—Brill, in the county of Bucks, was the demesne of King Edward the Confessor, and was let out in socage for the reserved rent of one hundred capons yearly for the king's table (39): "a capital messuage, a park, eleven score acres of arable land, held in free socage by the service of a bell" (129); "one acre and a half of land, held in socage by rendering one iron arrow to be paid yearly, and it was worth three shillings and four pence" (167): the manor of Gargawall, in Cornwall, was held of the Prior of Bodmin in free socage by rendering two oxen yearly (126); two messuages and fifty-six acres of land with the appurtenances at Goswyck, in Durham, were held of the Lord Bishop in socage and by the service of eight shillings and ten pence (132): lands at Libennith, in Monmouth, were held by socage tenure, subject to a fine certain of five shillings on alienation and to a heriot of the best beast (195): Merton, in Surey, was granted by James I. on payment of £828 8*s.* 9*d.*, to be held as of the manor of East Greenwich, in free and common socage, by fealty only, and not in chief or by knight's service (218): the tenement of Newstead, in Staplehurst, Kent, is held of the manor of East Greenwich, by fealty only and in free socage, and by the payment of six pence for smoke-silver (continuance of Peter pence) yearly to the sheriff (294).

[8] The *bordarii*, of whom Domesday Book contains a large number, were also in Mr. Hallam's opinion *ceorls*, distinguished by some legal difference, some peculiarity of service or tenure well understood at the time. We have also *cosceti* and *cotarii*. So in Bengal we have *kurfa*, *burga*, *adhiadar* and other various terms for under-ryots, current in different parts of the country and indicating local peculiarities of holding.

reason they were not regulated by any written law, and they varied in different places and at different times. In the old communities the descendants of the original settlers were naturally the persons entitled to share in the arable land of the village, and pasture their cattle on the common land. These would be the original freeholders. But in the course of time there would arise a considerable population consisting of men who had lost their rights, or, coming from outside, never had any rights in the village land. These persons would be employed as labourers, being paid with a portion of the produce, or might even be permitted to occupy and cultivate portions of land belonging to the freeholders, on condition of rendering labour service or giving a portion of the produce to the freeholders. These men were doubtless the *ceorls* or *villeins*, freemen[9] of a lower condition, dependent upon a superior class for the necessities of life or the means of procuring them. Such of them as obtained the occupation of land, a site for a house and a plot for cultivation, were naturally better off than those who received merely food—it may be a bare sustenance, in return for labour spent on the cultivation of the lands of the freeholders. This labour would naturally be of the lowest and hardest kind—such as was distasteful to the superior freeholders—carrying out manure, hedging and ditching and the like. Hence

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[9] There were slaves (theows) amongst the Anglo-Saxons :—Domesday Book gives some twenty-five thousand *servi* distinct from the *villani*, *bordarii*, and *cotarii*. Villenage must not therefore be confounded with servitude. In Anglo-Saxon times every man was bound to have a patron who would be surety for him ; and this custom compelled landless freemen to become the villeins of a lord. As against all persons other than his lord the villein was free and had civil rights. If he acquired five hydes of land, he became an *eorl* or *thane*. Villeins were either (1) *regardant* or attached to a certain manor with which, if sold, they passed ; or (2) in gross, when they had never been so attached or the connection had been broken off. The chief characteristic of villenage was the obligation to remain upon the lord's estate. If a villein left that estate, his lord might reclaim him by suit, as if he were a species of real property ; but if his lord did not reclaim him, he was in the eye of the law a freeman as regarded all others. If he remained unreclaimed for a year and a day in a walled city or borough, he became free, even as regarded his lord.

villein services came to be regarded as base and degrading, unworthy of the superior freeman. When the community passed under the authority of a lord, certain changes would naturally take place. The nature and extent of these changes depended much upon the manner in which the lord's supremacy was created, whether by commendation,[1] or conquest, or confiscation. Where the community had voluntarily sought the protection of a superior lord, its leading members doubtless made their own conditions, and retained their essential rights in the lands in which individual ownership had been acquired, agreeing to render some small service to their new suzerain. In cases of conquest and confiscation, it must have depended upon the will of the lord, how far the freeholders should retain their former rights, or be reduced to the condition of villeins upon the lands which they formerly owned in freehold tenure. In any case the lord would acquire almost a complete power of disposition over the unassigned land in which no individual ownership had arisen. He might, even, in the exercise of a power which there was little or nothing to control, enlarge this area of the land subject to his absolute authority by confiscating or forcibly destroying rights in portions of the assigned land. The entire tract subject to the lord's dominion became known as a manor;[2] and within this tract freeholders and villeins were alike his subjects, although their rights were different. The villeins would now naturally render their services to the lord direct; and the crowd of villeins would be increased by numbers seeking support and protection from a rich and powerful chief. Of the land which came under the lord's absolute authority, he reserved part for his own demesnes, and part he allowed

[1] Domesday Book shows that in the time of Edward the Confessor, a large class placed themselves by commendation in a position of dependence upon a superior lord—See on this point Freeman's *History of the Norman Conquest*, *V*, 463, 885, and Stubbs's *Constitutional History*, *I*, 217.

[2] A *manendo*, because the lord usually resided there. The lands in the possession of freehold tenants were called *tenementales*—those reserved by the lord for his own use and occupation were termed *dominicales*. The two together made up the manor.

to be occupied by *villeins*. His will and pleasure alone at first regulated the time and mode and conditions of occupation, and the services which the villeins were to render. These services consisted chiefly of labour upon the demesne lands of their lord, including the same base services which villeins had formerly rendered to the freeholders. They carried out manure, hedged and ditched their lord's fields, did his ploughing and sowing, and gathered in his harvest. But these services were at the arbitrary will of their lord, and none of them were certain like the services of free and common socage. The lands which the *villeins* occupied upon these conditions of service were said to be held by them in *villein tenure*.[3] At first their occupation, like their services, was at the will of their lord; but gradually custom gave confirmation to their possession, and what was in its inception permissive, grew in course of time into right. The services which the villein tenants were required to render came to be entered for reference and certainty's sake on the court-roll of the Manor. A copy of the entry

[3] The origin, condition, and final disenfranchisement of villeins will be found fully treated in *Hallam's Middle Ages*, *I*, 192—202, 331—333; and *III*, 171—178: *Stubbs's Constitutional History of England*, *I*, 485—489: *Green's History of the English People*, *I*, 10—11, 225—227: and *Dwarris on Statutes*, 771, 788. Those villeins who obtained the occupation of land rapidly secured an improved position after the Conquest, and finally developed into copyholders as described above. The position of landless villeins, on the contrary, became worse under the Normans; and from the reign of Henry II., they became incapable of property and destitute of redress, except against the most outrageous injuries. Their lord could seize whatever they acquired or inherited, could sell them apart from the land to a stranger, and had an unlimited right over their labour. Some fled from their lords to distant parts of the country, or to the cities and boroughs; and not being reclaimed became free. Others commuted their service for money or purchased their freedom from lords to whom money was more necessary than labour. The lord's demesne was reduced by sales, by subinfeudation and by leaseholds; and he no longer required labour, which those who had obtained lands from the lords wanted and were willing to employ. As regards these employers the villeins were free and became hired labourers in husbandry for the greater part of the year. Villenage thus gradually died out in England; and the landless villeins of the eleventh and twelfth centuries became the hired labourers of the fourteenth century. But to this day, the degraded condition of the English agricultural labourer savours strongly of his origin.

became the villein's title-deed; and thus he came to be called a copyholder. Tenants of this class could at first be evicted at the mere will of their lord; but arbitrary eviction was unusual. In the 42nd year of Edward III. (A.D. 1369) a case occurred in which it was held that if the tenant did not perform his service, his lord might seize his land as forfeited. Hence arose the idea[4] that if the copyholder did perform his services, the lord could not seize his lands and evict him; and in the reign of Edward IV. (A.D. 1461—1483) this idea was confirmed, and certainty of tenure was given to copyholders by the judges allowing a copyholder to maintain an action of trespass against his lord for dispossession without just cause. The title of copyholders is now as good as that of freeholders.

§ 9. The services of tenure[5] in chivalry, otherwise called knight-service, and grand sergeanty were personal, and uncertain both in their quantity and duration. Personal attendance being troublesome and inconvenient, the tenants began to send persons to perform their service in their stead, and afterwards they gave to their lords a pecuniary satisfaction in lieu of it. This money commutation was termed *scutage*,[6] or, in Norman French, *escuage*, and is said to have been first made in the fifth year of Henry II. (1159 A.D.) on the occasion of his expedition to Toulouse. It afterwards became so common and usual, that personal

Commutation of Personal Service—Scutage; Escuage.

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[4] The growth of the right of occupancy in Bengal has been very similar.

[5] The term 'tenure' is derived from 'tenere,' to hold, because the land is *holden*, held, of some superior lord by, and in consideration of, certain services to be rendered to the lord by the tenant or possessor of the property. The word has now come to be used very widely—in India especially—to signify not the services or conditions on which the land is held, but the land itself for which revenue or rent is paid to a superior landlord; and it is even applied to land for which neither revenue nor rent is paid,—*e.g.*, a *lakheraj tenure* is spoken of constantly.

[6] From *scutum*, a shield,—*i.e.*, service of the shield, according to Littleton; "and that tenant," says he, "which holdeth his land by escuage, holdeth by knight's service." According to Blackstone, it was so called, because *scutum* was then a well-known denomination for money; this kind of tenure being a pecuniary, instead of a military, tenure.

service fell into disuse. As the actual personal service was uncertain and depended upon emergencies, so the pecuniary substitution was uncertain,[7] and its assessment depended upon the view which each party took of those emergencies. In the course of half a century after its first introduction, scutage or escuage was converted into a very effectual means of exaction and oppression.

Table of Feudal Tenures and Subtenures.

§ 10. The following Table will give a general view of the tenures and subtenures of the so-called Feudal System :—

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[7] When the king went to war with the Scots, every one who held by the service of one knight's fee was to be with the king forty days, well and conveniently arrayed for war. He who held by a moiety of a knight's fee was to be with the king twenty days. He who held by the fourth part of a knight's fee, ten days. And he that had more, more; and he that had less, less. When the king returned from Scotland, the escuage was assessed, which every one should pay who had not been with the king in person or by a substitute. Parliament, it was said, ordained that forty shillings should be paid for a knight's fee, twenty shillings for half a knight's fee, and so on. When the lord had to pay escuage, he was held entitled to have escuage of his tenants. Sometimes the escuage payable by the tenant to his lord was a fixed sum settled by agreement and unaffected by the Parliament's assessment. Two marks on the knight's fee was the rate levied by Henry on the occasion of the expedition to Toulouse. Scutage or escuage gradually became obsolete about the beginning of the fourteenth century, being superseded by other forms of exactions.

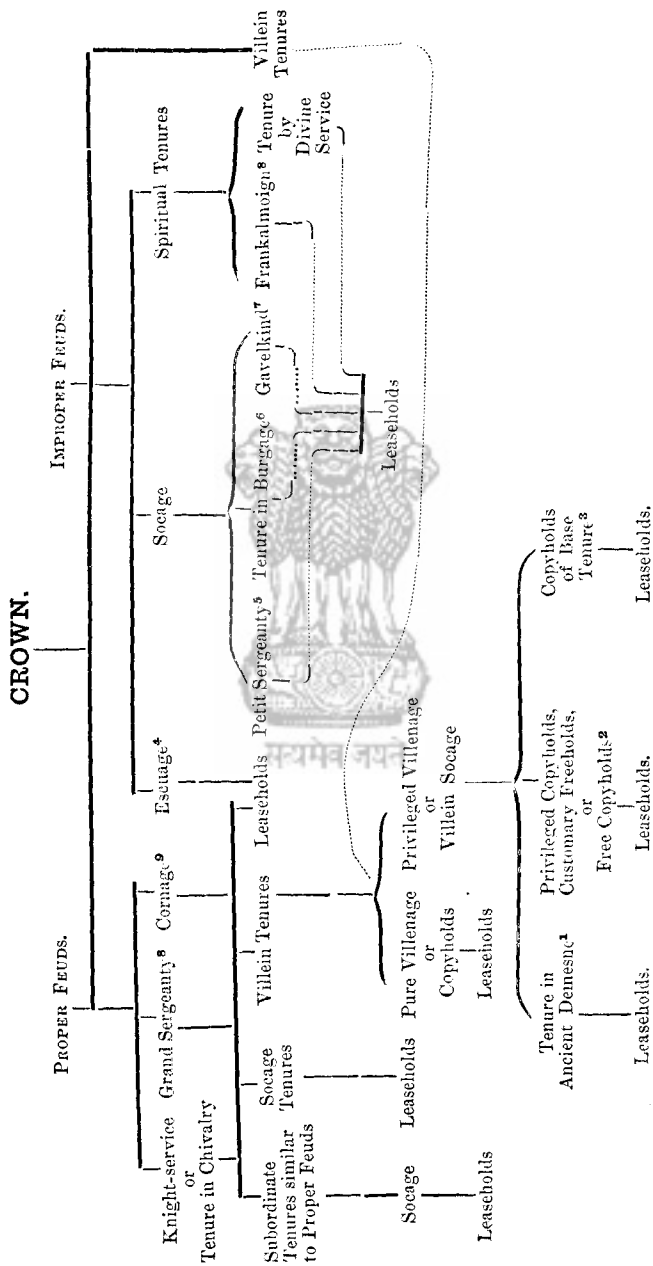
[8] See *ante*, p. 14, *note*.

[9] The service of blowing a horn to give warning, when an invasion of the Scots or other enemies was perceived. It was a species of grand sergeanty, according to Littleton, when held direct of the king; but when held of any other lord, it was knight's service, drawing to it ward and marriage. Many held by this tenure about the Picts' Wall.

[1] A tenure carrying with it certain immunities, the chief of which was the right to sue and be sued only in the lord's court. It existed only in those manors which belonged to the Crown in the reigns of Edward the Confessor and William the Conqueror, and which are in Domesday Book denominated *Terræ Regis Edwardi* or *Terræ Regis*.

[2] Held, like other copyholds, by copy of Court Roll: but not, like other copyholds, expressed to be at the will of the lord. According to some, the *freehold estate* or interest is in the tenant, while the *freehold tenure* is in the lord. They are found chiefly in the north of England and within manors of the tenure of ancient demesne.

[3] Held on base or villeinous services. There is said to be this difference between a base estate and villenage. Pure villenage is to do all the lord's


CROWN.
Proper Feuds.
Improper Feuds.
Knight-service or Tenure in Chivalry
Grand Sergeanty[3]
Cornage[9]
Escuage[4]
Socage
Spiritual Tenures
Villein Tenures
Subordinate Tenures similar to Proper Feuds
Socage Tenures
Leaseholds
Petit Sergeanty[5]
Tenure in Burgage[6]
Gavelkind[7]
Frankalmoign[8]
Tenure by Divine Service
Socage
Leaseholds
Pure Villenage or Copyholds
Leaseholds
Privileged Villenage or Villein Socage
Leaseholds
Tenure in Ancient Demesne[1]
Leaseholds.
Privileged Copyholds, Customary Freeholds, or Free Copyholds[2]
Leaseholds.
Copyholds of Base Tenure[3]
Leaseholds.

§ 11. During the interval of a century and a half between the Conquest in 1066 A.D. and John's Charter in 1215 A.D., the Feudal System was converted into an engine of tyranny and oppression. Scutage was levied arbitrarily at the king's pleasure. Aids were exacted upon all sorts of occasions. Reliefs were taken out of all proportion to the rank of the tenant and the value of his property. Waste was committed by the guardians in chivalry or those to whom they had leased their rights. Female wards were disparaged in matrimony, and widows were forced to remarry, for the profit of the superior lords. The Charter, extracted from John in the meadow of Runemede, provided that no aid or escuage should be imposed (except in the three cases[9] allowed by feudal law) without the consent of Parliament;[1] and it contained provisions for the prevention of other abuses; but it took nearly two centuries and the confirmation of thirty-two Acts of Parliament before these provisions were established and observed. The contents of the Great Charter,[2] as printed in the Statute

Abuse of the principles of Feudal Tenure.

The Great Charter.

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commands; but the holder of a base estate is not bound to the performance of every commandment of his lord.

[4] See *ante*, p. 24.

[5] See *ante*, p. 14, *note*.

[6] A tenure whereby houses and lands, which were formerly the site of houses in an ancient *borough*, are held of some lord by a certain rent.

[7] According to Lord Coke, *Gavelkinde* is "*Gave all kinde*," for this custom giveth to all the sons alike. According to another view, it means "*land of the kind that yields rent*," being derived from '*gafal*' or '*gavel*,' '*rent*' or '*customary performance of husbandry works*,' and signifying the land which yielded this kind of service, in contradistinction to knight-service land.

[8] Free alms—a spiritual tenure by which religious corporations held lands of the donor for ever, discharged of all except religious services. It differs from tenure by divine service in not requiring the performance of any divine services. In India also spiritual grants—*debuttur—piruttur*—have been common and usual.

[9] See *ante*, p. 10.

[1] This provision is not to be found in any of the three Charters granted by Henry III.; but Parliament acted upon it.

[2] The Great Charter as contained in the Statutes at large was made in the 9th year of Henry III., 1225 A.D.; and confirmed by Edward I. in the 25th year of his reign, 1297 A.D. It is really a collection of Statutes, consisting

book, exhibit the system of military tenures in full force, and the exactions and oppressions which were practised in the exercise of the powers which that system gave to the king and the mesne lords. This Charter provided that heirs of full age shall have their inheritance by the old relief, a reasonable scale for which is given—that guardians shall not waste the lands of their wards or destroy the tenants—that heirs shall be married without disparagement —that widows shall have their dower and not be forced to remarry against their will—that excessive fines shall not be inflicted—that purveyance abuses shall cease—that justice or right shall not be sold, denied or delayed to any man: and this reformation of feudal abuses, which the king granted to the barons, was to be extended by them to their tenants. Even after other abuses of the system of military tenures had ceased or been superseded by new forms of exaction, the hardship of the rules as to marriage and wardship was felt to be a very oppressive burden. Henry VII. again aggravated this burden by imposing excessive fines upon the granting of livery to the king's wards on their attaining majority; and Henry VIII. gave a form of legal sanction to these proceedings by establishing *The Court of Wards and Liveries.* Cromwell virtually abolished military tenures by shutting up this Court in 1645 A.D., believing that abuses would best be prevented in future by removing the source and origin of them.

Military Tenures abolished, 12 Car. II., c. 24.

§ 12. Upon the restoration of Charles II., there was a strong feeling against the revival of a system, which had been the cause of so much domestic trouble; and all military tenures were at length abolished by a formal Act of the Legislature in 1660 A.D.[3] The Statute 12 Car. II., cap. 24, enacts as follows:—

"Whereas it has been found by former experience

of 37 chapters. By it the king grants to all freemen of the realm the "liberties underwritten, to have and to hold to them and their heirs, of us and our heirs, for ever."

[3] The reign of Charles II. is computed from the death of Charles I., so that the year of the Restoration and the first year of his actual reign is counted as the twelfth.

That the Courts of Wards and Liveries, and tenures by knight-service, either of the king or others, or by knight-service *in capite*, or *socage in capite* of the king, and the consequents upon the same, have been much more burthensome, grievous and prejudicial to the kingdom than they have been beneficial to the king. And whereas, since the intermission of the said Court, which hath been from the four-and-twentieth day of February, which was in the year of our Lord one thousand six hundred forty and five, many persons have, by will and otherwise, made disposal of their lands held by knight-service, whereupon divers questions might possibly arise, unless some seasonable remedy be taken to prevent the same,—Be it therefore enacted by the King our Sovereign Lord, with the assent of the Lords and Commons in Parliament assembled, and by the authority of the same; and it is hereby enacted—That the Court of Wards and Liveries, and all wardships, liveries, *primer seisins*[4] and *ousterlemains*,[5] values and forfeitures of marriages, by reason of any tenure of the King's Majesty, or of any other by knight-service, and all mean rates, and all other gifts, grants, charges incident or arising for or by reason of wardships, liveries, primer seisins or ousterlemains be taken away and discharged and are hereby enacted to be taken away and discharged, from the said twenty-fourth day of February one thousand six hundred forty-five—any law, statute, custom or usage to the contrary hereof in anywise notwithstanding. And that all fines for alienations, seizures and pardons for alienations, tenure by homage, and all charges incident or arising, for or by reason of wardship, livery, primer seisin or ousterlemain, or tenure by knight-service, escuage, and also *aide pur file marrier*, and *pur fair fitz chevalier*, all other charges incident thereunto, be likewise taken away and discharged—any law, statute, custom or usage to the

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[4] See *ante*, pp. 9-10.

[5] *Ouster-le-main*, *amovere manum*, to withdraw the hand and deliver up the lands to the heir on his or her attaining majority.

contrary hereof in anywise notwithstanding. And that all tenures by knight-service of the king, or of any other person, and by knight-service *in capite;* and by socage *in capite* of the king, and the fruits and consequents thereof, happened or which shall or may hereafter happen or arise thereupon or thereby, be taken away and discharged—any law, statute, custom or usage to the contrary hereof in anywise notwithstanding. And all tenures of any honours, manors, lands, tenements or hereditaments, or any estate of any inheritance at the common law, held either of the king, or of any other person or persons, bodies politick or corporate, are hereby enacted to be *turned into free and common socage*, to all intents and purposes, and shall be so construed, adjudged and deemed to be for ever turned into free and common socage,—any law, statute, custom or usage to the contrary hereof in anywise notwithstanding. And that the same shall for ever hereafter stand and be discharged of all tenure by homage, escuage, voyages royal and charges for the same, wardships incident to tenure by knight-service, and values and forfeitures of marriage, and all other charges incident to tenure by knight-service, and of and from *aide pur file marrier*, and *aide pur fair fitz chevalier*—any law, statute, usage or custom to the contrary in anywise notwithstanding. And that all conveyances and devises of any manors, lands, tenements, and hereditaments made since the said twenty-fourth day of February, shall be expounded to be of such effect, as if the same manors, lands, tenements, and hereditaments had been then held and continued to be holden in free and common socage only—any law, statute, custom or usage to the contrary hereof in anywise notwithstanding."

§ 13. The effect of abolishing military tenures or converting them into tenures in free and common socage was, that the Crown could no longer claim or receive from the land of the kingdom that revenue which had been levied after the Conquest under the various denominations of aids, reliefs, escuage, and other forms of feudal imposi-

tion. It has been said that the great landholders of England, by means of the Statute of Charles II., got rid of their liability to contribute to the defence of the kingdom, which, in whatever form the contributions were made, was the original condition on which their lands had been granted; and that the effect of this has been to cast upon other classes of the community a burden of taxation, which should justly fall on the landholding class alone. There may be some truth in this observation; but in order to estimate properly its value and significance, several considerations must be taken into account. In the first place, there is no comparison between the war-services which the grantees of the Norman Conqueror bound themselves to render, and the military service which has in modern days become necessary for the defence and maintenance of the nation, regard being had to our extended dominions and the altered conditions and requirements of warfare. In the next place, the landholding class are equally with other classes subject to indirect and other taxation, and so contribute to the requirements of the State from, and in proportion to, the income which they derive from the land. Lastly, the land has not been wholly exempted from the payment of a direct revenue. The Long Parliament had imposed a tax upon landed estates by fixing a sum, which was distributed among the counties, and levied within each by a rate. This was found to be such a convenient mode of raising money, that it was resumed after the Restoration. Between the Restoration in 1660 A.D. and the Revolution in 1689 A.D., recourse was had on several occasions to a land assessment. After the Revolution the war with France rendered this mode of raising a revenue still more necessary; and in 1689, 1690, and 1691 considerable amounts were obtained from this source. In 1692, an accurate valuation of estates was directed to be made, and on the rental so ascertained a rate of a shilling or more in the pound was imposed. In time of war it was four shillings in the pound: and after the American War it was never

Effect of the abolition of Military Tenures.

The Land-Tax.

less than this. For one hundred and six years, 1692 to 1798 A.D., a Land Tax Act was annually passed by Parliament;[6] but in the year 1798 the tax was made perpetual at the amount raised in that year, *viz.*, £2,037,627, subject however to purchase and redemption by proprietors.[7]

Rent in England as distinguished from Revenue.

§ 14. The Statutes, which abolished military tenures and permanently fixed the amount of the land-tax, settled Revenue from land upon its present basis in England, the term *Revenue* being understood to mean that which is paid by the superior landowners to the State. When we come to the question of Rent, or that which is paid to these

[6] See Macaulay's *History of England*, Chap. XIX, Vol. VI, pp. 324—326, and Green's *History of the English People*, IV, 142. The County Members generally opposed the Land Tax Bills. The assessment of 1798 was made at four shillings in the pound under the 38 Geo. III., cap. 5; and this assessment was made perpetual by the 38 Geo. III., cap. 60. It must not be supposed that a land-tax was an innovation of the Long Parliament and unknown before that time. Danegeld, imposed by Ethelred the Unready, was a tax of one shilling, and afterwards of two shillings, on every hide of land for maintaining a force sufficient to repel invasion and clear the British seas of Danish pirates. It was abolished by Edward the Confessor; but William the Conqueror re-imposed it at the rate of six shillings: and one of the chief objects of the Survey recorded in Domesday Book was that all cultivated land in the kingdom should pay this tax. Stephen promised to abolish it; and after his reign it disappears from the records of State. It was, however, revived in other forms; and the later *subsidy*, which was levied on every one according to his lands or goods, was raised chiefly from landed estates.

[7] The effect of the two Statutes—12 Car. II., cap. 24, and 38 Geo. III., cap. 60—which abolished military tenures and fixed the land-tax for ever at the sum at which it was assessed in 1798, was in many respects similar to that of the Regulations which provided for the Permanent Settlement of Bengal. Both limited for ever the amount of revenue which the State was to derive from the land; and the result of both has been that the exigencies of Government, which this amount is insufficient to meet, have to be supplied by other modes of taxation. In both instances, the limitation of the Government demand upon the land followed after a system under which the uncertainty of that demand gave rise to exaction and oppression. If the forms of oppression and the designations of exaction have differed in the two countries, their social and political history, the requirements of luxury, and the demands of extravagance have also been different. The systems of the two countries have been radically different in their origin and operation; but in both the same evils have resulted from the same cause—uncertainty of demand; and for these evils the same remedy has suggested itself—to give certainty to the demand of Government upon the land.

superior landowners either by the actual occupants or cultivators for the use of the land, or by others who stand between the owners and the cultivators, we find a great paucity of information as to its origin and history. In the times which followed the Norman Conquest ready money was scarce, and the most convenient and usual form of alienation was a perpetual lease granted in consideration of an immediate payment of a certain sum, and of services or rent to be afterwards performed or paid at stated times. The Crusades fostered this and other species of alienation. Then the services upon which the free tenants held their lands of superior lords and the labour-services of the villeins were gradually commuted to money-payments. That the doctrine and principles of rent were well settled in the fifteenth century appears from the chapter on *Rents*[8] in

Principle of Rent settled in 15th century.

[8] He begins by saying:—"Three manner of rents there be,—that is to say, rent-service, rent-charge, and rent-seck. Rent-service is where the tenant holdeth his land of his lord by fealty and certain rent; or by homage, fealty, and certain rent; or by other services and certain rent. And if rent-service at any day that it ought to be paid, be behind, the lord may distrain for that of common right." Elsewhere he says:—"Also in all cases where the tenant holdeth of his lord to pay unto him any certain rent, this rent is called *rent-service*."

A *rent-charge* is an annual sum of money granted by one person to another, and payable out of land in which the grantor has an estate. In ancient times, an express power was given to the grantor to distrain upon the premises out of which the rent-charge issued.

A *rent-seck* (*siccus*) is a dry or barren rent,—*i.e.*, for which no distress can be made. A rent-charge without a power of distress was a rent-seck; and the rent-service incident to a seignory or reversion, if conveyed without the seignory or reversion, was a rent-seck, because the grantor of the bare rent-service could not distrain. A power of distress has now been attached by the 4 Geo. II., cap. 28, to rents-seck.

A *quit-rent* was a rent-service reserved upon the conveyance of lands in fee-simple or for any less estate; but the Statute of *Quia Emptores* having stopped the creation of tenancies in fee-simple between subjects, a rent-service cannot now be reserved upon a grant of lands from one subject to another in fee-simple, because, upon a grant in fee-simple, the grantee holds not of his grantor, but of him of whom his grantor holds; there is therefore no tenure between the grantor and the grantee, but in order to rent-service there must be a tenure.

There is in Pennsylvania a kind of tenure known as 'ground-rents,' and which is created by a grant in fee-simple, the grantor reserving to himself and his heirs a certain rent, which is the interest of the money-value of the land.

Littleton's Tenures, which was probably written about the middle of that century. It is tolerably certain, however, that at that period the effect of competition upon rents was inconsiderable. Money was not very abundant. Trade and commerce were undeveloped. Population had not begun to press upon the land. Services and payments, more especially in the case of villein tenants, had been regulated by the will of the lord, and its repeated exercise without material variation created custom, which sufficiently regulated matters, until competition came into operation. Under the firm government of the first Tudors the country enjoyed peace and rest; and great domestic progress and prosperity were the natural and immediate result. The merchant classes began to invest largely in land. The

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The grantee may mortgage, sell, or otherwise dispose of the grant as he pleases; and, as long as he pays the rent, the land cannot be sold or the value of the improvements lost. The grantor cannot demand the principal money, which represents the value of the land; but the grantee has now a power of redemption. It has been decided that as the Statute of *Quia Emptores* was never in force in Pennsylvania, these *ground-rents* are rent-services, not rent-charges.

Rents of assize are the certain established rents of the freeholders and ancient copyholders of a manor, and which cannot be departed from. Those of the freeholders are called chief rents, and both are indifferently termed *quit-rents*, because thereby the tenant goes *quit* and *free* of all other services. Payment of an unvaried rent for a long series of years to the lord of the manor is evidence of a quit-rent.

A *fee-farm rent* is a rent-charge reserved on a grant in fee, the term denoting the perpetuity of the rent or service and not the amount.

A *rack-rent* is a rent which equals the full annual value of the land, and is usually the result of unchecked competition.

A *fore-hand rent* or fine is a premium given by the lessee to the lessor at the time of taking or renewing the lease. This is common and usual in Bengal, and is known as *salâmi*.

It is not necessary that rent should be reserved in money. According to Chief Baron Gilbert, in his *Treatise on Rents*, it is "an annual return made by the tenant either in labour, money, or provisions, in retribution for the land that passes." Rent must be certain or ascertainable, and *id certum est quod certum reddi potest*.

In England, rent does not usually issue out of incorporeal hereditaments; but to this there are some exceptions, as for example, in the case of grants from the Crown.

rise in the price of wool introduced sheep-farming on an extended scale. Common lands were enclosed and converted into sheep-walks. Clearances were made: the smaller tenants were evicted, and their holdings thrown together. The old tenants thus evicted sought land elsewhere, and increased the demand. The customary rents were raised owing to this and other causes; and in the beginning of the sixteenth century had been more than doubled. Sir Thomas More, writing in 1515 A. D., gives a very striking account of the miseries produced by these proceedings. Mr. Green,[9] speaking of the state of things at that period,

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[9] *History of the English People*, II, pp. 20, 21. Every sharer in the arable land of the village community had originally the right to pasture his cattle on the unreclaimed waste. This waste was at first undefined, and the lord reclaimed portions at his will. Soon, however, those who had the right of pasture objected to the diminution of the area of the waste, and disputes arose, which led to the passing of what are known as *Statutes of Approvement* (*i.e.*, improvement). The first of these was the Statute of Merton (1236 A.D.), which recites that many great men, who had enfeoffed knights, and their freeholders of small tenements in their great manors, had complained that they could not make their profit of the residue of their manors, as of wastes, woods, and pastures; and provided for leaving these feoffees pasture sufficient for their tenements, and enabling the lord to make his profit out of the residue *notwithstanding the contradiction of his tenants*. The next Statute was the Statute of Westminster the 2nd, which empowered the lord to approve *notwithstanding the contradiction of his neighbours*. These Statutes only enabled the lord to bring under cultivation so much of the waste as would leave sufficient pasture for those entitled to it: but in course of time it became expedient to convert into arable land even those tracts in which there existed a common right of pasturage. This led to what are known as the *Inclosure Acts*. Up to 1760, 244 of these Acts had been passed. Between 1760 and 1773, in consequence of the stimulus given to agriculture, 650 such Acts were passed: from 1773 to 1792, 705 were passed; and no less than 1,481 between 1792 and 1811. Lord Brougham, speaking in 1816, said, that, during the preceding ten years, Inclosure Bills to the number of 12,000 had been passed, and some two million acres had thereby been brought into cultivation (see Walpole's *History of England*, I, 165, and authorities there quoted). The *fencing*, cultivation, and improvement of common arable fields, wastes, and commons was provided for by 13 Geo. III., cap. 81 (1773 A. D.); and the 6 & 7 Will. IV., cap. 115, was passed (1836, A.D.) for facilitating the inclosure of open and arable fields in England and Wales. A General Inclosure Act (8 & 9 Vict., cap. 118) is now in force, under which the rights of all parties interested are duly considered and compensated

says:—"The riots against 'enclosures,' of which we first hear in the time of Henry the Sixth, and which became a constant feature of the Tudor period, are indications not only of a perpetual strife going on in every quarter between the landowners and the smaller peasant class, but of a mass of social discontent which was to seek constant outlets in violence and revolution. . . . The extension of industry at last succeeded in absorbing this mass of surplus labour, but the process was not complete till the close of Elizabeth's day, and throughout the time of the Tudors the discontent of the labour class bound the wealthier classes to the Crown. It was in truth this social danger which lay at the root of the Tudor despotism. For the proprietary classes, the repression of the poor was a question of life and death. Employer and proprietor were ready to surrender freedom into the hands of the one power, which could preserve them from social anarchy."

Inclosures and Clearances in 15th and 16th centuries.

By evicting the small tenants, the lords were enabled not only to unite their holdings into large farms, but also to appropriate the common lands in which these tenants had rights of pasture. From the middle of the fifteenth to the close of the sixteenth century, the destruction of small holdings and conversion of arable land into pasture continued notwithstanding legislation intended to check it. An Act of Henry VII., passed in 1488, and which prohibited the destruction of farm buildings let with twenty acres of land, recites, that "many houses and villages are now deserted. The arable land, which belonged to them, has been enclosed and turned into grass land; and idleness is becoming general. Where two hundred people were living but lately by their labour, two or three shepherds are now to be seen." Acts passed in the reign of Henry VIII. directed the rebuilding of the demolished

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by Commissioners appointed for the purpose. For much valuable information as to the process by which the waste land was inclosed and converted into arable land, see Mr. Williams' work on *Rights of Common*.

houses and the restoration to the plough of lands that had been taken from it. Latimer, preaching before Edward VI., in 1549, reproached the nobles for being inclosers, graziers, and rent-raisers. A Commission was soon after appointed, and its members reported that they could see nothing but houses in ruins and cultivators without homes; that sheep and oxen had taken their place; and the king could no longer find soldiers. So late as 1634 an Act recites that a few individuals had accumulated in their own hands enormous extents of land on which they fed countless flocks; that some of them possessed from ten to twenty-four thousand sheep; that consequently cultivation was abandoned and the country depopulated. The direct consequence of this immense extension of grass land was a keen competition for such arable land as was to be let. Customary rents were thus superseded by competition rents; and when the decline of the wool trade and an increasing population brought a reaction, and pasture was again converted into arable land, the principle of competition was well settled, and continued to regulate the relations of landlord and tenant.

Customary Rents superseded by Competition Rents.

§ 15. Macaulay, describing the state of England in 1685,[1] says, that the rent of land had been constantly rising, that in some districts it had multiplied more than tenfold, while in some it had not more than doubled, that it had probably on the average quadrupled; and he further tells us that the country gentleman who witnessed the Revolution (1689 A.D.) was probably in receipt of about a fourth part of the rent which his acres now yield to his posterity.

Great Rise of Rents in the 17th century.

[1] *History of England, Chap. III.* In the same chapter he tells us, that four-fifths of the common people were, in the seventeenth century, employed in agriculture,—that agricultural wages were four pence a day with food, and eight pence without, on the average four shillings a week—and that "an English mechanic, instead of slaving like a native of Bengal for a piece of copper, exacted a shilling a day." The native of Bengal now gets something more than a piece of copper. The labouring coolie receives three, and in some places four annas a day. In Calcutta he makes as much as eight annas, which to him are worth more than a shilling.

Improvements in Agriculture during the latter half of the 18th century.

At the beginning of the eighteenth century, notwithstanding the fact that rent had on the average quadrupled, agriculture in England was in a very rude and primitive state. The land was in most places uninclosed. The cattle of each township grazed together as they do in India at the present day.[2] The arable land was occupied in common field. There was no rotation of crops, and corn was grown year after year, until the land was completely exhausted and had to be left fallow in order to recover itself. This century, however, brought a great change. The high prices of corn, which were kept up by the artificial legislation known as the Corn Laws,[3] had the

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[2] In India, at the present day, the fields are uninclosed. When the crops are gathered, the village cattle in a common herd depasture at will the open *maidans* or plains around the cluster of homesteads belonging to their owners. But indications are not wanting that this vestige of common property will before long disappear in many places. *Cattle Trespass Acts*, passed from time to time by the British Legislature, have introduced the idea that one man's cattle have no right to go upon another man's field, even when the crop is no longer on the ground.

[3] In former times the prohibition of the exportation of corn was considered sound policy for the purpose of increasing and maintaining the food-supply of a country. In India, during the last famine, it was a question for consideration by Government whether the exportation of rice should not be prohibited. In England, from the Conquest to 1436 A.D., exportation was absolutely prohibited. Importation was free up to 1463, for importation, it was considered, increased the supply. In 1463, by way of benefiting agriculture, importation was prohibited until the home price exceeded that at which exportation ceased. In 1562 the prices, at which exportation was allowed, were fixed at 10*s.* a quarter for wheat, and 6*s.* 8*d.* for barley. In 1571 the principle of imposing duties on exportation was introduced; wheat was allowed to be exported when the home price did not exceed 20*s.* a quarter, on payment of 2*s.* duty per quarter; and barley, when the home price did not exceed 12*s.* a quarter, on payment of 1*s.* 4*d.* duty. In 1663 the high duties on exportation were taken off, and an *ad valorem* duty substituted, the limit of price allowing exportation being extended. In 1670 this limit of price was further extended to 53*s.* 4*d.* per quarter for wheat, and other grain in proportion; prohibitory duties being imposed on importation till the price rose to 53*s.* 4*d.* per quarter, and the duty being 8*s.* between this price and 80*s.* Upon the Revolution in 1689, with a view to the interests of agriculture, not only were the duties on exportation abolished, but exportation was encouraged by a bounty of 5*s.* on every quarter of wheat exported, while the price continued at or below 48*s.* The object of this bounty was to *raise the price of corn, and so raise rents*,

direct effect of bringing about great improvements in agriculture; and accordingly towards the close of the

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When the price of corn fell, the home producer could raise it by exporting and so diminishing the stock available for home consumption; and the bounty of ten per cent. enabled him to continue exporting without loss. When the price remained high or became higher, the duties on importation prevented the introduction of foreign corn which would increase the supply and so lessen the cost to the consumer, to whose disadvantage the price was thus maintained.

Up to 1760 England exported corn; and the total amount of bounty paid during the ten years ending with 1750 exceeded a million and a half of money. After 1760 there was a rapid increase of population, and a very great extension of commerce and manufactures, the result being that England was able to consume all the corn produced by herself, and occasionally required a further supply from abroad. It, therefore, became necessary to modify or remove the restrictions on importation. In 1773 an Act was passed, by which the bounty and exportation were both to cease when the price of wheat was 44*s.* a quarter or more; and when this price was 48*s.* or more, the importation of foreign wheat was allowed on payment of a nominal duty of 6*d.* Between 1773 and 1791 a large quantity of foreign wheat was imported, this being the consequence of a greater demand for food caused by the rapid increase of the manufacturing population. It was not till 1788 that imports permanently exceeded exports. Between 1773 and 1788 there were fluctuations, and in some years of unusually abundant harvests, exports considerably exceeded imports. The Act of 1773 prevented prices from rising as the result of increased demand, because, when they reached a certain point, foreign corn was exported, and the supply thereby increased. The landholders, who were a strong power in Parliament, cried out against a law which, to their thinking, kept down prices, and, therefore, rents. Pitt yielded to the outcry, supported by arguments, as to the danger of having to depend on foreign supplies; and in 1791 a new Act was passed, by which the price at which foreign wheat might be imported at the nominal duty of 6*d.* was raised from 48*s.* to 54*s.*: under 54*s.* and above 50*s.* the duty was 2*s.* 6*d.*: and under 50*s.* there was a prohibitory duty of 24*s.* 3*d.* The bounty continued as before to 44*s.*, and exportation without bounty was allowed up to 46*s.* The operation of this Act; the increased facility for obtaining capital created by the exemption in 1797 of the Bank of England from paying in specie; the scarcity and high prices of 1800 and 1801—all these causes together gave an unnatural stimulus to agriculture, and poor soils were brought under cultivation, which, in the natural course of things, would have remained unbroken. In 1804 it was found that prices, as regulated by the operation of the Act of 1791, would not allow the poor soils to be cultivated with profit; and the landholders obtained a new Act, by which the home price, up to which the prohibitory duty of 24*s.* 3*d.* was imposable on imported wheat, was raised from 50*s.* to 63*s.*: from 63*s.* to 66*s.* the duty was to be 2*s.* 6*d.*; and above 66*s.* the nominal duty of 6*d.* was allowed. Prices and rent were in consequence forced up to an extraordinary height, and in 1813 wheat was sold at 112*s.* a quarter.

century a very extraordinary advancement had been effected. The introduction of a proper alternation of crops is said to have had the effect of doubling and occasionally

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Importation was prevented as well by the operation of this Act, as by the war which made freight and insurance five times as high as during peace, while no vessel could be laden in any Continental port for England without a licence. With the destruction of Napoleon's anti-commercial system in the autumn, and the prospects of peace, prices fell, a large quantity of corn being imported. It was clear that a considerable extent of poor lands would be thrown out of cultivation and relapse into pasturage, and that rents would fall. Again, the landholders raised the cry that the country was in danger, if it had to depend upon foreign supplies of food; and a Bill was passed in 1815, by which the importation of corn from the North American Colonies was prohibited, until the home price of wheat was 67*s.*; and the importation of foreign corn, until the home price was 80*s.* a quarter. By an Act of the preceding year, 1814, the bounty was repealed, but unlimited freedom of exportation was conceded. Fresh legislation was tried in 1822, 1829, and 1842, the duties being made to vary with the variations in the price of corn. For reasons which will be found fully stated in the article on the Corn Laws in McCulloch's *Commercial Dictionary*, these attempts to interfere with the action of economical laws, though productive of immediate benefit to landholders, were in their ultimate effects prejudicial to agricultural interests, whilst on the manufacturing population of consumers they inflicted unmitigated injury. An agitation was raised against the protective system; and year by year it grew stronger, and the manufacturing interest grew more powerful. The failure of the potatoe crop in 1845 and the necessity of large importations in order to avert famine, made this agitation irresistible, and at last in 1846 the Corn Laws were modified and repealed with effect from the 1st February 1849, by the 9 and 10 Vict., cap. 22, under the provisions of which the corn trade was thenceforward conducted. Before the repeal of the Corn Laws, the reaction had set in and had reached its climax about 1834, when land in Birminghamshire, which had been let for 35*s.* to 37*s.* an acre, was reduced to 7*s.* to 14*s.* an acre. Farmers were afraid to take long leases, and yearly tenancies became usual. No one could tell what a year might bring forth; and no foresight could calculate future prospects. Thus landlords, as well as tenants, were afraid to enter into any but temporary engagements. It will thus appear that the inclosures and clearances of the 16th, and part of the 17th centuries enabled a limited class to destroy the rights of the small holders and obtain absolute power over the land, which absolute power was confirmed in them by the 12 Car. II., cap. 24. These measures, together with the extension of sheep-farming, while diminishing the area of the arable land, enabled the landowners to ask and obtain higher rents for cultivated land. When increasing population and the decline of the wool trade brought about the reconversion of pasture into arable land, the power of the landowners to exact high competition rents was strengthened by the Corn Laws, which kept out foreign supplies and forced the people of England to depend altogether upon home-produced corn.

trebling the productive powers of the land. The natural result of all this was that old rents rose immensely, and the rental of estates was enormously increased, as well by this rise as by bringing new land into cultivation. The total rental of land in Scotland rose from two millions in 1795 to more than five and a quarter millions in 1815. The total increase in England was not so great, but in parts of the country the advance was very remarkable. Farms in Essex, which, before the French Revolution, were let for less than ten shillings an acre, were paying 45 to 50 shillings an acre in 1812; and in Berkshire and Wiltshire, farms, which were let at 14 shillings an acre in 1790, brought 70 shillings, or five times as much, in 1810.[4]

Further rise of Rents in consequence.

§ 16. From the peculiar course of progress in England, and from that state of affairs under which the absolute ownership of the land was, from the close of the seventeenth century, in the hands, not of the cultivators, but of a limited class of proprietors, who were all-powerful in the Legislature to regulate its measures with a view to their own interests above all others, there has been evolved a theory of Rent, which, although it may be scientifically correct with reference to the peculiar circumstances of England, is not equally correct when applied, and is, in many instances, not at all applicable, to other countries and other communities whose past history and present condition are in many respects, if not altogether, different. The basis of this theory[5] is the application of Capital to Land.

Theory of Rent in England.

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[4] Porter's *Progress of the Nation*, p. 151.

[5] Mill points out that this theory of Rent is applicable only to capitalist farmers; and that it cannot be supposed to regulate metayer rents or cottier rents; but the distinction has been too often lost sight of. In India, for example, there is no cultivated land which does not yield a rent, for a portion of the produce of every *bigha* is demandable by the State or by those to whom the State has transferred its rights; and the very foundation of the theory is, therefore, wanting. Yet some twenty years ago it was argued, and, for a time successfully, that rent in Bengal was to be adjusted by this theory. In considering the consequences of forcing English theories and institutions upon India, we must bear in mind that the above principle of Rent had not been elaborated at the time of the Permanent Settlement, and was not perfected

It postulates the remuneration of the cultivator at no higher rate than the bare wages of unskilled labour. The capital employed must yield the ordinary rate of profit, not less than the average rate of profit derived from capital employed in other investments. The labourers who do the work of cultivation are paid the ordinary rate of wages, not more than the rate to which an overcrowded labour market renders it possible to reduce them, and this, too, often means but the very barest sustenance. All the profit which the land yields after discharging these two items is *Rent*. The worst land in actual cultivation just satisfies these two items, and gives no surplus for rent. If the price of the produce is increased either by artificial means or by the natural increase of demand, while the supply remains the same, there is a surplus; in other words, this land yields rent, whereupon inferior soil is taken into cultivation. "We may lay it down as a principle," says Mill, "that so long as any of the land of a country which is fit for cultivation, and not withheld from it by legal or other factitious obstacles, is not cultivated, the worst land in actual cultivation (in point of fertility and situation together) pays no rent" . . . . . "any land yields just as much more than the ordinary profits of stock, as it yields more than what is returned by the worst land in cultivation." . . . . . "The rent which any land will yield is the excess of its produce beyond what would be returned to the same capital, if employed on the worst land in cultivation." This is the theory which the capitalist and the landowner have constructed. The labouring cultivator had no hand in its construction—his voice was not heard in council—and his vote did not direct that legislation, which took so little account of his class and of his interests. The origin of this theory, as of trial by jury and *habeas*

till some twenty-five years later—See Mill's *Political Economy*, I, 509, and Walpole's *History of England*, I, 340. The Permanent Settlement was a mistaken attempt to introduce into India the English system of landholding, but the consequences of this attempt—competition rents—could scarcely have been foreseen.

corpus, is to be found in the peculiar circumstances of the history of an individual nation; and from this origin the value and importance of the theory, as of those institutions, are scarcely separable; yet, wherever the English nation has extended its sovereignty, it has, directly or indirectly, endeavoured to introduce its own system of landholding, and apply this theory of rent to other and different conditions of rural economy. There is too much reason to believe that at least as much mischief has been done by this spirit of economical propagandism, as other nations have caused by that religious proselytism, which England has wisely and liberally discarded.

CHAPTER III.

The Tenure of Land, and the Relation of Landlord and Tenant in Prussia.

§ 17. On the Continent the Feudal System continued to exist for a century and a half after its abolition in England; and it was only in the early part of the present century that it was abolished in most states of modern Europe. From this delay in the advent of an inevitable revolution there resulted this great advantage, that increased knowledge and experience and consequent enlightenment were at hand to guide and direct its action and operation, when in the fulness of time it came to the great continental nations. The consequence has been that the effects of the change have been to these nations altogether different from the effects produced in England. This will be manifest more particularly from what has been done in Prussia. At the commencement of the present century land in that country may be said to have been divided into districts of two kinds: the Manorial district proper, consisting of the demesne lands cultivated by the manorial proprietor; and the district of the Village Community, consisting of the arable mark and the common mark, in which the peasant population had rights, which varied with the nature of the original settlement and the influence of subsequent events. Where villeins of the lowest degree had been settled upon the demesne lands of great proprietors, they were liable to unlimited service, and too often had no rights of property in the plots of land which they were permitted to cultivate. They might, at the will of their lords, be deprived of their holdings or transferred to others. Freemen similarly settled, and who practically

Feudal System on the Continent not abolished until the 19th century.

State of things in Prussia before Reform.

had sunk to a condition of superior villenage, might have become owners of their lots, while bound to render services, which left at their disposal but little of their own labour. Local custom for the most part regulated the services and dues to be discharged by those who were not subject to the mere will of their lords. Where allodial owners had come under the power of the lords by commendation, they had been able to make their own terms, and their descendants continued to have rights of property in their lands, while their rents and services depended upon how far resistance to encroachment had been successful through the long years of feudal oppression. The condition of the peasants thus varied widely not only in different provinces, but in different parts of the same province. In few places, however, did the peasant holdings consist of separate parcels, absolutely unconnected with each other. They were everywhere integral portions of the district or township of the Village Community; and this township was subject to the overlordship[6] of the manor. In some parts the periodical

[6] What exactly were the incidents of this overlordship has been as much debated as the rights of a zemindar in Bengal. The feudal lords, like the Bengal zemindars, at one time asserted an arbitrary right to dispossess the tenants and take possession of their lands. Frederick the Great imposed a fine of a hundred ducats on any landlord who took and retained possession of peasant land, and a general law was subsequently passed to prevent it. There was an old Statute of William the Conqueror's time, which forbad the lords to remove the cultivators from the land as long as they discharged their services, and provided that, if the lords did not procure fit persons to cultivate the lands, the justices should do so. Either these provisions soon fell into desuetude, or they were intended to refer only to lands other than the lord's demesne, for Bracton defines *dominium villenagium*, or demesne land, to be that which the lord may resume and recall in season or out of season at his pleasure. In Bengal the zemindars were forbidden by the Act of 1859 to evict persons who had acquired a right of occupancy by holding for twelve years. Both in the East and West there were distinctions, which supplied arguments on either side of the question. The allodial proprietors, who had commended themselves to lords, and who paid rents and services in the nature of taxes rendered to secure protection, the first duty of government, were in a very different position from *villani*, who came in under, and accepted grants from, the lords. So in Bengal the ryots, who were on the land before the Permanent Settlement created the modern zemindar, have claims and

division of the arable land by lot had wholly ceased, and private property in separate parcels had been developed; but partition by lot was still practised for the meadows and woods. In other Communes the allotment of the arable land had become permanent; but each person entitled occupied all the parcels in rotation. In other places again annual allotment and partition still prevailed. Thus there were (1) peasants who had rights of property in the lands which they held; and (2) peasants who had only rights of usufruction. Then again there was a difference between land in a Commune, which, originally allodial, had *commended* itself to a feudal lord, and land upon which the lord, exercising full power of disposition, had settled his villeins or retainers. In the latter case the right of property was subject to heavier burdens; and the usufruction was seldom hereditary, and often merely for life or for years, or even at will. The lord could not himself enter into possession of peasant land; but, when it became vacant, was bound to put some peasant in possession. Along with these various rights in lords and peasants, there were various cross rights between lords and peasants, and between peasants *inter se*. The lords, for example, had rights of pasture upon the common mark, and the peasants upon the lord's demesne and the mark of other Communes. The peasants had rights to collect firewood in the lord's forest, and to fish in his streams; while he was entitled to receive dues from them for keeping cattle or bees, and upon marriages, might require their labour at inadequate customary rates, and could compel them to sell their surplus produce to himself. Then the whole community was divided into three classes, who in respect of rights connected with land and other matters were kept as strictly asunder as, in matters of ceremonial religion, men of different castes in India. These three classes were the Nobles, the Peasants, and the Burghers.

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rights which cannot equally be conceded to those who, since the Permanent Settlement, have been let into possession of land cleared and brought into cultivation by the labour and capital of the zemindars, their grantors.

The Noble might administer his estate, or serve the king in civil or military employment; but he might not devote himself to trade or business, and he might not acquire burgher land, or the actual possession, the *dominium utile*, of peasant land. The Peasant might not possess land in absolute ownership. The *dominium utile* was his; but there could be no merger between this and the *dominium directum*, which could belong only to members of the superior caste. Moreover, the peasant, though nominally free, could not use his labour as he pleased, but owed part to his lord, and might have to give another part for insufficient remuneration. The Burghers had a monopoly of trades and industries, but they could not acquire either nobles' land or peasants' land; and the pursuit of arms and civil employment in the service of the State were forbidden to them. There can be no more remarkable instance to show how the well-being, the growth, and the best interests of a people may be affected by its system of landholding.

§ 18. The first great step towards a change was the edict of October 9th, 1807. In this it is recited that, owing to the universal character of the prevailing misery, it surpassed the means of Government to relieve each person individually, that it is not only conformable to the everlasting dictates of justice, but likewise to the principles of a sound national economy to remove all hindrances in the way of the individual attaining to that measure of material well-being which his capacities may enable him to attain; that the existing restrictions, partly on the possession and enjoyment of landed property, partly in connection with the personal condition of the agricultural population, in an especial manner obstruct the benevolent intentions of Government and exercise a baneful influence, the one by diminishing the value of landed property and impairing the credit of the landed proprietor, the other by diminishing the value of labour. The edict then ordains that every one is free thenceforth to acquire and own landed property of every kind and description; that the Noble may acquire

Prussian Legislation—Edict of October 9th, 1807.

not only noble land, but burgher and peasant land, and the Burgher and the Peasant may acquire not only burgher and peasant land, but likewise noble land; that every Noble, without derogation to his rank, may exercise the trades and callings of the Burgher, the Burgher may become Peasant, the Peasant, Burgher; that all owners of real property may sell the same piecemeal, as well as in block; that from the day of the publication of the Edict, no new relations of villenage, either by birth, marriage or acquisition of a villein holding can be created; all peasants holding by hereditary tenures, and their wives and children shall cease to be villeins, and from Martenmas 1810, every remaining form of villenage shall cease. It was further provided that, if a landed proprietor thought that he could not restore or keep up the several peasant establishments on his property, he might, if the holdings had not got the character of hereditary tenures, and, with the permission of Government, consolidate such holdings into one large peasant-holding, or incorporate them with his demesne land. By subsequent instructions this was allowed only in the case of *new land*, or land let out in peasant tenures during the previous fifty years, and then only upon condition that half the land proposed to be changed into demesne land should be made into comparatively large peasant holdings, and either given in fee-simple to peasant-holders or let on perpetual leases. This edict was the work of a Commission, the most prominent members of which had been pupils of Kraus, the great expounder of Adam Smith at the University of Königsberg. One great question discussed by this commission was, whether legislation should be directed to the formation of large farms worked by capitalists, or to maintain the actual peasant-cultivators, raise their personal status, and increase their material well-being. The provision above last-mentioned, while guarding the peasant proprietors from anything like extinction, allowed the experiment of capitalist farming in places where the Government were satisfied that this system could be tried without prejudice to the interests of the peasant population.

Villenage abolished.

§ 19. Notwithstanding the edict of 1807, the ownership and occupation of the land continued to be in separate hands. The ownership was with the Nobles, the occupation with the Peasants. But the peasants, while they could not be evicted from the lands, were not masters of their own labour. The Peasants and the Land were enfranchised by two edicts of 1811—an "*Edict for the Regulation of the Relations between the Lords of the Manor, and their Peasants*," and an "*Edict for the better Cultivation of the Land*." The first of these provided for the transformation of peasant-holdings into property, and the commutation of the services and dues on the basis of a fair indemnity. Tenants of hereditary holdings, that is, holdings inherited according to the common law, or for which the Lord of the Manor was bound to select as tenant one of the heirs of the last tenant, were to become proprietors of their holdings after paying to their landlords the indemnity required by the edict; but all claims of the peasants on the Manor for repairs of the farm buildings or other purpose were to cease. Landlords and tenants were allowed two years to settle the terms of the indemnity between themselves. After that, the State took the matter in hand. The landlords' rights to be commuted were thus classified: (1) right of ownership, (2) right to services, (3) dues in money and kind, (4) dead stock of the holdings, (5) easements on the land. The tenants' rights to be commuted were specified, thus: (1) claim to assistance in case of misfortune, (2) right to gather wood and other forest rights in the forest of the Manor, (3) right to have buildings repaired by landlord, (4) claim upon landlord in case of tenant being unable to pay public taxes, and (5) pasturage rights. It was pointed out by way of instruction that dues paid in kind or in money, dead stock and easements were capable of exact valuation, while other rights could only be approximately valued. Three principles were laid down to regulate the commutation: (1) neither the services nor the dues of hereditary holdings were to be raised, (2) they were to be lowered, if at their existing rate the holder could not

Prussian Legislation of 1811.

subsist,[7] (3) the holder was to be left in a position to pay the State dues. In other words, the landlord could get only what remained after paying the Government taxes and leaving the tenant sufficient means of subsistence. The literal application of this rule would have given the landlord too much in the case of large holdings and small families, while he would have got little or nothing in the case of small holdings and large families. It was, therefore, further provided that all conditions should be taken to be satisfied when the dues and services rendered to the Manor did not exceed *one-third*[8] of the total revenue derived by an hereditary tenant from his holding; and that the lords should be taken to be fully indemnified, when the tenants had surrendered to them a *one-third* portion of all their lands, and renounced all claims to extra-ordinary assistance, dead stock, repairs and payment of State dues on their behalf. Where the lords and peasants made their own arrangements mutually, the indemnity might be a money payment, or a corn or money rent. The general rule was, however, to be payment in land, unless in the case of holdings of fifty morgen (about 34 acres) or less, the indemnity for which was allowed to take the form of rent. Some exceptions to the creation of absolute proprietorship were found necessary. The lord was allowed to retain his right of pasturing his sheep upon two-thirds of the fallow and stubble of the arable mark, while the peasant was still permitted to collect as much firewood in the demesne as he required for his actual use. In return for this right and for the acquisition of his house, farm buildings and garden plot (*i.e.*, his allotment in the *village*

Commutation of Landlord's Rights for a third of the Land.

[7] In the *Report of the Bengal Rent Law Commission* (1880), it was adopted as a cardinal principle of rent for that Province, that such a share shall be left to the cultivator of the soil, as will enable him to carry on the cultivation, to live in reasonable comfort, and to participate to a reasonable extent in the progress and improving prosperity of his native land.

[8] In the *Draft Rent Bill* prepared by the same Commission, the highest rent exigible from an occupancy raiyot was limited to *one-fourth* of the average annual value of the *gross* produce—but the landlord retains the *dominium directum*, while the raiyot has only the *dominium utile*.

mark), he was to render labour service to the lord at harvest, and other times when extra hands were wanted, subject to the limit of ten days' team-work, ten days' hand labour for a team peasant, and ten days' man's work and ten days' woman's work for a hand peasant. When corn rents were not paid punctually, the lord might exact labour service instead. Such were the provisions applicable to *hereditary* holdings. In the case of holdings *for life, or a term of years, or at will*, the landlord's indemnity was to be one-half, while the conditions and principles of commutation were generally similar.

§ 20. The "Edict for the better Cultivation of Land" removed all pre-existing restrictions on the transfer of landed property. These restrictions had been many and burdensome. For example, land could not be alienated without the consent of the Crown; peasant inheritances were valued at a fixed rate, and the purchaser was prohibited from paying such a price as would leave him unable to pay the public charges. The proprietor was now allowed the fullest power of exchanging and disposing of his land in whole or in part, and an opportunity was thus afforded to the *small folk*, cottiers, gardeners, and day-labourers to acquire land, and little by little to increase it. All distinction between peasant's land and demesne land was done away with, and the lords were allowed to acquire the former. In order to discourage the system, under which the ownership had been with one person and the occupation with another, although proprietors were allowed to settle labourers on their estates, and pay wages wholly, or partly in land, such contracts were limited to twelve years. Indeterminate rents in money or in kind were disallowed. A first attempt was made towards dealing with rights of common, which were so numerous and burdensome as materially to obstruct the enfranchisement of the land; and one-third of the lands subject to common of pasture were freed from this right of common, and placed at the absolute disposal of individual proprietors. Provision was made for the employment of qualified

Edict of 1811 *for the better Cultivation of Land.*

experts in agricultural suits and disputes. Finally, the formation of Agricultural Societies in every part of the country for the purpose of collecting and diffusing agricultural knowledge was encouraged by paying out of the Exchequer the expenses of these Societies, and the salaries of their secretaries. When the Edict of 1811 for the regulation of the relations between landlord and tenant came to be put into operation, strong objections were raised that the principles of commutation therein contained were unfair to the nobles; and this agitation was sufficiently strong to procure *The Declaration of the 9th May 1816*, by which the right of conversion into absolute property was limited to peasant farmers—a peasant farm being defined to be a farm (1) sufficing for the maintenance of the possessor as an independent cultivator, (2) entered in the provincial survey and paying land-tax as a peasant property, (3) established before certain dates in the middle of the eighteenth century, and (4) subject to the obligation on the part of the lord to keep it tenanted by a peasant cultivator. The result of this enactment was that a large number of small holders were excluded from the right of conversion. Those of them, whose holdings were hereditary, continued burdened with feudal services and dues; and those, whose holdings were not hereditary, were evicted wholesale, as the law no longer prohibited the nobles from acquiring possession of peasant land. In 1836, a further Declaration fixed twenty-five Prussian (about 17 English) acres as the smallest holding entitled to conversion.

Declaration of 9th May 1816—Restriction of the right of conversion into absolute property.

§ 21. The operation of these laws, while opening out a vista of splendid freedom to the agricultural population, was however not sufficiently effective to bring about the desired results. Numerous suits were instituted, in order to determine what peasant holdings were excluded from, or entitled to, the right of conversion. A large amount of dissatisfaction arose. Fresh legislation became necessary, and, in 1850, certain measures became law, which effectuated the intentions of the commencement of the

century. By *The Law for the Redemption of Services and Dues, and the Regulation of the Relations between the Lords of the Manor and their Peasants*, all hereditary holders in Prussia, irrespective of the size of their holdings, became absolute proprietors, subject to the customary services and dues. A distinction was, however, drawn between customary rights and dues which were considered fit subjects for compensation, and other rights and dues which it was thought proper to abolish without compensation, unless where they were specifically attached to the grant or alienation of land. In the latter class were included a number of judicial and other powers, and dues levied in connection therewith; certain dues which had the form but not the essence of public taxes; a variety of fines, *e.g.*, for keeping cattle, bees, &c.; services of personal attendance, and the obligation to sell produce to the lords of the manor. The obligation to work for the customary wages of the district was unconditionally abolished. Services and dues, for which compensation was allowed, were valued on an average of years according to certain prescribed principles, and were commuted into fixed money charges. These charges were made compulsorily redeemable, either by the immediate payment of 18 years' purchase, or by the payment of 4½ per cent. for 56½ years, or 5 per cent. for 41½ years, on a sum equivalent to 20 years' purchase of the rent charge. The rent charge was not to exceed *two-thirds of the net return* from the land; and the occupancy holder could claim such a reduction as would leave him *one-third of the net proceeds*. The important distinction between this legislation and that of the early part of the century was that a money compensation payable in a lump sum, or by a rent charge for a term of years, was substituted for compensation payable by giving up a portion of the land. In order to carry out the redemption thus provided for, another law was passed, having for its object the establishment of Rent Banks. By means of these Banks, which were established in every district, the State constituted itself the broker between

Prussian Legislation of 1850—All Hereditary Holdings converted into absolute property.

Commutation of Services and Dues into Rent Charges.

Rent Banks established in order to the Redemption of the Rent Charges.

the nobles and the peasants. The Bank advanced to the landlord, in Rent Debentures paying four per cent. interest, a capital sum equivalent to the amount for which the rent charge was made redeemable. The peasant in addition to his ordinary rates and taxes pays to the District Tax Collector each month one-twelfth part of the annual interest on this sum, calculated at 5 or 4½ per cent. according as the redemption is to be made in 41½ or 56½ years. Upon the expiry of this term of years the payments will cease, and the peasant will be absolute proprietor of his land. The legislation for the inclosure of common lands and the commutation of rights of common, which was commenced in 1811, was continued in 1821 and 1850. Under the provisions of the laws passed in these two years, commutation of vested interests was applied to common of pasturage on cultivated lands, meadows and woods, to common of mowing grass and collecting rushes and reeds, to common of cutting wood and gathering faggots, to common of cutting heather, to common of gleaning, to common of collecting resin, to common of piscary, to common of turbary, and other commons.[9] Every person entitled to exercise the right of common was allowed to claim commutation. The rights of the claimants were ascertained by evidence of laws, bye-laws, customs and contracts. In those cases in which it was possible, the property affected by the rights of common was divided, and each person interested received a share of the land. Where this was not possible, compensation was made in rent charges, commutable at

Commutation of Rights of Common.

[9] In Bengal there are few or no rights of common. The only right of this kind which I have met is the customary right of all the villagers to graze their cattle, in charge of a common herd, upon the stubble of the rice fields as soon as the crop is gathered. Woods do not exist, except in the form of unreclaimed jungle, and the firewood of the vast mass of the population consists of cakes of cow-dung dried in the sun. Fisheries are private property, and are strictly preserved, the slightest invasion of a *julkur* or right of fishery, being invariably followed by a civil or criminal suit. In the Lower Provinces of Bengal the village community has left few traces of its existence in the shape of rights of common.

twenty-five, and afterwards at twenty years' purchase. Finally a special Ministry of Agriculture was organized, with capable subordinates all over the country, for the purpose of guiding and watching these reforms; and collecting and circulating the most useful practical information on the subject of agriculture and other matters connected therewith.

§ 22. It has been said that the great object of the legislation of 1807, was the abolition of villenage, in so far as it affected the *personal status of the villein;* that the great object of the legislation of 1811 was the abolition of villein and other feudal *tenures*, and the substitution of allodial or absolute ownership; and that the legislation of 1850 was directed to the removal, from the land thus allodially owned, of all *charges*, public or private, derived from the feudal forms of tenure and from the feudal organization of society.[1] The general result of this legislation has been to free the land, and to free the peasant population. At the beginning of the century, Prussia had reached that dangerous stage at which population had begun to press upon the land; competition amongst landlords to let, and amongst tenants to take, farms was threatening danger to the welfare of the community. No method of fairly and satisfactorily regulating the relations of landlord and tenant was discovered; and the wisdom of Stein and Hardenberg cut the knot by uniting landlord and tenant in one person, *viz.*, the cultivating proprietor. Thus Prussia, in freeing herself from the trammels of feudalism, deliberately adopted as a principle of State policy the creation of peasant proprietors. Since the beginning of the cen-

General result of Prussian Agrarian Legislation during the present century.

[1] By R. B. D. Morier, C.B., in his Essay on *The Agrarian Legislation of Prussia during the present century*, published in the Cobden Club Essays on *Systems of Land Tenure in Various Countries*. In the above sketch I have largely borrowed from this essay, as well as from the papers by Mr. Harriss-Gastrell and Consul Herslet in the *Reports from Her Majesty's Representatives respecting the Tenures of Land in the several countries of Europe*, presented to both Houses of Parliament by command of Her Majesty in 1870. These papers contain a large amount of valuable information.

tury, Prussia has emerged from mediæval backwardness and social stagnation, and has stepped into the foremost rank amongst the advanced and enlightened nations of Europe. From being purely agricultural she has become an important manufacturing country; and, while the increased population, which land labour failed to support in comfort, have found remunerative industrial employment, the purely agricultural community have shared in the general amelioration instead of being relegated to a condition of endless, hopeless toil, with the poor house as the only provision in prospect for infirmity and old age.[2] There are enthusiasts who attribute this general progress and improvement wholly to her new land laws and the change in her system of landholding. It may, however, be justly asserted that these, though not the only causes, have been very important factors in producing the present prosperity of the nation.

Some particulars of the Law of Landlord and Tenant in Prussia.

§ 23. In a country in which the great majority of cultivators have been converted into proprietors, and in which as a principle of State policy proprietorship has been deliberately preferred to any form of tenancy, even for small holders, the law of Landlord and Tenant and the regulation of rent have naturally become questions of secondary importance. Nevertheless there are some few points connected with this branch of the law in Prussia, which may be usefully noticed. Demises of real property are of two kinds, those which grant the use, and those which grant the usufruct. Unless the contrary appear, it is presumed that a demise of land is a grant of the usufruct. A parol letting is for a year at most. The demise must be in writing when the annual rent is less than £7-10*s.*; and if

[2] Contrast the English labourer's share in the prosperity of his native land. Mr. Caird, after his tour through the counties of England in 1850, showed that, since Arthur Young's similar tour, less than three quarters of a century before, the rent of land and of a labourer's cottage had risen 100 per cent. in the purely agricultural counties, the price of butter had increased 100 per cent. and of meat 70 per cent., while the rise in labourer's wages during the same period was only 14 per cent.

the rent be £30 per annum or more, and reserved upon a whole estate, the demise must be executed before a competent tribunal or a public notary. The lessor may demand registration in the mortgage register. The rent may be in money or in kind; and rent in kind may be a fixed quantity, or a proportionate share of the produce. The law favours stipulations for rent in kind, or partly in money, and partly in kind, it being considered more fair that the result should in some respect at least vary with the price of corn. Apart from express agreement, rent is payable quarterly; and if two quarters' rent is in arrear, the lessor may give notice to determine the lease. If the lessee is by circumstances beyond his own control, and not merely by personal disability, prevented for three months or more from benefiting by his usufructuary right, he may claim a proportionate reduction of his rent: if prevented for a year or more, no rent can be claimed for that time. A partial remission of rent may be claimed, when the crop is damaged by fire, water, drought, frost, hail, mice, locusts, and the like. The lessor has the right of distress for the recovery of arrears of rent and other demands; and all goods and chattels, standing crops, gathered crops, live and dead stock, may be distrained. The lessee may obtain compensation from his lessor's estate, if the lease is determined before the expiry of its term by a forced legal sale of the lessor's property. The lessee must maintain the land in good condition, and the houses in good repair. The lessee is entitled to compensation for improvements made with the sanction of the lessor, or by order of the Executive. The lessee may withhold his rent, in order to satisfy claims for compensation. The landlord is unrestricted by law from raising the rent at his own option; but no mischief results from this, as there is a practical limit imposed by the conditions of agricultural economy. Tenants may tacitly hold over from year to year, and then the tenancy can be determined only by a notice given six months before the end of the agricultural year; but in farms divided for rotation of crops such a tenancy can be

determined only at the end of the period of rotation according to local custom. There can be no eviction without judicial sanction. Evictions decreed by Court are carried out, with reservation of the rights of both parties, before an appeal is decided. The evicted tenant has the right to be re-instated on certain grounds. A detailed valuation entering into the qualities and productiveness of the soil accompanies every contract of demise. Any variation from this estimate is ground of compensation, or in extreme cases for annulling the contract. The land is usually let with the necessary buildings, implements, live and dead stock. As a general rule, a lessee cannot sublet without the express permission of his lessor; but there are some exceptions to this rule, as, for example, in the case of outlying fields. Middlemen are, however, very rare; and, where they exist, they are generally working cultivators, who sublet a portion for convenience and in order to avoid the extra expense of divided operations; not unproductive farmers of rent, who share the fruits without having shared the toil of producing them.

CHAPTER IV.

The Tenure of Land, and the Relation of Landlord and Tenant in France.

§ 24. In England the power of the nobles coalesced with that of the Crown to destroy the rights of the peasantry, for the benefit of the nobles who thus became absolute owners of the land. In France, on the other hand, the Crown, seeking to diminish the power of the nobility, supported the cause of the peasantry. When, therefore, the French nobles attempted to suppress common pasturage, to appropriate the lands of the communes and unite them with the lord's demesnes, royal ordinances were passed to stop the encroachment. An ordinance of Henry III. in 1567 forbad all persons, whatever their rank or condition, to take or appropriate waste lands, which are the commonage and pasture of their subjects. Eight years later, the ordinance of Blois directed the *procureurs* to lay information against those persons who, of their own authority, had taken or made away with the letters, titles, or other evidences of their subject vassals, in order to appropriate the common lands, which such vassals had previously enjoyed; or who, under pretext of agreements, had compelled such vassals to submit to the decision of such persons as seemed good to them; and all such submissions, compromises, transactions or decisions were to be declared to be thenceforth of no effect. In 1629, the same directions were repeated in a fresh ordinance. In 1659, Louis XIV. made an ordinance, which recited that the majority of communities and villages had been induced to sell and alienate to powerful persons, such as the lords of the districts, their land and their right of user for very

France—Crown supported Peasantry against Nobles.

inadequate sums; and in many cases the price had never been paid, although there was writing to the contrary, by reason of the violence of the purchasers, who had compelled the inhabitants under false pretences to sign or grant away that which was lawfully due to them. The ordinance, therefore, annulled all alienations made during the previous twenty years, and re-established the communes in possession of all the property alienated. In 1667 all alienations, which had been made since 1620, were set aside, and the communes were authorized to resume possession of the lands on restoring the price which they had received. At the same time, the right of *triage*, under which the lords claimed to take for themselves gratuitously and in absolute ownership one-third of the communal property, was abolished. The effect of this maintenance by the Crown of the interests of the peasant communities was, that the rights of the cultivators of the soil were largely preserved and strengthened; and as in the usual course of progress common property was converted into individual property, these rights became permanent and transferable: and in many parts a peasant proprietorship was acquired, subject however to many heavy burdens imposed by the nobles and to a grievous State taxation. Long before the Revolution the French peasant had shown an effective desire to acquire land in small parcels. M. Monny de Mornay has shown that such acquisition was by no means unusual before the close of the sixteenth century; and the existence of an immense number of peasant properties long prior to 1789 has been proved beyond doubt in the introduction to M. de Lavergne's *Economie Rurale de la France*. Arthur Young, who travelled in France in 1787, 1788 and 1789, estimated that one-third of the kingdom was then so occupied; and further investigations have shown this to be under, rather than over, the true proportion.

Existence of Peasant Properties in France two centuries before the Revolution.

§ 25. In France, then, just before the Revolution the state of things was this:—In many places peasants held small parcels of land in more or less complete ownership;

at least a third of the soil was thus owned by them ; but the laws of succession tended to create subdivision of these properties into still smaller parcels. In other places there existed permanent tenures, implying an interest less than ownership and subject to the exaction of higher rent. In other parts the cultivators held upon tenures wholly precarious : and in many parts the occupants were mere serfs, holding at rack-rents ; in a condition of abject dependence ; obnoxious to unredressed injury ; clothed in rags ; fed upon the coarsest food, too often only nettles and pulse ; children of squalor and misery. Even the petty proprietors, and those who held on the most favourable terms, were subject to unjust restrictions on their industry, depravation of its fruits by vexatious oppression and imperious harshness, to merciless taxation, and the other miseries of outrageous misgovernment. Their knowledge of agriculture was rude in the extreme ; and they had no capital wherewith to make improvements. Stimulus to industry was wanting in the minds of those who knew that others would take and enjoy the increased fruits of greater exertion. The French Revolution is one of the many instances in which a nation has risen to redress the wrongs, which its government has created or has been unable to remedy. The tendency in France was to make the great body of the cultivators proprietors of the soil, and this tendency naturally derived strength from the access of the people to legislative power. The laws of the 13th April 1791, the 28th April 1792, and the 10th June 1793 annulled all partitions made since 1669 in virtue of the right of *triage*, re-established the Communes in all their lands, and declared them proprietors in full ownership of all waste lands. By the law of the 10th June 1793, the Convention decreed the division of communal lands among all the inhabitants equally. On the 28th September 1791, common pasture was abolished. Thus, the government of the Revolution disaffirmed the principle of collective ownership, and affirmed the principle of individual ownership of the soil by the members of the peasant community. The

State of things immediately before the French Revolution.

Effect of the legislation of the Revolution.

combined effect of this legislation, of the predilection of the rural population for the acquisition of land, and of a safe and cheap system of transfer and registration of title, has been, that with rare exceptions all the great estates have been broken up, and the land is now chiefly occupied by small proprietors, who form the great majority of landholders. According to the statistics published in 1868, there are about five millions of *rural proprietors*, of whom nearly four millions or four-fifths are cultivators of the soil. M. de Mornay tells us that in the greater number of Departments seventy-five per cent. of the agricultural labourers have become owners of land. While there are but fifty thousand properties averaging 600 acres, there are two and a half millions averaging 60 acres, and five millions averaging 6 acres.[3] As to the advantages or disadvantages of this subdivision of the French soil and *la petite culture* which is the consequence, opinions differ; but there seems to be a preponderance of authority for saying, that the new state of things has increased the productions of the soil, and has tended to improve the material condition of the agricultural population. Industry and thrift have been largely developed. According to M. de Lavergne, the best cultivation in France on the whole is that of the peasant proprietors; and with respect to the peace, comfort and happiness which pervade their dwellings there is a concurrence of testimony. If the welfare and prosperity of a large agricultural population be the true and only object of a system of land-holding, this object may be said to have been achieved in modern France in a remarkable degree.[4] At the same time there

[3] See the paper on tenure of land in France in the *Reports from Her Majesty's Representatives respecting the Tenure of Land in the Several Countries of Europe*, 1869, presented to both Houses of Parliament; this will hereafter be referred to as *The Parliamentary Blue Book*.

[4] Mr. Morier, comparing England, France and Germany, says:—"Three great countries began their political life from a similar agricultural basis. In each of them the great conflict between *immunity* and *community*, between *demesne* land and *tenant* land, between the *manor* and the *peasant*, has had to be fought out. In England the manor won, the peasant lost. In France

are considerations, in which some minds see future danger to that condition of affairs which now appears so prosperous. The great desire to possess land,[5] and the consequent demand tend naturally to raise its price; and the purchase of land at too high a price may be just as ruinous to the small cultivating proprietor, as an engagement to pay too high a rent to a cultivating tenant. In the former case, the use of the land is paid for in a lump sum; in the latter case, in instalments. Then the law of succession in France, by which all the children take equally, has the effect of causing too much subdivision, too great *morcellement;* and when the petty properties become too small for each to maintain a single family, it is said that amongst a purely agricultural community misery must ensue; and Wurtemberg and the sad experience of a few years of scarcity in that province are pointed to in proof. On the other hand it is alleged that, while sub-

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the peasant won, the manor lost. In Germany the game has been drawn and the stakes have been divided. Each system can be defended and passionately pleaded for. Each has much to be said for and against it."—*Systems of Land Tenure in various countries*, published by the Cobden Club.

One great advantage of peasant proprietorship is said to be that it conduces to political, as well as social, order. The greater the number of proprietors, the larger is the proportion of the community bound to law and order and respect for rights of property. Such men have something to lose, but nothing to gain from revolution, which may improve but cannot impair the condition of the landless and helpless. It has been said that the present land system of France is not only the salvation of that country itself, but is one of the principal securities for the tranquillity and economic progress of Europe. In America the prevailing public opinion is that the ownership of land should be within reach of the most modest means. A proprietor of land, it is said, however small a proprietor he may be, has a stake in the country and a vested interest which guarantee his faithful discharge of his duties as a citizen. Where the land and the personal wealth of a country are in the hands of a small minority, while a large proletarian majority are dependent for subsistence upon daily labour at either agriculture or manufactures, revolutionary and subversive ideas are sure to arise, whenever failure of crops or commercial stagnation renders their condition one of suffering and misery. In the opinion of the Germans and other primitive nations, the possession of land was an indispensable attribute of freedom.

[5] Those already possessed of land frequently mortgage it, borrowing money at high rates of interest to buy more.

division is being effected by the operation of the law of succession, there is a counter movement going on towards the consolidation of small parcels and the enlargement of little farms by the purchase of additional parcels. Then there is another counteracting cause in the decrease of the rural population. It is established beyond doubt that there is a progressive tendency to diminution of fecundity. Marriages are made later in life under the influence of thrift; and the labourer who has become a proprietor is afraid that his little property will be too much divided if he has a numerous family. Where families of seven or eight children were commonly met with, now two or three or even one are found.

§ 26. In France, as in Prussia, although the greater part of the land is held in peasant proprietorship, some portion is let to tenants either (1) on lease for three, six or nine years, or (2) on *mètayage*, under which the proprietor and the *metayer* divide the produce, the capital being furnished by either or both in proportions varying in different localities. It is said that *mètayage* is falling into disuse, and that it now obtains only in a few departments.

Relations of Landlord and Tenant in France.

Where rent is reserved, it is usually payable in money; but sometimes in kind, although this is becoming less usual. The amount of rent is matter of agreement, and is regulated by such competition as co-exists with peasant proprietorship, the tenant being often the proprietor of other parcels in the vicinity. A demise may be made orally or in writing. Where there is a written agreement, it may be registered; but registration is not compulsory, though, if not registered, the tribunals will not in case of dispute take cognizance of it until it has been registered. Where there is no stipulation to the contrary, a tenant may sublet or transfer; but leases usually contain provisions against subletting or transferring otherwise than by the consent of the landlord. So long as the tenant pays his rent and fulfils the conditions of his lease, his landlord cannot interfere with him. If his rent is in arrear, he may be summoned to pay within twenty-four hours; and if he fail to do so, the

Judge may order the seizure of all his effects on, as well as off, the farm. The Judge has a discretionary power to use indulgence towards tenants whom he considers hardly dealt with, and may grant them time for the payment of their rent. There can be no eviction or annulment of a lease otherwise than through the tribunals. The tenant is seldom turned out, as long as he conducts himself well and does not deteriorate the land; and in many parts of France, the farm, though let on short leases, continues in the hands of the same family from father to son. The landlord usually constructs the farm buildings. If the tenant builds or improves, especially by works of drainage or irrigation, he does so at his own risk, and in the absence of an agreement is not entitled to compensation. He may, however, remove his buildings, so that he leave the farm in the same state in which he found it. When improvements are necessary, the parties commonly come to an agreement by which the landlord advances the necessary sum and the tenant pays interest thereupon. The Code allows compensation in some exceptional cases, as for example, that of unexhausted manure. There has been for many years a steady rise of rents, owing, it is said, to the increased prices at which agricultural produce sells: but the profits of peasant proprietorship regulate this rise and prevent the occurrence of rack-renting.[6]

Improvements.

[6] In the *Appendix* to Mr. Joseph Kay's *Free Trade in Land*, there will be found collected a number of valuable opinions as to the great moral and material improvement that has taken place in the condition of the peasantry of France since the land-laws have been so changed as to enable the great mass of the labouring cultivators to become owners of small landed properties—pp. 311–331.

CHAPTER V.

The Tenure of Land, and the Relation of Landlord and Tenant in Bavaria, Wurtemburg, Saxony, Baden, Hesse and Saxe Coburg Gotha.

§ 27. Feudal tenures in the kingdom of Bavaria were finally abolished by *The Land Charges Redemption Law* of 1848, which was in general conformity with the course of Prussian legislation already described. The chief provisions of this law were the following:—all rights of civil jurisdiction and police vested in the great landlords were from the 1st October 1848 to be transferred to competent Government officers, by whom exclusively they were to be thereafter exercised; all personal servitudes rendered in respect of the occupancy of land and houses were abolished from the 1st January 1849 without indemnity to the landlords; every peasant was declared competent to buy off or commute all charges, tithes or burdens, subject to which he held his land from the ground landlord. Having done this, he was to become the absolute proprietor of the land held by him. This commutation was to be effected in the following manner. The net annual value of the burdens was to be ascertained and determined by a Commission. The rent-charge so fixed was to be redeemed in any one of the three following ways:—(1) by paying in cash its money value at eighteen years' purchase; (2) by undertaking to pay the ground landlord the full rent-charge so fixed annually for 34 years, or nine-tenths thereof annually for 43 years, the land being hypothecated as security for these payments; (3) by creating in favour of the State a four per cent. mortgage for a sum equal to eighteen years' purchase of the rent-charge. In the last-mentioned case

Kingdom of Bavaria—The Land Charges. Redemption Act of 1848.

the Government paid off the landlord with debentures bearing four per cent. interest, equal in amount to twenty years' purchase of the rent-charge; and realized the amount of the mortgage loan with interest from the peasants in equal annual sums extended over a number of years. The third of these methods was that most generally adapted in practice. The system under which land is now held in Bavaria is almost universally that of occupation by the proprietor himself, the great mass of the occupiers being small or peasant proprietors. Occupation by tenants or sub-tenants is a rare exception to this general rule. In fact the *occupation* of land is almost synonymous with the *ownership* of land. There are no accurate statistics showing the quantity of land held by the members of any particular class, but it has been roughly estimated that the total number of landowners of all classes in Bavaria is about 500,000, or rather more than one-ninth of the whole population, and pretty nearly equal to the number of persons who find employment in manufactures. Of this number of landowners only about *one hundred* hold more than 1,000 Bavarian acres.[7] The holdings of the peasant proprietors vary greatly in extent, but 200 Bavarian acres may be taken as the maximum, and 40 to 50 as the minimum size. The small proprietors reside, not on their lands, but in villages or small groups of dwellings.[8] They are, as a general rule, in comfortable circumstances, well fed, well clothed and well housed. The social condition, education, habits and dress of the peasant proprietor in the Southern provinces differ little from those of the labourers whom he employs; but in the Franconian provinces and the Palatinate the peasant proprietors are generally superior to the agricultural labourers in education, knowledge of husbandry and social standing. The general feeling of the community is in favour of cultivation by

Peasant Proprietorship almost universal in Bavaria.

Their Social Condition.

[7] The Bavarian acre is a small fraction more than five-sixths of an English acre.

[8] The Indian raiyats, especially in Bengal and the North-Western Provinces, similarly reside in villages.

peasant proprietors. This system is in accordance with the habits and traditions of the people; and the results, as indicated by contentment and prosperity, are sufficiently satisfactory.

§ 28. All transactions of sale, transfer, exchange or division of land in the kingdom of Bavaria must be set forth in a formal Notarial Act, in order to be valid. The Notary by whom this Act is drawn, must exhibit it to the Civil Tribunal of the District. It is then entered in the records of this Tribunal, and the fact of such entry is endorsed on the document itself, which is thereupon returned to the Notary. The original document remains in his custody, he being legally responsible for its safe keeping; but certified copies are by him furnished to the parties concerned.

Transfer, &c., of Land in Bavaria.

In the case of a mortgage, the Notarial Act must also be presented to the keeper of the *Register of Mortgages*, in order that the proper entries may be made therein. There is a Government tax on all contracts for the sale of property; and all such documents must further be stamped. The whole cost of transfer, including the Notarial fee, the Government tax and the stamps, only amounts to $1^1/_5$ per cent. of the purchase-money. As regards succession and inheritance the Bavarian law makes no distinction between real and personal property. An owner who has more than four children may at his pleasure dispose by will of one-half of his property; an owner who has four or less may dispose of one-third. If the portion of property required by law to be left to the children is a share in house or land, the eldest son, or the second son, if the eldest be an ecclesiastic, usually retains the whole property, indemnifying the other heirs by a money payment. If all those interested do not agree to this, or if a partition cannot be arranged, the property is sold and the heirs receive their portions from the sale-proceeds. The small peasant proprietor almost invariably bequeaths the farm-house, buildings and land to one member of the family (generally the widow or the eldest son), making such member responsible to the others for the payment of the

Succession and Inheritance.

values of their shares, ascertained by official appraisement. The money necessary to pay off these liabilities is usually raised by mortgage ; and it thus happens that most of the peasant properties are mortgaged, but not so heavily as to hamper the industrial exertions of the owners. The general effect is that the land is kept together and injurious subdivision (*morcellement*) prevented. At the same time those members of the family, who receive their shares in money, frequently avail themselves of the facility thus provided to emigrate to America and commence a fresh career in a new country.

§ 29. There is in Bavaria so little occupation of land by tenants under landlords, that tenancy can scarcely be said to exist as a regularly organized or acknowledged system. The exceptional cases fall under two heads: *First*, complete estates or large farms are occasionally taken on lease by persons who have studied the theory and practice of husbandry, or have acquired experience as managers or land stewards on estates belonging to large proprietors, and who have some capital. These instances of capitalist farming are not very numerous and are said not to have proved very successful. *Secondly*, small parcels belonging to the commune or the church are let to peasant inhabitants, who may be labourers or small proprietors. The relation of landlord and tenant in both cases is regulated rather by the general law relating to the hiring of real property than by any special law applicable to the letting of land for agricultural purposes. There is usually a written lease, which may be drawn up as a formal Notarial Act and officially registered, if the parties so desire. But the law does not make official registration necessary to validity. In the case of a peasant's property, however, the law expressly provides that the lease, if not formally drawn up by a Notary, shall be deemed to be in force for one year only. Tenancy depends altogether upon contract, and the object of this provision is to prevent disputes and litigation, which too commonly ensue where instruments are drawn up informally. The amount of rent and the

Tenancy not common in Bavaria.

Conditions of Tenancy, where it exists.

period at which it is payable are matters of agreement between the parties. The landlord provides and keeps in repair the farm buildings, pays all taxes and rates chargeable on them, and is bound to indemnify the tenant for any expense incurred for useful or necessary repairs. The landlord has a first claim for his rent upon all crops, cattle or other stock actually upon the land. The tenant has not by law or custom any right to sell his interest either with or without the consent of his landlord. At common law he may sublet, but a stipulation restraining him from doing so is almost invariably inserted in the lease. A tenant is liable to eviction for non-payment of rent or for gross misuse of the demised property, but cases of eviction are practically unknown. No tenant has by law or custom any right to remain in possession after the expiry of the term of his lease.

The Kingdom of Wurtemburg.

§ 30. The kingdom of Wurtemburg contains over six million acres of land, and has a population of nearly two millions. About four million acres or two-thirds of the entire area are cultivated. The chief occupation is agriculture, and there is little or no manufacturing industry. In Wurtemburg, as in other parts of Germany, feudal tenures have been abolished during the present century, and a system of peasant proprietorship has been created. Before 1817 the land was largely in the hands of a class of tenants, who held life-tenures, renewable by one of the deceased tenant's sons upon payment of a substantial fine ; but feudal dues and services were generally so oppressive that the progress of the country was hampered and impeded. In 1817 personal servitude was abolished ; and in 1836 and 1848 laws were passed for the effectual emancipation of the land from the restraints of feudalism. The principle of commutation, adopted in other German States, was introduced with a few changes of detail ; and the peasant was enabled to redeem the dues payable to the nobles, and so became the proprietor of the land cultivated by him. Almost the whole of the soil of the kingdom is now in the occupation of these peasant proprietors. Some

330,000 persons, or one-sixth of the entire population, are owners of land. Some 150,000 of these are actually independent farmers, while 180,000 must, besides cultivating the small parcels of land which belong to them, work as day labourers or follow some industrial pursuit in order to maintain themselves and their families. The size of the peasant properties varies from 3 to 200 acres. Of the 150,000 independent farmers, fourteen thousand hold farms of more than 50 acres ; fifteen thousand, farms of 30 to 50 acres ; fifty-five thousand, farms of 10 to 30 acres ; fifty thousand, farms of 5 to 10 acres ; and sixteen thousand, farms of less than 5 acres. Some 3,000 of the large farmers, who hold 50 to 200 acres, live in detached farm-houses situate upon their farms. The rest of the small proprietors live in villages adjacent to the parcels of land which they cultivate. These parcels are generally scattered, and, in consequence, there is much inconvenience and waste of time in going backwards and forwards between the village and the parcels, and from one parcel to another. The quality of the soil varies considerably. In the Nuterland a farm of 20 acres will maintain an ordinary family in comfort, while in many parts of the Alf and Black Forest districts it would hardly afford them the bare means of subsistence. In the wine districts, five or six acres go a long way towards the employment and support of a peasant ; elsewhere they would require to be supplemented by day labour or some industrial pursuit. The average value of the yearly produce of an acre of cultivated land has been computed at 33 florins ; and the cost of cultivation, including seed, labour, wear and tear of stock, agricultural implements, &c., at 30 per cent. In Wurtemburg the subdivision of the land has been carried to a greater extent than in most of the other German States ; and the consequence has been that in years of scarcity there has been much distress. The co-existence of a redundant population, very small holdings and the want of manufacturing employment invariably creates a condition of things, under which an agricultural community is ever on the

Condition of the Peasant Proprietors.

brink of calamity, and may in any year be subjected to the horrors of famine upon the failure of the staple crop.[9]

Registration and Transfer of Land.

§ 31. There is in Wurtemburg a very simple system of Land Registration. Some fifty years ago a complete survey was made, and the area, estimated value and ownership of every parcel of land were entered in registers kept at the office of the Mayor or principal official of each Commune. All transfers by sale, exchange and inheritance are entered in these Registers. The parties appear before the Communal Council, who, having ascertained from them the particulars of the transaction, enters it in the Register, a copy of which is then made by the Magistrate and signed by the parties. A duty of one per cent. on the value of the property is charged by the State; and a registry fee of one-fifth per cent. by the Commune. It is supposed that the facility and cheapness of the process of transfer have the effect of encouraging the subdivision of the land. Theoretically, according to law, all the children of a deceased proprietor in Wurtemburg are entitled to share equally; but there is a well-settled custom which overrides the law, under which the eldest son, or in some parts of the country the youngest, succeeds to the whole of the landed property, the other children receiving a sum of money calculated according to the size of the property and the number of recipients. This sum falls short of the value of the share to which they would be entitled under the law of equal partition; but the custom is so time-honoured, that no one thinks of advancing his legal rights. When a farmer dies, there is usually a meeting of the heirs and of a deputation of the Communal Council, composed of the chief farmers, together with the Notary Public. A settlement is arranged at this meeting, and, being formally drawn up by the Notary and signed by the parties interested, has the force of a binding contract. The heirs other than the one who gets the property

Succession to Peasant Properties in Wurtemburg.

[9] The Irish famine of 1848, when the potato crop failed, and the Indian famines caused by the failure of the rice crop, are instances.

remain at the paternal home until they find an opportunity of making a start in life on their own account. Occasionally when the father is incapacitated by age from managing the farm, he retires in favour of his son, resides in a cottage upon the property and receives support during his lifetime, both in money and kind. With a view to prevent too great subdivision of the land and the creation of a proletarian population, the Communal Regulations forbid men to marry until they have the means of supporting a family. This restraint is unpopular and is not enforced with any great strictness. Its chief effect has been to cause emigration, which has been further induced by the new military law on the Prussian system, which requires a lengthened term of military service from the youth of the country. In consequence of these and other causes there has been a steady flow of emigration from Wurtemburg to America. These emigrants once settled there keep up a steady correspondence with their friends at home, many of whom being thus fully informed of the prospects of success in a new country are induced to follow their example. The position of the day labourer in Wurtemburg is said to be better than that of the day labourer in most parts of England. The standard of living is lower; the necessaries of life cheaper; and taxes and house-rent together make up but a small item, not more than £1 a year. Wages are from 1*s.* 2*d.* to 1*s.* 8*d.* a day in money, and food besides.

Emigration.

§ 32. There are few land tenancies in Wurtemburg. Those which exist are to be found on property belonging to the State, to the Royal Family and to a few great landed proprietors amongst the Nobles. The smallest holdings of these tenants are from 50 to 100 acres; some are as large as 500 acres; and the ordinary size is from 100 to 250 acres. The State property is let on fairly long leases, generally for terms of eighteen years; and these leases are put up to auction. The Government does not, however, hold itself bound to accept the highest bid; it attaches great importance to the character, agricultural education and antecedents of the tenants, who are required in the

Relation of Landlord and Tenant in Wurtemburg.

case of the larger farms to deposit security for the due fulfilment of the terms of the lease as to artificial manuring, mode of cultivation and amount of live stock to be maintained on the land. The relations between landlord and tenant are in all cases regulated by agreement, the conditions being almost invariably embodied in a written lease. Subletting is usually prohibited; and tenants are not allowed to mortgage their interests. Rent is regulated by competition, and is always payable in money—half-yearly, as a general rule. It is, however, customary for the tenant to supply his landlord, when resident on or near the property, with milk, butter, eggs and fruit required for his personal use, as well as with forage for his horses and manure for his gardens. If the rent is not paid upon the day on which it falls due, the landlord can apply to the Commune, who will give the tenant notice to pay within thirty days, and, if he fail to do so, or do not contest his liability, will levy an execution on his effects. If he contest his liability, the landlord must resort to a law-suit. It is usually provided in the contract that non-payment of rent for a year shall determine the tenancy. If there is no such express provision, the law makes the lease voidable for non-payment of rent during two consecutive years. In any exceptional case in which there is no agreement as to the duration of the tenancy, the tenant is regarded as a tenant-at-will, and must quit the next term after receiving notice. The buildings on a farm are usually erected by the landlord, and the tenant is bound to keep them in good repair. Improvements made by a tenant may be removed by him, if this can be done without injury to the property. If this cannot be done, the tenant may claim compensation for any improvements, by which the letting value of the property has been increased. If the parties cannot agree as to the amount of this compensation, the tenant must bring an action against his late landlord. The *bonâ fide* sale of land, in the absence of an express agreement to the contrary, renders void all leases existing at the time of sale. A tenant, whose tenancy is thus avoided, is entitled

Payment of Rent.

Improvements.

to compensation from his lessor for improvements or labour rendered unproductive by the loss of the demised property. Great improvements, such as draining and the like, are usually carried out by the landlord, who receives from the tenant in addition to the rent a fair interest on the money thus expended.

§ 33. Saxony is eminently an industrial country, more than 56 per cent. of the *whole* population and nearly 53 per cent. of the *working* population being engaged in industrial pursuits. A little over one-fourth of the entire population are employed in agriculture. About 69 per cent. of the cultivated area is in the hands of middle class owners, who hold 10 to 100 acres each and, as a general rule, cultivate their own land. About 23 per cent. belongs to landed proprietors holding 100 to 1,000 acres each, many of whom let to tenants; and about 8 per cent. is occupied by small owners, holding less than three acres each. There are no middlemen. The rules as to succession and inheritance are generally the same as in the other German States. Where there is no testamentary disposition, the children share equally. Either the property is sold and the proceeds divided; or one heir takes the whole, paying the others the value of their shares, the property being mortgaged to enable him to do this. The small peasant properties are occasionally transferred during the lifetime of the owner to a son or son-in-law, who engages to supply the transferrer with lodging and to make him certain payments in kind as long as he lives. This happens most usually where the owner has himself become unable to carry on the work of the farm. As an exception to the general rule, there are some properties ('Ritterguter') which still follow the feudal rule of descent in the male line; but the rule is said to be gradually becoming extinct as regards these also. Where tenancies exist, they depend wholly upon contract, and the landlord is absolutely unrestricted in letting his land. Written leases, generally for terms of six to twelve years, are usual. Rent is paid in money, half-yearly or quarterly. In the absence of any ex-

Landholding in Saxony.

Succession and Inheritance.

press stipulation to the contrary, the landlord is entitled by law to put an end to the tenancy before the expiry of the term, if the tenant is in arrear with two quarterly instalments of his rent; if he deteriorates the land after warning from his landlord; or if he becomes bankrupt. Eviction can be carried out only through the tribunals. A notice is served on the tenant requiring him to quit the land. If he fail to do so, he is summarily ejected by the law officers, unless there is a *bonâ fide* contest of right, and questions are raised which must be tried in a regular action. Not unfrequently the tenant deposits money with his landlord as security for the payment of the rent; and the landlord may distrain the tenant's crops and property to enforce payment, where no such security has been given. If there is no express agreement as to the duration of the tenancy, an annual lease is understood for those lands on which the cropping is uniform, and a lease for three years on the larger estates. In either case a six months' notice to quit is necessary to determine the tenancy, which, in the absence of such notice, is presumed to continue. This notice must be served before the 1st May or 1st October. In the case of a *bonâ fide* sale of the property by the landlord, his vendee may annul the lease by giving notice eight weeks before the end of the year. Landlords usually stipulate against subletting. The rules as to improvements are, generally speaking, the same as in Wurtemburg. There is little or no emigration from Saxony.

Landlord and Tenant.

Eviction.

§ 34. In the Grand Duchy of Baden about 40 per cent. of the population are exclusively employed in agriculture. A considerable portion of the community combines agriculture with employment in manufactures or other industrial pursuits. The small peasant proprietors cultivate their own lands, usually living in adjacent villages. The estates, which belong to the State, the Communes, Corporations, mediatized Princes and the larger landholders are let to tenants, generally in small holdings. This affords day labourers and the 'Halb-banern' or half-peasants an opportunity of renting small patches of land which they

Grand Duchy of Baden.

cultivate in their spare hours, often by industry and economy, thus raising themselves to the condition of independent proprietors. The land is very much divided, and large estates or farms are rare and are becoming rarer. The average size of small holdings in the valley of the Rhine and the lower hill districts is one-third of a morgen or five-twelfths of an acre; and in other places three-fourths of a morgen or a little less than an acre—one acre being taken as equal to 1¼ morgen. In the plain and on the hill slopes, where the vine is chiefly cultivated, 5 to 7 morgen will support a family, and three members can work 8 to 10 morgen. In the mountain districts a family can work 50 to 60 morgen, and 20 to 50 are required for their support. The condition of the peasantry is generally one of tolerable comfort, and the prevalent public opinion is, that the system of small freeholds tends to promote the greater economical and moral prosperity of the people, to raise the average standard of education, and to increase the national powers of defence and taxation. It is believed that small farmers realize better returns than large farmers from the same number of acres; and the result is, that large properties and large farms are rapidly disappearing, being broken up and parcelled out amongst a number of small cultivators. Under this process the price of landed estates is determined less by their intrinsic value than by the possibility of selling or letting them in small holdings.[1] Upon the death of a small proprietor his land is divided amongst his heirs, but the law forbids any division which will make the shares less than one-quarter of a morgen. When there is a difficulty about division, the land is sold by auction and the proceeds divided. There is one kind of property, named 'Hofgüter,' in certain parts of Baden, which cannot be divided, but must descend to a single heir, generally the

Great Subdivision of the Land.

[1] If rent can be properly regarded as the price of the holding spread over a number of years, there is mischief in competition that raises the price of land above its true value.

youngest son, or, failing a son, the eldest daughter, who is bound by custom to make a provision for other brothers or sisters. The mode of transfer of land is generally the same as in Wurtemburg, but the State tax is higher, being two and a half per cent. There is considerable emigration from Baden, and this seems to show that the ownership of land by one portion of the community, and the combination of agricultural and industrial employment as regards another portion, tend to create a certain standard of comfort, which those who cannot obtain at home will seek abroad. The relations of landlord and tenant are in general regulated by business considerations, except on the estates of some of the old noble families, where the tenants have for generations occupied the same holdings, and a kind of patriarchal connection still subsists. Upon other properties rents have greatly risen, and the profits of the tenants are small. Rent is regulated by competition and is payable, generally in money, occasionally in kind. Leases are granted for three, six, nine, twelve, fifteen and eighteen years, the term of the largest number being nine or twelve years. Where no term has been agreed upon, the law provides that the tenancy shall last for such a time as is necessary to enable the tenant to reap the full benefit of his cultivation. This is, in the case of pasture or vineyard, one year ; in the case of arable land, the period of rotation of crops. A tenant is not entitled to sell his interest, nor has he any supposed right to continue in possession of the land upon the expiry of the term of his lease. He may be evicted during this term for non-payment of rent, and generally for the same causes as in other German States ; but eviction can only be effected through the action of the Courts. Eviction is of rare occurrence. Buildings and improvements are generally made at the landlord's expense, the tenant being bound to maintain proper repair. In the absence of any agreement to the contrary, the improvements made by a tenant become the landlord's property without compensation upon the expiry of the lease, nothing in the nature of *tenant-right* being known in Baden.

Succession and Transfer.

Relation of Landlord and Tenant.

No Compensation for Improvements.

The relations between landlords and tenants are sufficiently satisfactory, and nothing has occurred to make legislative interference necessary or desirable.

§ 35. In the Grand Duchy of Hesse, agrarian legislation has, during the present century, followed a course very similar to that of the Prussian legislation already described, the ruling idea of both being to abolish double ownership of all kinds, and to substitute therefor full unhampered rights of individual proprietary possession. According to Mr. Morier this legislation in Hesse may be said to have begun in 1811 and closed in 1849; and to have been directed to the effectuation of four objects,—*viz.*, (1) the abolition of villenage, in so far as it affected the personal status of the villein; (2) the commutation of feudal services and dues into fixed rent-charges; (3) the abolition of villein and other feudal tenures, and the substitution therefor of undivided ownership; and (4) the regulation of common rights with a view to unrestricted individual cultivation. Villenage in Hesse, which had always been of a mild form, was abolished by the Edict of the 25th May 1811. It then consisted merely of personal dues payable by the villeins to their lords, irrespective of any lands held by them; and these dues were made redeemable by a capital payment spread over a certain number of years. The feudal services and dues, which were to be commuted, were of many and various kinds. Some were rendered to the Grand Duke, as head of the State; and others, to him, as lord of the Manor—the former being public, the latter private in their nature and origin. The general principle followed was that those which were public should be abolished without compensation, existing taxes being considered as equivalents; but that those which were private should be compensated and commuted. The private dues and services to be commuted were put under two heads, (*a*) servitudes, tithes and such like, which burdened land belonging to persons who would be absolute owners of such land when discharged of these burdens; and (*b*) dues and services which represented *bonâ fide* rent. Those of the first class

Grand Duchy of Hesse. Abolition of Feudal Rights.

Villenage abolished.

Commutation of Feudal Dues and Services.

were converted into rent-charges ; and by a law of the 27th June 1836 these rent-charges were made compulsorily redeemable at the instance of the payer or payee. In order to assist the redemption, Rent Banks were established by the State. The value of the rent-charge at eighteen years' purchase was paid by the Bank to the person entitled ; and was to be liquidated in 47 years by annual payments made to the State by the person liable to pay such rent-charge. Dues and services of the second class were not at first made subject to this principle of commutation, unless the parties mutually agreed to convert them into rent-charges. The tenures upon which the peasants held lands were of many kinds, varying between the two extremes of *free* and *servile* in almost endless shades of difference. The two kinds, which, according to Mr. Morier, differed most from each other, were, *first*, those which resembled the Roman *emphyteusis*,[2] in which the lord's rights were reduced to a minimum, and the tenant's raised to a maximum ; and, *secondly*, those known as 'Erbleihe' and 'Landsiedelgüter.' The incidents of this second class were:—(1) the grant had to be renewed and a fine paid upon the renewal, whenever there was a change in the person of lord or tenant ; (2) the rent was fixed and could not be raised ; (3) the tenant could not mortgage without his landlord's consent ; (4) the tenure was inheritable without division in the direct line by a male or female legitimate child : failing direct issue, the tenure did not go to collaterals, but reverted to the lord ; (5) before renewal of the grant to a single heir, he must compensate his co-heirs, who must renounce all claims to the tenure ; (6) the tenure might not be alienated without the consent of the landlord, who on giving his consent was entitled to a fee of five per cent. upon the purchase-money. By a law of the 6th August 1848, tenures of the first kind were made commutable under the law of the 27th June 1836 : and tenures of the second class were made convertible into personal pro-

[2] See *ante*, p. 6.

prietorship in one of three ways[3] at the option of the tenant. The laws of 1814 and 1849 were directed to disentangle the cross servitudes and easements which the peasant communities possessed in the demesne lands of the lords, and those which the lords had in the common lands of the peasants, as well as to separate and regulate the common rights, which the peasants possessed as a community, and those which they individually claimed on the lands of each other.[4] The general object was that every landed proprietor, whatever might be the size of his property, should be able not only to dispose of it freely, but to use it freely, while in his possession, without being hampered or obstructed by the concurrent rights of third parties.

Conversion of Feudal Tenures into Personal Proprietorship.

Regulation of Common Rights.

§ 36. In the Grand Duchy of Hesse, as in other parts of Germany, there still remain traces of the *mark*.[5] The *gemarkung* or communal territory consisted of (1) the village or collection of habitations, (2) the arable land, and (3) the common pasture. The tenements in the first were held separate from the earliest existence of the community. The arable land was first enjoyed in common, was then partitioned periodically, and finally, the periods after which partition was made having grown gradually longer, became with some exceptions the subject of separate and individual ownership. The pasture continued longest to be enjoyed in common ; but it too has at last in great part yielded to the power of progress and the operation of

Rural Political Commune Relic of the Mark.

[3] (1) Payment of a capital sum equivalent to the right of ownership, and the value of the rent and fines on renewal upon death of grantor or grantee. (2) Converting this right and this value into rent-charges redeemable under the law of 1836. (3) Payment of a sum equivalent to the right of ownership, and leaving the value of the rent and fines as a rent-charge. The right of ownership was defined to be the right of reversion, the fees paid for clerical work in drawing up the grant, and the fines payable on sale of the tenure. This right of ownership was made redeemable by *one-tenth* of the value of the fee-simple.

[4] See as to the similar Prussian legislation, *ante*, p. 54.

[5] For further information as to the Germanic mark, see Laveleye's *Primitive Property*, Chapter VII.

legislation. The modern relic of the *mark* is the rural political Commune, governed by a common council, the members of which are elected by the Commune. The Burgomaster is chosen by Government from amongst the members of the Common Council. He exercises police functions, and with the aid of two or more assessors, members of the Commune, constitutes a local civil court of limited jurisdiction. The Commune is at the same time a private corporation and a public body, constituting the administrative unit of the circle. As a private corporation it holds any common lands of the ancient *mark*, which have escaped the general tendency to private property, and regulates the exercise of rights of pasturage and such servitudes as survive to the community in the forests of the lords. It allots the common lands to those entitled, and may alienate them, when duly authorized by Government. The property of the lords lies sometimes outside the territory of the Commune, sometimes distributed within it. When the quantity of land owned by a lord within a commune exceeds a certain amount, he is entitled to name one member of the Common Council to represent him. The peasant proprietor is a member of the Commune, and is bound to fill any communal office assigned to him, such office necessitating the performance of public duties. The Legislation which has been briefly described has largely operated to create freehold peasant proprieters. There are no exact statistics, but Mr. Morier estimates that two-thirds at least of the land under cultivation is owned by peasant proprietors, and that thirteen-fifteenths of the arable land is under peasant cultivation. "The Grand Duchy of Hesse," he says, "is a country of small proprietors with just a sufficient number of large farms interspersed amongst these small holdings to facilitate a comparison between the results of the two systems of cultivation." The general result of the emancipation of the land and the creation of peasant proprietors has been that the standard of cultivation has been immensely raised; that the land yields infinitely more than it did previously, and that the

Two-thirds of the Grand Duchy of Hesse owned by Peasant Proprietors.

peasant population is not only much better fed and much better clothed ; but is much better educated and much more proficient in the art of tillage than it was a generation ago. One great cause of improved agriculture is the very efficient system introduced by the Grand Ducal Agricultural Society for diffusing amongst all classes of the peasantry a knowledge of the best practical methods of cultivating and improving the land, and some acquaintance with agriculture as a science.

Agricultural Education.

§ 37. The Grand Duchy of Hesse enjoys the benefit of a very complete and accurate system of registration. There existed from a very early period a rough cadastration for the purposes of public taxation. There was deposited in each Commune a Field-book, corresponding with this cadastration, and containing a topographical register of the whole of the land of the Commune. This Book was not at first used as a record of titles ; but, an accurate trigonometrical survey having been commenced in 1824, a law was passed in 1854, which provided that the Field-books prepared on the basis of this new cadastration should be utilized as Registers for the transfer of land and the proof of titles. A duplicate of the map of each communal district is deposited in the Local Court, and constitutes the basis of the Land Register. Each district is divided into " fluren" or fields, and each field into parcels or items. Each *flur* has its own volume and each parcel a separate entry in this volume, the basis of the Register being not the *owner*, but the *thing owned.* There is, however, a supplemental alphabetical Register of owners' names, with a reference against each name to the volume of the Land Register. As the cadastral survey was completed, and these registers formed for the first time, the greatest care was taken to secure the accuracy of the original entries. After due notification, the Register was exposed to public inspection for a certain time. It was then *legalized* by the District Court, a rebuttable presumption being created as to the accuracy of the entries. After five years, if no objection was raised during this

Hessian System of Land Registration.

period, this presumption became irrebuttable. The mode of transfer is as follows:—The vendor and vendee appear before the Local Court. The vendor produces documentary proof of his title, and answers certain questions put to him, the substance of the replies being entered in an interrogatory. If the particulars correspond with the Register, and these replies are satisfactory, the Local Court transmits to the District Court (1) a certified extract from the Land Register, (2) the interrogatory duly certified, and (3) a protocol of sale containing the essential details of the transaction. The Local Court is responsible for the *facts*, the District Court for the *law*. If there is no objection to the transaction, the District Court makes a minute thereof, from which a formal deed of sale is drawn up, signed by the vendor and vendee, and certified by the District Court, which thereupon enters the transfer in a register called *The Protocal of Transfers*. The entries in this Register are copied into the Communal Land Register once in every six months under the responsibility of a Government Officer. The cost of the entire transaction, including the stamp fees, amounts to between one-half and two-thirds per cent. of the purchase-money. In no country in the old world is the sale of land effected with greater rapidity, facility, cheapness, and exemption from fraud. The same mechanism is employed for effecting mortgages; but a separate Register of Mortgages is kept in the Local Court, which undertakes by means of its own sworn valuers to estimate the value of the property. The valuation is certified at the head of an interrogatory, and with this document in his possession, the person who desires to raise money upon a mortgage of his land finds no difficulty in obtaining accommodation at four to five per cent. interest. The general rule of inheritance is that the children take equally, where there is no will; but to this rule there are some exceptions. For example, the *Erbleihe* and other tenures are inherited by one child. The owner of property may dispose of it as he likes by will, if he have no children. If he have four or more children, he can dispose by will

Mortgages.

Inheritance.

of one-half; and if he have four or fewer, he can dispose of two-thirds.

§ 38. The relation of landlord and tenant is not a very important subject in a country where the great majority of the cultivators are peasant proprietors. Small parcels of land are occasionally let in the Communes either to other small proprietors whose lands they adjoin, or to labourers. These tenancies are, however, exceptional, and involve no questions of general importance. The majority of those, who derive their principal maintenance from daily wages, own at least a cottage and garden; and many of them have a parcel or two of land, which they either obtain in their turn from the common lands, or lease from the Commune, or the Church, or a large proprietor. Many peasant proprietors, whose chief source of income is their own property, work occasionally for hire. The peasant proprietor, the peasant tenant and the agricultural labourer are thus intermingled, two of these characters being commonly, and all three occasionally, united in the same person. Large consolidated farms of 200 to 1,200 morgen[6] are in a few instances let to tenants, who are capitalists, pursuing the occupations of farming as an investment for their money. The rent payable in money is settled by competition, the farm being put up to auction. There is invariably a written lease, usually for a term of eighteen years. The conditions of the tenancy depend wholly upon the written contract, which invariably forbids subletting. Improvements form the subject of distinct agreement between the parties, and as a rule are executed by the landlord and tenant jointly. There is a considerable amount of emigration from amongst the rural population to America. In 1853 to 1855 there was a morbid belief that the land was no longer capable of maintaining the population, and there was in consequence a very abnormal exodus, which led to subsequent com-

Relation of Landlord and Tenant in Hesse.

[6] One morgen is equal to a quarter hectare, or a little less than two-thirds of an English acre; 162 morgen being equal to 100 English acres.

plaints of the paucity of agricultural labour. One result of this exodus was the establishment in America of groups or colonies of Hessians, between whom and the mother country a close correspondence is maintained.

Emigration. Those who now emigrate therefore do so with full knowledge of the conditions under which it will be for their advantage to transport their labour to the other hemisphere, and many of the present emigrants are vigorous married couples or families, who upon the death of their head have sold their land instead of splitting it up. These persons commence a career in a new country with some little capital, with able-bodied vigour, agricultural skill, and habits of thrift, all which combined usually command success ; while the pressure of population in the old country is relieved and the standard of comfort maintained by their migration.

§ 39. The population of the Duchy of Saxe Coburg Gotha is chiefly agricultural ; and the greater part of the land is occupied by small proprietors. Tenants are to be found on the larger properties belonging to the Ducal House, the Church, and the Communes. Middlemen are practically unknown. The average size of the peasant properties appears to be larger, and the proprietors themselves more substantial than in some of the other German States. The smallest property belonging to a single owner,

Duchy of Saxe Coburg Gotha. who depends upon its cultivation as his sole means of subsistence, is given as some 34 English acres. The small proprietors usually reside upon their own land in dwellings described as small and not very comfortable. Their mode of

Condition of the Agricultural Population. life is plain, homely and frugal ; and they are as a class said to be respectable, very industrious, and not disposed to take part in any political agitation. The size of the holdings generally necessitates the employment of farm labourers, and both these and the day labourers are well paid and live in fairly comfortable circumstances. There is little or no emigration. The rules of succession and inheritance, and the system of transfer and registration of land do not differ materially from those of other German

States, which have already been described. The peasant properties are somewhat heavily mortgaged in consequence of money being constantly raised in this manner to pay off those heirs, who accept the money value of their shares instead of dividing the land. The holdings let to tenants are generally of considerable size, comprising four hundred acres or more. The relation of landlord and tenant depends wholly upon contract. Written leases, generally for terms of twelve or eighteen years, are usual. The tenant may not by law or custom transfer his interest without the consent of his landlord; nor has he any claim to remain in possession after the expiry of his lease. A landlord generally makes a public announcement that a farm is to be let, and fixes a day to receive offers. Rent is thus regulated by competition; and security is commonly given for its payment. It is paid in money, as a rule quarterly, and punctuality is required. The landlord usually reserves the right to evict, if the tenant fails to pay his rent for a year, or becomes bankrupt, or is sentenced to a degrading punishment, or deteriorates the land in violation of the conditions of the lease; but he can evict only through the Court. Improvements are generally matter of contract, and, except draining, are made by the tenant. In order to prevent groundless and exaggerated claims, and consequent dispute and possible litigation, it is usual to stipulate in the lease that the tenant shall renounce all claims for improvements.

Tenancies created by Contract.

CHAPTER VI.

The Tenure of Land, and the Relation of Landlord and Tenant in Belgium, the Netherlands, and the Hanse Towns.

§ 40. Belgium is most particularly the country of peasant proprietors and *la petite culture*. Taking the system of landholding in Belgium and Holland as his text, M. de Laveleye, in his able article contributed to the Cobden Club Essays, discusses the question—What is the agrarian constitution most conducive to the progress of agriculture and the welfare of mankind?—and he sums up strongly in favour of peasant proprietorship. He is satisfied that much larger gross returns are everywhere obtained from the land by small than by large farming; and he thinks it to be a self-evident truth that there are no measures more conservative or more conducive to the maintenance of order in society than those which facilitate the acquirement of property in land by those who cultivate it.[7] According to

Belgium—the Land of Peasant Proprietors and Small Cultivation.

[7] Men have a natural predilection in favour of a system which they understand, and which they see working beneficially. It is however sometimes dangerous to conclude that this system will be universally the best—will succeed equally well under other and altered conditions. Mr. Longfield, in another article in the same volume, expresses an opinion that it would be difficult to create, and impossible to maintain, peasant proprietorship in Ireland. He thinks the habits and feelings necessary to such a system inconsistent with the mental activity of Irishman, and he would not expect much advantage from a change in this direction. His view has received corroboration from the experience of the Armagh tenants, who purchased from the Commissioners of the Irish Church Temporalities—See the leading article in "The Times" of the 6th July 1881; and the *Report of the Bessborough Commission*, pp. 61-2. Subdivision and subletting have proved fatal to peasant proprietorship, and these are the dangers of a purely agricultural community rapidly increasing in numbers. Mr. Sackville West, in his report on the tenure of land in France, thinks that the Irish and French systems of

the census of 1846, the total of the lands under cultivation in Belgium were 1,793,153 hectares,[8] of which 613,570 hectares were cultivated by owners of the soil, and 1,179,583 by tenants. Underletting by tenants does not exist to any great extent, and is therefore not shown in the official statistics. Forty-four per cent. of the cultivating owners occupy less than one hectare; thirty-six per cent., from one to five hectares; and nineteen per cent., over five hectares. In many parts of the country, particularly in the Pays de Waes, the small proprietor does not depend solely upon agriculture for subsistence, but also follows some industrial pursuit. For example, he buys of a large farmer ten or twenty hectares of standing flax, which, with the help of his wife and family, he gathers, steeps, dries, scutches, cleans and prepares for sale.[9] In some parts of Belgium a man having 10 or 11 hectares can make a living from the land alone; but in the opinion of competent authority, a single holding should not be less than 20 hectares. It is in the poorer and more thinly inhabited districts that proprietors most usually cultivate their own lands. The system of letting to tenants increases notably in the neighbourhood of towns, and in populous districts proprietors farming their own lands become comparatively rare. Here, as in other countries, the proprietor of land ceases to labour and becomes a gentleman, as soon as others will pay him for permission to cultivate his land as much as will maintain him in his new position. Under the system of small proprietorship the land is better manured. It is kept cleaner, the proprietor and his family spending all their spare hours in weeding and similar agricultural work. It is rendered more productive by careful and minute labour, and by the

land were originally almost identical; and what has caused in the one case discontent and agrarian outrage, has in the other case been productive of social order and general contentment—Parliamentary Blue Book, I, p. 72. France, however, never had her trade suppressed and her manufactures destroyed by a Paramount Power.

[8] A hectare is equal to 2 acres 1 rood 35 perches English.

[9] The small Irish farmer might have done something similar, if Irish trade had not been destroyed.

Small Proprietorship not suited to all Countries.

most remunerative rotation of crops.[1] It has, however, been observed that it would be erroneous to suppose that a system of husbandry, such as that which exists in Belgium, could be applied with advantage to all other countries indiscriminately, for, in order to meet with success, it must have been developed naturally by the force of circumstances and events, and be, moreover, in harmony with the customs and institutions of the inhabitants, and adapted to the climate and general capabilities of the soil. The Belgian rural population, especially in the Flemish Provinces, appear to combine the leading qualifications requisite to success in the cultivation of small properties. They are steady, sober and persevering; prudent and economical in their habits; and are possessed of all necessary experience in whatever relates to the management of land.[2] It must not be supposed that even in Belgium the system of small proprietorship has no drawbacks. The extreme subdivision of the land which it involves is an undoubted evil, and one which shows a strong tendency to increase.

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[1] See M. de Laveleye's article in the Cobden Club Essays. Mr. Longfield thinks that ignorance of good agriculture has been an important factor in the creation of Irish misery. No doubt it has been; but in the eighteenth century this knowledge would have been useless so far as regarded the production of articles for export, inasmuch as trade was not allowed. Then as to the production of more food for consumption in the country, I need only quote Mr. Fitzgibbon, the Irish Master in Chancery, who says:—"The people who have thus imperfectly reclaimed bog and mountain seldom hold by lease. When they come under rent, they do so as tenants from year to year, liable to be turned out on a six months' notice to quit. As soon as the poor tenant has brought his farm to that degree of fertility, which enables him to pay a rent and live, all further improvement is studiously avoided, as a thing which the tenant believes will *only increase his labour, to produce a larger rent for the sole benefit of the landlord*, whom he regards as a vigilant spy upon every symptom of ability to pay more rent."—*The Land Question in Ireland*, by Mr. O'Connor Morris, "The Times'" Special Commissioner, p. 83. At pp. 99—103 of the same volume will be found a description of an Irish estate purchased by a Scotch capitalist and worked upon the most approved principles of high farming, and yet the resident Scotch Agent said with reference to his smaller Irish neighbours:—"Give them capital and fair play, and they would run us hard."

[2] Parliamentary Blue Book, I, p. 158.

In 1846 there were 758,512 proprietors, owning 5,500,000 parcels of land. On the 1st January 1865 there were 1,069,327 proprietors owning 6,207,512 parcels. One great cause of subdivision is the law of inheritance, by which, in the absence of a will, all the children take equal shares.[3] A person having one legitimate child may bequeath half his property; having two, may bequeath one-third; and having three or more, may bequeath one-fourth. Another cause of subdivision is the practice, which prevails at public sales, of dividing real property into small lots, because this raises the price by encouraging competition. So great is this competition[4] and so strong the passion for buying land, that ruinous prices are often paid for it, the purchaser having little or no capital left to lay out in improvement, and his purchase yielding him a return of merely one and a half or two per cent. *Great Subdivision of the Land.*

§ 41. The number of tenants in Belgium, according to the official returns published in 1850, was 234,964, of whom 145,967, or about 60 per cent., held not more than half a hectare; 66,027, or about 30 per cent., held from one to five hectares; and 22,970, or about 10 per cent., held more than five hectares. Rent is settled by mutual agreement; and, except in the Pays de Waes, written leases are usual, and are granted generally for nine, but occasionally for twelve, fifteen or even eighteen years. In the Pays de Waes verbal agreements are made for one year ending on Christmas Eve. There is a difference between estates held by the noblesse, and estates purchased by persons who have acquired wealth by trade *Relation of Landlord and Tenant in Belgium.*

[3] The Hindoo and Mahomedan Laws of Inheritance similarly operate to cause subdivision of the land in India.

[4] The price may be regarded as the capitalized value of the rent. The competition to buy land can never be so injurious as the competition to offer rent. In the former case those only can compete who have some capital, the possession of which usually implies some thrift. In the latter case the poverty-stricken and thriftless may compete, and rent is often offered, which cannot be paid, the landlord merely obtaining the right to squeeze out of the tenant all he can get, and the tenant being demoralized by making an agreement, which he has no intention of fulfilling.

or otherwise. In the former the tenants have held from father to son for generations. They regard with friendly respect their landlord, who treats them liberally as old retainers ; and written leases are desired by neither party. In the latter the relation between landlord and tenant is a business transaction, the highest rent is exacted, and written leases are given to the tenants.[5] Rent is usually paid in money, though some leases stipulate for additional payments in kind, such as butter, lard, eggs, poultry, pigs, hay, &c. The landlord has a first lien for the amount of his rent. The tenant cannot be evicted, or his rent raised during the term of the lease, where there is a lease. Non-payment of rent is, however, a ground of eviction, which may be summary, if the lease were executed in the presence of a public Notary ; but can only follow upon the judgment of a Court, if the lease were signed privately. A tenant may sublet or assign, unless restrained by a covenant in his lease, but such a covenant is invariably inserted. No law or custom exists in Belgium, by which a tenant is considered as having a right to remain in the occupation of his holding as long as he pays a stipulated rent, or a rent to be determined from time to time by a legal tribunal, or by agreement subject to arbitration. Rents are affected by competition ; and throughout Belgium, says M. de Laveleye, increases of rent take place regularly and periodically. The landlord is bound, even without any express stipulation, to keep the demised property in a state fit for the purpose for which he has let it. He must make over the buildings in a proper state of repair, and maintain them in repair during the tenancy. The outgoing tenant is entitled to compensation for unexhausted improvements made with the consent of the landlord. Improvements made without such consent may be retained by the landlord on paying their reasonable value, or he may at his option compel the tenant to remove them and restore the land to its original condition.

[5] Similar changed relations have been brought about by the purchasers at the sales of the Incumbered Estates Court in Ireland, and by the purchasers of estates sold for arrears of land-revenue in Bengal.

Subsoil drainage, which requires considerable outlay, is usually done by the landlord, the tenant paying, in addition to his rent, five or six per cent. on the capital so expended. There is in Flanders a *pachters-regt* or farmer's right, which is a custom that the incoming tenant shall pay the outgoing tenant the value of the straw and manure on the land, the manure in stock and the crops on the ground. About forty years ago an attempt was made to establish a sort of tenant right in some parts of Belgium, the outgoing tenant endeavouring to prevent the landlord from letting his land to another tenant, unless his consent was purchased either by the landlord or the new tenant. This barbarous usage (as it is described in an official document) was sought to be enforced by outrages committed upon person and property. But very severe measures of repression were taken, threats being punished with flogging, and any attempt to carry them into execution, with death. The outgoing tenant was further declared civilly liable for murders, incendiarisms, injuries or outrages happening to the landlord, the new tenant, or the family of either; and if any of these offences were committed and the offender were not found, he was arrested and imprisoned together with his family; his goods sold, and the proceeds devoted to the indemnification of the injured persons, unless he could prove within three months that the offence had not been committed by him or his adherents, nor with his knowledge or sanction. These measures appear to have been effectual. All sales, exchanges and divisions of landed property must be made before a Notary, and registered. The penalty for non-registration is a fine, but the unregistered deed is valid. Deeds of mortgage are required by law to be registered for the purpose of protecting the interest of third parties. There is little, if any, emigration amongst the agricultural population of Belgium; and with this may be taken the fact that in the winter the large towns swarm with beggars. In Brussels alone thirteen thousand persons are said to be dependent upon charity. There is in Belgium a Land Tax, which realizes

Tenant Right.

Sale and Mortgage.

nineteen million francs = £760,000. On waste land about twenty centimes per hectare are payable, and no higher rate is levied till after twenty years' cultivation. M. de Laveleye thinks that this tax ought to increase in some proportion to the augmentation of rent, so, however, as not to affect the return from improvements; but that some portion of the general advance of rents, which is due to the general progress of the country, may contribute to State expenditure.

§ 42. There are at the present day traces in Holland of the Germanic *Mark* or territory belonging to a single tribe and comprising wood, plain, and arable land. Formerly the sharers in the mark met once a year to regulate the enjoyment of the common property,[6] to appoint the works to be executed, to impose pecuniary penalties for the violation of rules, and to nominate the officers who were to manage affairs and exercise authority during the ensuing year. The same organization still exists as a very effectual form of self-government. The land of the *mark* was formerly not transmissible by sale or grant; but in modern times it has been held to be alienable like all other landed property. The consequence has been that most of the *marken* have been sold, and the purchase-money distributed amongst the sharers in proportion to their shares. Individual has thus been substituted for common property. Nearly all the territory of the ancient *marken* is still, however, subject to common pasturage; and, when the harvest is gathered, cattle and then sheep are allowed to graze at large. Many of the old towns, which no doubt sprung out of the *marken*, have large common meadows attached to them, in which the inhabitants have a common right of pasture for their cattle. There are still in Holland several forests owned in common, this common ownership having doubtless survived the sale of the arable lands of the *mark*. In the Nether-

Holland—Lands of the Mark converted into individual property.

[6] For some account of common lands in Belgium and their conversion into individual property, see M. de Laveleye's *Primitive Property*, Chap. XXIII.

lands, as in Belgium, the land is held partly by small cultivating proprietors and partly by tenants. The latter are not in the habit of subletting. The farms held by cultivating proprietors are on an average much larger than in Belgium ; and most of them require hired labour for their cultivation in addition to the work of the proprietor and his family. Although the law of inheritance is nearly the same as in Belgium, the land has not as yet been subdivided to any injurious extent. These small proprietors are able to bear without real suffering a blight, or a murrain, or a succession of bad harvests. In ordinary years they live in reasonable comfort. As to the condition of the agricultural community, there is a satisfied indifference, and nothing has occurred to elicit an expression of public opinion upon the merits of the existing system. There is little or no emigration amongst the agricultural population. Mortgages of land must be effected by a notarial deed, which, in order to be valid, must be registered. Where there are more mortgages than one, they have priority according to date of registration. A duty of four per cent., with an additional fee of eight pence, is levied, at the time of registration, on all acts of award, sale, re-sale, transfer, re-transfer, and all other civil and judicial acts effecting the transfer of landed property, except acts of exchange, which are liable to a tax of only half the amount, or two per cent.

Cultivating Proprietors.

Registration of Documents affecting Land.

§ 43. The average size of farms let to tenants in the Netherlands is larger than in Belgium. The relation of landlord and tenant is regulated by the Civil Code, which, saving a few omissions, is identical with the Code Napoleon. A tenancy may be created either by parol or by written agreement. Where there is no writing, the tenancy is presumed to be for a time sufficient to enable the tenant to gather the crops sown. The law presumes that a farm is let for cultivation ; and, if the tenant use the land for any other purpose, if he injure it, neglect it, fail to stock it properly, or break the conditions of his lease, he may be evicted and made liable for damages. Rent is settled by mutual

Relation of Landlord and Tenant in the Netherlands.

agreement between the parties, and is almost invariably paid in money. In a few parts of the country, however, there are tenants who pay rent in proportion to, or by a share of, the produce. Rent is reserved yearly, and is usually paid in February and November. If half or more than half the harvest be destroyed by some unforeseen accident or misfortune, such as hail, frost, blight, inundation, and the loss is not compensated by subsequent good harvests, the landlord must allow a proportionate deduction of rent, unless an express stipulation to the contrary has been inserted in the lease. A tenant can be evicted only by a judicial proceeding, which is commenced by a petition for annulling the lease. The tenant has an opportunity of resisting the action by producing written proofs of existing, renewed or extended tenancy. If he fail, the Court issues a writ of ejectment, which is executed without delay, often on the following day. In no case is more than one month's indulgence allowed. A tenant has no right by law or custom to sell his interest, either with or without his landlord's consent. He is expressly forbidden by the Code to sublet, and his lease can be annulled, if he do so. If on the expiration of the lease the tenant hold over with the tacit consent of his landlord, he holds upon the conditions of the expired lease, and he must be allowed to gather the crops afterwards sown by him. The power of the landlord to raise the rent upon the termination of the lease is limited only by the willingness of the old or a new tenant to pay the increased rent demanded. Farm buildings are erected, and improvements usually made, by the landlord. If the tenant expend his own money on improvements, the landlord obtains no legal right to anything which the tenant can remove, but the removal must be effected in such a way as to leave the realty uninjured. The Legislature has never found it necessary to interfere in order to compel the grant of any particular species of tenure. Proprietors have consulted their own interests and the interests of others in granting long leases of unreclaimed lands to persons willing to undergo the labour and expense of bringing

them into cultivation. Rents, as a rule, are not so high as to make the tenants dissatisfied with their condition; and no demands have been made for greater security of tenure or for proprietorship.

§ 44. There is a species of tenure prevalent in the province of Groningen, which is termed *Beklem-regt.* It is a kind of hereditary lease at a fixed rent, which cannot be raised. The tenant may bequeath, mortgage or sell his interest, provided only that he do not diminish the value of the land. The landlord is entitled to a fee upon every transfer, this fee being fixed beforehand and amounting usually to one or two years' rent. The origin of this tenure was, that some landlords, being in want of money, and not wishing to mortgage their lands, gave hereditary leases upon receipt of a sum of money as a fine, thus retaining the fee-simple and continuing to be nominal proprietors. The larger the fine in the first instance, the less the rent, and *vice versâ.* M. de Laveleye states the advantages of this tenure to be (1) that the tenant having absolute security for the future is encouraged to make improvements; (2) that this absolute security is acquired at a much less cost than the purchase of the fee-simple would involve: the tenant has therefore more disposable capital for improvements; (3) that the Beklem-regt being indivisible without the landlord's consent, compulsory or injurious subdivision is prevented; (4) the Beklem-regt discourages immoderate increase of the population, because it limits the number of farms, and creates a high standard of comfort; (5) it brings about the residence of well-to-do quasi-proprietors, who cultivate the land with capital and science, and are as a class independent, proud, simple, looking for their well-being to their own energy and foresight alone. "As long as the hereditary tenants cultivate the lands for themselves," says the same authority, "the Beklem-regt is attended only with beneficial effect; but, as soon as they sublet, it becomes subject to the drawbacks of common leases, with the difference that in that case the subtenant must pay a double rent, *viz.*, the fixed

Beklem-regt in the Province of Groningen.

one to the landlord, and a variable one to the hereditary tenant.[7]

Small Proprietors and no Tenants in Hanse Towns, Hamburg and Bremen.

§ 45. The territory of Hamburg and of Bremen is almost entirely in the hands of small proprietors, who dwell in their own houses and cultivate their own soil. Except in the case of the State Domains and some other large properties, there are no tenancies and no tenants. The cultivating proprietors live comfortably, and some of them are even wealthy. They are a slow-thinking conservative race of people, who trouble themselves little with politics, and dislike changes of any kind. The average size of farms is rather large,[8] most of them requiring hired labour for their cultivation. The majority of the population of Hamburg are engaged in commercial and maritime pursuits. About one-third find employment in manufactures ; and only 9,000 out of 302,581 follow agriculture. Bremen has no manufactures except ship-building, distilling and cigar-making, which together do not employ any large portion of the community. Commercial pursuits engross the great majority, and the agriculturists are few in number. It is easy to understand that farming operations conducted in the neighbourhood of a populous commercial city, whose inhabitants require large supplies of milk, butter, vegetables, and other products of the soil, must prove very advantageous to the cultivating proprietors. The population of the Republic of Lubeck, which numbers scarcely fifty thousand, is chiefly occupied with agricultural and commercial pursuits, there being no manufactures worth mentioning. About one-half of the territory is subject to the seigneurial control of the State, or of the corporations who have succeeded to the rights of the old religious houses, but is held

Occupation of Land in the Republic of Lubeck.

[7] For further information as to this tenure, see M. de Laveleye's *Primitive Property*, Chap. XX ; and the Parliamentary Blue Book, I, p. 214. There is a very remarkable similarity between the *Beklem-regt and the Patni* tenure of Bengal. But unfortunately the Patni tenure-holder has never been anything but a middleman.

[8] Some comprise 120 to 180 acres.

by individuals, who exercise full proprietary rights, subject to the formal consent of the superior lord upon a sale or other transfer. The farms on these seigneurial lands do not exceed thirty acres in extent. About one-fourth of the territory is in the possession of independent proprietors, some of whom let to tenants, while others conduct their own cultivation. The remaining fourth is the domain of the State, and is let upon leases of ten, fourteen or twenty years, the last term being now most common. The inhabitants of the Duchies of Schleswig and Holstein for the most part follow agricultural pursuits. The greater part of the lands belong to noblemen and other large proprietors, who let them in parcels to tenants upon lease. The rest of the soil is in the hands of small peasant cultivating proprietors. The quantity of land held by these small proprietors varies considerably. The full peasant, 'bauer,' is he who possesses about one hundred English acres. The half peasant, 'halb-bauer,' possesses about fifty acres. The small peasant, 'kathner,' holds under fifteen acres. Where tenancies exist, the relation of landlord and tenant is created by written lease, which is sometimes for seven, but usually for fourteen or twenty-one years. The rent is paid in money, half-yearly, and generally in advance. Formerly the landlord stipulated for a supply of milk, butter and other articles for the use of his household in addition to the rent, but this practice has gradually fallen into disuse. Holdings at the will of the landlord by verbal consent from year to year are unknown. A tenant may be evicted with the aid of a Court of Justice for non-payment of rent or for breach of the conditions of his lease; but cases of eviction are very rare. New buildings and other improvements are made by the landlord. The tenant keeps them in repair during his occupation. The relations between landlord and tenants are friendly and have never called for legislative interference. There is no emigration from the territories of any of the Hanse Towns The subdivision of properties is avoided by a custom under which, in the absence of a will, the eldest son takes

Relation of Landlord and Tenant in the Duchies of Schleswig and Holstein.

the farm at a valuation, and pays his brothers and sisters the money value of their shares respectively, commonly borrowing money on mortgage to enable him to do so. Some of the farms are indivisible holdings; and if this course were not adopted, a sale would be the necessary alternative. In the Hamburg territory every landed estate must have a page assigned to it in the State Register of Mortgages. The name of the proprietor is here inscribed, and all sales and mortgages are entered. Only those persons, whose names appear in this Register, can have any title to the property.[9] A similar Register is maintained in the Duchies of Schleswig and Holstein.

[9] A Register of Estates is maintained in all Bengal Districts (see Act VII (B.C.) of 1876), and those persons only are recognized as in possession and entitled to the rents, whose names appear in this Register. This is wholly unconnected with a costly system of registration, which is not productive of advantages commensurate with its cost.

CHAPTER VII.

The Tenure of Land, and the Relation of Landlord and Tenant in Denmark, Sweden, Geneva, and Austria.

§ 46. There are some curious points of analogy between the old land systems of England and Denmark. As the English Manor consisted of (1) the demesne, and (2) the tenemental lands,[1] so the Danish 'Sœdegaard,' or family seat, comprised (1) the 'Hovedgaard,' or demesne round the mansion; and (2) the 'Böndergaard,' or lands occupied by peasant farmers. Between these two classes of land and the rights and obligations appertaining to them respectively, Danish law has drawn and maintained a clear line of distinction. The Sœdegaard itself may belong to the *Stamhuse* or to the *Fiefs*. The Stamhuse are a kind of entailed estates, apparently created by something like the *fideicommissum*[2] of the Roman Law. They were enjoyed according to the will of the founder, and the lands were usually inalienable, the usufruct following the rule of primogeniture. The consitution of 1849 forbad the creation of fresh entails, and promised the conversion of estates of this class into free property. But this promise has not as yet been fulfilled. The *Fiefs*, or estates of the Counts and Barons, enjoy certain privileges and descend by primogeniture, escheating to the Crown on failure of the male line. They are thirty-two in number, and their creation dates from the establishment of the Absolute Monarchy

Denmark—Distinction between Hovedgaard and Böndergaard.

[1] See *ante*, p. 22, note.

[2] See Sandars' Justinian, pp. 337—347. A *Fideicommissum* differs from a *Trust* in this that it is meant to carry out only the wishes of a deceased person, while a Trust operates to carry out the wishes of a person, living or deceased, and has also in some other respects a wider application.

in 1660. Turning now to the component parts of the Sœdegaard, the power of the lord over the Hovedgaard, or demesne lands, is much more absolute than over the Bönder-

Rights of the Lord in respect of the Hovedgaard.

gaard. He may sell these lands at his pleasure, unless they belong to an entailed estate. They may also be leased, but are never split up into separate farms for this purpose. The relation of landlord and tenant so created depends wholly upon the terms of the agreement, and neither party has any rights or liabilities save those derived from express contract. If the tenant die before the expiry of the lease, his heirs inherit, unless the landlord notifies that he resumes the farm. If the landlord die, the lease is determined by his death; but this is not usually insisted upon. These lands formerly enjoyed certain fiscal immunities, and are still, as a rule, free from tithe. The fiscal privileges, together with the *corvée*, were abolished in 1850. The conversion of Böndergaard into Hovedgaard land was forbidden by the Code of Christian V. in 1683.

§ 47. The Böndergaard is the land occupied by the better class of peasants. The laws of Denmark appear to assume that the peasantry as a body have a right to continue on the soil, as long as they comply with certain conditions of tenure, fixed not by the landlords but by the State. The Böndergaard is divided into farms of not less than 10 or more than 120 acres in size. Each farm is let

Böndergaard or Peasants' Farms.

to a separate tenant on a lease for his own life and that of his widow. When a farm becomes vacant, the lord must, as a rule, assign it within a year and fourteen days to a *bönde* upon a new lease similarly for two lives. According to custom the children or other relations of the last occupier are entitled to this new lease. There are, however, exceptions to the rule that the farm must be assigned to a new *bönde* tenant. *First.*—If no tenant offers a fair rent and the landlord can establish this fact, he may under severe restrictions parcel out the vacant farm amongst the adjacent farms. *Second.*—He may turn it into lots for labourers. *Third.*—He may convert it into plantation, provided that he build two houses and assign a

small piece of ground to each. *Fourth.*—He may include it in the Hovedgaard, but only on condition of converting an equal portion of Hovedgaard into Böndergaard. *Fifth.*—He may lease it for fifty years certain. *Sixth.*—He may grant it in *Arvefæste*, a species of hereditary tenure which is of two kinds—(*a*) where the lease is to the tenant and his heirs for ever at a fixed rent, the tenure to escheat to the landlord upon failure of the tenant's heirs—the tenant's interest here appears to be unassignable: (*b*) where the lease is a perpetual one at a fixed rent payable in grain; the lessee may mortgage and assign, but the landlord is entitled to a fee upon every transfer. *Seventh.*—He may sell the farm; and Danish legislation has always encouraged the sale of farms and the conversion of tenants into peasant proprietors.[3] In 1854 an Act was passed, which authorizes the sale of Böndergaard farms in Stamhuse estates, the sale-proceeds being converted into trust-money, subject to the same trusts as the real estate. In order to encourage the landlords to effect these sales it was provided that any landlord, who sold nine farms, might convert one into Hovedgaard. Acts were also passed for selling to the tenants the lands of the Crown Domains and of the colleges and other corporations. Under the operation of these laws, a large portion of the Danish territory has been converted into small freehold properties of sixty or seventy acres each, or more where the land is poor, held by substantial and prosperous yeomen. The new freeholder has not begun to sublet his land. If he do so within twenty years from the date of his purchase, he must let upon the conditions of Böndergaard tenancy, which are hereinafter described.

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[3] This was done so far back as 1769 by a law, the preamble of which recites that the feeling that a man is bestowing his labour on his own land is the best spur to agricultural industry and progress. It may be observed that the sale of land to the tenants and also the Arvefæste were first tried upon the Crown Domains. In Bengal many estates become the property of Government from time to time in various ways; and with these, or some of them, a similar experiment might perhaps be well tried.

§ 48. We will now suppose that the farm is about to be assigned to a new tenant. As soon as he and the landlord have come to a preliminary understanding, two impartial persons are called in, one by each party. These persons attest in writing the state of the farm, the buildings and the soil: they likewise examine and appraise in an inventory the beasts, implements and seed which the law requires the landlord to supply; and until they have been supplied, the new tenant is not bound to pay rent. Their report and inventory are appended to the written lease. The rent consists of a sum down (*indfæstning*) and a yearly payment (*gilde*) in money or in kind, or both. If in kind, it may be commuted at rates officially calculated from the average market prices of grain, and published every year. The *indfæstning* is a considerable sum, as much as from one-third to one-sixth of the value of the farm. The amount of both the *indfæstning* and the *gilde* is settled by mutual agreement between the parties. The lease may be forfeited, if the tenant does not pay his rent—does not reimburse the landlord for the land tax[4]—does not keep the farm in as good a condition as that set out in the inventory—is unable by reason of advanced age or other cause to carry on the farming operations—sublets any part of the land—sells hay or other fodder so as to impoverish the land from want of manure—abuses the turf or timber—stirs up the other farmers against the landlord, or assaults him in act or word. The landlord may determine the lease if, having no house of his own, he wishes to live in the tenant's homestead. When the landlord makes a complaint to the judicial authority for the purpose of evicting the tenant, an attorney is

Conditions of Böndergaard Tenancy in Denmark.

[4] All the land is rated for fiscal purposes in the Danish cadastre (*matrikul*) according to its productive capability. The best arable is that which produces one *tönde* (3·87 bushels) of *hard-corn* (rye and barley) upon 7,200 square ells. This is marked 24, the worst being marked 0. A large number of fractional ratios come in between these extremes, so as to allow every field to be fairly taxed. For example, land which would produce only two-thirds of a *tönde* on 7,200 square ells, or one *tönde* on 7,200 + 2,400 = 9,600 square ells, is marked 16. Hay is the measure for pasture land; the number of beasts that can be grazed, for common; and the number of swine, for forest.

appointed to defend the latter gratis. For minor breaches of his contract, the tenant may be fined. If damage to the building, land or stock be alleged, the Magistrate sends two persons to make a survey, and if they report against the tenant, he is directed to make good the damage within a fixed time. If he do not obey, the case comes before the Court in due course. On special grounds the landlord may demand immediate eviction, and the case is then heard at once. Rent is payable on the 1st May and 1st October, and the non-making prompt payment is a *primâ facie* ground of eviction. The Magistrate may, however, on reasonable grounds, allow time for payment, not exceeding four months. If both the tenant and his wife die within thirty years after taking possession of the farm, their heirs are entitled to receive as many thirtieths of the *indfæstning* as there are years wanting to complete the period of thirty years, unless the lease is continued to one of the heirs. The tenant must make good all damage done to the farm by fire, weather, or other similar cause. But if the house or building be destroyed, the landlord must supply timber, and the parish is required to afford general help to build again. If, on the expiration of a lease, the landlord thinks that improvements are required, he must make them at his own expense. If the tenant wishes to make any large improvements during his tenancy, he must give notice to the landlord in order that a survey may be made for the purpose of providing materials, upon which subsequent claims to compensation may be fairly determined. The outgoing tenant or his heirs may claim compensation for all unexhausted improvements made by him, and which have added to the marketable value of the farm. Great improvements are supposed to be exhausted in 30, and small improvements in 10, years; and after these periods respectively no claim for compensation will lie. The Danish *bönde* is a respectable, upright and intelligent person; having some education—attendance at the parochial school being compulsory from the age of seven to fifteen years; thrifty and prudent, unwilling to marry until he has the means of sup-

Eviction.

Improvements.

porting a wife and family ; something of a politician ; and possessing considerable independence of character.

§ 49. There is in Denmark another class inferior to the bönde, and designated *Hausmand* or Housemen. The term 'Haus' signifies not only a house, but also a holding too small to be ranked as Böndergaard. There are about 137,000 of these housemen, one-half of whom hold on an average four or five acres of land ; one-fourth, less than an acre ; and the remaining one-fourth, merely a house without land. Two-thirds of the housemen are freeholders and better off than the remaining one-third who are leaseholders. The houseman cannot subsist on the profits of his holding, and generally has some industrial pursuit besides, being a fisherman, or carpenter, or cooper, or blacksmith, or even working as a day labourer. The owner of a *haus* may let it as he pleases : but a written lease is obligatory ; and in the absence of such a lease, after six months' undisturbed possession, a lease for two lives will be presumed, of the same nature as a *Böndergaard* lease. Services of work may not be stipulated for in such a lease ; but they may be the subject of an agreement unconnected with the rent and having operation for not more than a year. If a Hausmand, who has a lease, commit a breach thereof, or do not pay his rent, he may be served with a six months' notice to quit on the 1st May ; and, if he refuse to leave, may be evicted by the police ; but he can sue his landlord for damages, and can claim a trial. A Hausmand, who has no lease, is entitled to six months' notice to quit before the 1st May, but cannot demand a trial. Emigration is not uncommon amongst the housemen.

The Danish Hausmand, or Housemen.

§ 50. A very ancient and exact system of Registration exists in Denmark. It can be traced back to a law of 1550 ; and the titles and encumbrances of every field in the country can be immediately ascertained by intending purchasers and mortgagees. In every district there is maintained a threefold Register in which are entered all estates, large and small. The *first* division

Danish System of Registration.

gives the area, locality and other items of description. The *second* division shows the changes of ownership. The *third* division contains a specification of mortgages and other circumstances, which affect the proprietary interest, and refers to every instance in which the property has been the subject of a '*Thing-læsning*' or Court-reading.[5] There can be no complete title without a written instrument. Every such instrument must contain an exact description of the property with which it is concerned; its place in the cadastre; its rate in *hard corn*, according to which the land tax is calculated; the price actually paid, or where no price has been paid, the estimated value. The person who takes under it delivers it to the Sub-Prefect of the district, who being satisfied that the taxes are not in arrear, and having been paid the Court-fees, reads it in open Court at the next weekly session; makes an entry in the Court's journal that it was so read; and certifies this upon the instrument, which is then copied into the Protocol of deeds and mortgages, and noted in the Register of real property. The Clerk of the Court delivers to those who require them attestations of the matters entered in the Registers. The whole process of registry and conveyance costs from one to three per cent. on the purchase-money. Danish law, alive to the mischief of too great subdivision of the land, forbids any estate, large or small, to be parcelled without the permission of the Minister of the Interior. When a *Böndergaard* farm is broken up, there must be reserved one lot of at least 25 acres of first class land. Farms of less than 25 acres may not be subdivided, unless under very special circumstances: and, when subdivision is allowed, one lot of 10 or 12 acres must be reserved. Building lots of two acres may be detached from an estate. Every application for leave to subdivide must be accompanied by an accurate map. These rules do not apply to the holdings of the Hausmand. The property of

Provisions against Subdivision.

[5] A deed is binding on the contracting parties without being read in Court; but the reading in Court is necessary in order to conclude third parties, and a deed which has been read prevails against a deed which has not been read.

an intestate is divided equally between his children. An owner may dispose of one-third of his property by will.

Rules of Inheritance.

In the case of an unentailed Sœdegaard, the sons may take the whole estate, giving their sisters money compensation calculated upon the value of their shares. The owner of a freehold *Böndergaard* may leave the whole to one heir of either sex ; and, if he wish, he may fix the amount of compensation to be paid by this heir to the others who have been deprived. If he have no heirs of his body, he may bequeath the property to any one whom he chooses. Where property, to which several heirs are entitled, is not allowed to be subdivided, it must be sold and the sale-proceeds divided, unless the sharers agree that one shall take the whole, paying the others the money value of their shares. In the Island of Bornholm, there is a custom that the youngest son shall take the property and compensate the other children.

§ 51. In Sweden the population finds employment not only in agriculture, but also in manufactures, mining and fishing. The greater part of the land is the property of peasants who cultivate it themselves, and consequently it is for the most part divided into small properties. Large properties are few in number, and it is on these only that tenancies exist. The whole country contains 66,438 'mantal' or assessed unities—the *mantal* being an ancient division of land based on its assessed value. There are about 290,000 landowners, so that each landowner holds on an average less than a quarter of a *mantal.* The average quantity of land in a *mantal* is nearly fifteen hundred acres, and the average population 55 persons. It would appear from these averages that population has not yet begun to press upon the land in Sweden. Landed property is inherited in the same manner as personal property, being divided between the heirs without regard to sex, save that brothers have first choice of shares, and are entitled to buy in their sisters' shares, when the land cannot be conveniently divided. Sale, gift or exchange of land is effected by

Sweden—Most of the land belongs to cultivating Peasant Proprietors.

Inheritance.

a written instrument, which must be produced, proclaimed and entered in a special record before the Town or County Court of the district, within which the property is situated. Conveyances are also published by notifications posted on the doors of the Town or County Court, or by being read from the pulpit of the Parish Church, after which they are again proclaimed at the next ordinary meeting for the year of the Town or County Court. The fact of these proclamations having been made is noted on the instrument. If no counter-claim is made, or if a counter-claim being made is disallowed, the Court confirms the conveyance of the property. All the proceedings are entered in a record, the original of which is kept in the archives of the Town or County Court, a copy being sent to the Court of Appeal. Land in Sweden is heavily mortgaged. A deed of mortgage must be produced, proclaimed, and specially recorded before the Town or County Court. A mortgage, if not redeemed within ten years from date of registration, becomes null and void, unless in the interval it has again been declared valid by the Court. Of several mortgages, the first has the preference; and being renewed, it retains its precedence. Public opinion is in favour of the existing system of land tenure; but some persons think that the easy and inexpensive manner in which land can be conveyed, injuriously facilitates the subdivision of property. The peasant proprietors are as a class above poverty; a large proportion of them is in comfortable circumstances; and some are rich, possessing property worth £1,000 to £10,000. With rare exceptions they live on their land. Agriculture is in a very backward state, but indications of improvement are not wanting. Hired labour is not employed to any great extent, most peasant proprietors being able to work their farms with the aid of their families. There is a considerable amount of emigration amongst the agricultural classes, chiefly to America—induced partly by the hope of increased earnings, partly by the desire of greater civil and religious liberty.

Transfer of Land.

Mortgages.

Condition of the Peasant Proprietors.

Emigration.

§ 52. As the owners of even large estates usually cul-

tivate their own lands, tenancies are not numerous. Where they exist, they usually consist of entire estates, or of portions of entire estates, which have usually been separate properties. They may be created either by parol or in writing. Where there is a writing, it must, in order to be binding on third parties, be produced and proclaimed before, and confirmed by, the Town or County Court; and this confirmation must be repeated every ten years. Tenancies are usually by lease for a certain term of years not exceeding fifty, or during the lives of the tenant and his wife. Where no specific term is agreed upon, the letting is presumed to be for one year. There is no law or custom by which a tenant has a right to sell his interest in his farm, or to remain in occupation without a special agreement. Tenants of small farms are, however, generally allowed to continue in possession as long as they live, and are usually succeeded by their sons or sons-in-law. Rent is determined by agreement and is paid in money, in kind and in labour. If payable in money or in kind, it is usually payable once a year. Payment of rent by a share in the produce is rare. No reduction in case of misfortune is provided for; but landlords generally grant a respite as to the payment of a portion. The landlord may on the execution of every new agreement demand as high a rent as he can get. Arrears of rent are summarily recoverable, where the matter is clear; but if it is complicated or open to doubt, there must be a trial before the proper Court. The proprietors of certain *privileged land* are empowered to distrain the personal property of their tenants through two impartial officers, but must within a fortnight apply to the proper authorities to have the distrained property sold. If they do not so apply, the distraint becomes null and void. Agreements for letting usually contain a stipulation that the tenant shall be liable to eviction for non-payment of rent, or any other breach of covenant. Eviction may be had summarily by order of the Governor; but if the matter be open to doubt, it is referred to the proper Court for formal trial. The tenant is bound to maintain all buildings

Relation of Landlord and Tenant in Sweden.

Tenant has no Right of Transfer.

Rent how settled and paid.

Recovery of Arrears.

Eviction.

in the condition in which he has received them ; and also within certain limits prescribed by law, to erect such new buildings as may be needful. Improvements are generally effected by the tenant without assistance from the landlord ; and the tenant has no definite legal right to compensation. It is however usual to allow the tenant on quitting to remove buildings erected by him with his own materials beyond what he was bound to erect, unless the landlord pay him the value of them ; and where such buildings have been erected with materials taken from the estate, either the tenant removes them, paying for the materials, or the landlord keeps them, compensating the tenant for his labour. Between large proprietors and small tenants patriarchal relations have hitherto prevailed. The general state of feeling between landlord and tenant has been friendly ; but of late, signs of discontent have been manifested by some of the smaller tenantry, which will, it is supposed, create a necessity for amending the existing law. Sub-tenancies are prohibited, but this prohibition does not apply to previously existing subfarms subordinate to the principal property leased. The tenant may not, however, raise the rent of these subfarms unless they become vacant, when he may make a new agreement on such terms as he is able to obtain.

Improvements.

Sub-tenancies prohibited.

§ 53. The land of the Canton of Geneva in Switzerland is occupied partly by small proprietors, partly by tenants under proprietors ; but in what proportion these modes of occupancy respectively exist, there are no statistics to show. There are no subtenants and therefore no middlemen. The quantity of land held by a single peasant proprietor varies from six to twelve acres. The average quantity of land for each member of the agricultural population is 2½ acres. On the death of a proprietor, the land is equally divided between his children. The legal method of sale, transfer, exchange or division is by an authentic act registered at the mortgage office, and inscribed on the Cadastre or Land Register, in which every parcel of land is mapped out and numbered. There is a duty of five per cent. on sales ;

Occupation of land in the Canton of Geneva.

Transfer and Inheritance.

and of two to twelve per cent. according to the degree of relationship, upon transfer by inheritance. The land of the Canton is mortgaged to about one-fourth of its value. Proprietors live in villages, generally, in detached houses; and their circumstances are reasonably comfortable. There is hardly any emigration. Tenancies are usually created by written lease, and for a term of not less than nine years. The quantity of land held by tenants varies from ten to twenty acres near the town, and from thirty to fifty acres at a distance in the country. Rent is settled by mutual agreement. Money rent is payable yearly six months in advance. In some instances, for example in the case of vineyards, rent is paid in produce. The landlord has a lien for the rent on the live and dead stock of his tenant. He can evict the tenant for non-payment of rent, or for breach of any of the conditions of the lease; but for this purpose he must resort to the Court, which may grant the tenant time for payment upon reasonable cause shown. A tenant has no right to sell his interest, or to remain in possession after the expiry of his lease. Improvements, especially buildings, are usually made by the landlord. If the tenant makes them, he must have an agreement with his landlord, or he may be prevented from removing them, and will have no right to compensation. Tenants are said to be generally superior to small proprietors in their mode of cultivation and general circumstances. The agricultural community are generally satisfied with their condition, and there is no necessity for legislative interference.

Tenancies.

Rent.

Eviction.

Improvements.

§ 54. The tenure of land in the Austrian Empire is now regulated by the Land Laws of 1848-9, by which the Feudal System was completely abolished. Before 1848 the Austrian peasants were serfs, legally subject to forced labour, by which the estates of the great proprietors were cultivated. In return for this labour a certain portion of land was allotted to each serf, who cultivated it exclusively on his own behalf and for his own profit. Subject to certain duties payable to his lord, the serf could sell, mortgage, transfer

Austria—Feudal System not abolished until 1848.

or bequeath his land ; and he had therefore a proprietary interest in it, though subject to conditions of forced labour and feudal impost. By the Land Laws of 1848 these conditions were abolished ; and the peasant serf became a peasant proprietor, holding his land in free and unconditional ownership. This change was effected by the State compensating the great proprietors for the pecuniary value of the feudal rights of which they were deprived. These rights were valued by a Commission, upon which all the great proprietors were represented. From the total amount of the value thus estimated the Government cancelled *one-third*. The payment of the remaining two-thirds was provided for by the issue of five per cent. bonds, the whole amount of which was redeemable in forty years by annual drawings at par. The annual sum required to pay the interest on the debt and provide for its redemption by means of a sinking fund was raised—one-half by a tax levied exclusively upon the new peasant proprietors, which represented the price paid by them for the immense advantages which they had received—and the other half by a sur-tax on the local taxation of each province which is annually voted as part of the local budget by each of the Provincial Diets. As this sur-tax falls upon the great proprietors, they have really received only one-third of the estimated value of the feudal rights abolished, being the amount levied by the tax on the new peasant proprietors. It is said, however, that few of them are dissatisfied with the change. Being compelled to substitute machinery for the forced labour of the peasants, they have by scientific farming doubled and trebled the income of their properties, while, in consequence of this and of the improved condition of the peasantry, the average market price of land has risen a hundred per cent. or even more.

Peasant Serfs converted into Peasant Proprietors.

Great Proprietors how compensated.

§ 55. In the Alpine districts of Austria, the Tyrol, for instance, Salzburg, Carinthia, a great part of Styria, and the mountainous parts of Upper and Lower Austria, the average size of peasant properties is from 30 to 40 acres. In parts of the country, where the woods do not belong to

Distribution of Peasant Proprietors in Austria.

the State, many peasant proprietors own as much as 1,500 to 2,000 acres, of which 1,000 acres at least are wood-land. In Bohemia, Moravia, Silesia, and Lower Austria exclusive of the mountainous districts, agriculture is most scientific and most productive, and the greater part of the land is in the hands of the great proprietors, who from time immemorial have possessed estates of large extent; while the lesser part is held by peasant proprietors in estates of from fifteen to fifty acres. A large number of the Bohemian peasantry occupy only a small patch of garden ground, the produce of which is insufficient to support them, and they complete the means of subsistence by working as agricultural labourers. In Upper Austria exclusive of the mountainous districts, and in the lowland districts of Styria, small proprietors predominate, holding usually 40 to 60, and occasionally as much as 200 to 300 acres. The lowland portion of Carniola is occupied by small proprietors, amongst whom the subdivision of property is very great. This is said to be owing to the conquest of Napoleon I., and the introduction of the French Code, which abolished all previously existing limitations of the right of division and descent. In Galicia three-fifths of the whole productive soil is cultivated by large proprietors, whose estates vary in extent from 1,000 to 20,000 acres. In this province twenty acres are considered sufficient to maintain a peasant family. Some peasants, however, hold only one or two acres, and make up the means of living by day labour. The local tribunals greatly assist the division of land in Galicia. Large estates, consisting chiefly of wood-land, prevail in Bucovina. Those laws, which formerly prohibited or limited the division of small peasant properties, have now been generally abolished by recent legislation throughout the Austrian Empire. The provisions of the Austrian Civil Code as to succession and inheritance make no distinction between movable and immovable property. In the absence of a will, all the children, male and female, share alike. An exception exists in the case of family entails, 'majorats,' which

Succession and Inheritance.

cannot be constituted without legislative sanction, and the succession to which is regulated in each case by the provisions of the instrument by which they were created. All immovable property in Austria is inscribed in the Registers of the Public Registration Office; and the title to such property depends upon the entries in these Registers, which are made only after a sufficient judicial inquiry. Certain duties varying from one to 3½ per cent. on the value of the property are payable upon transfers; and a duty of one per cent. is payable upon mortgages. Properties are not in general heavily mortgaged; the cases in which land is mortgaged for more than half its value are exceptional. The small proprietors generally live on their holdings; and are able to maintain themselves in considerable comfort. But their system of agriculture is very rude and primitive; and it is said to be a notorious fact that in this most agricultural country agriculture flourishes only in those provinces where great estates and great landowners prevail. There is very little emigration of agricultural labourers, except from parts of Bohemia, which suffer from over-population.

Condition of the small Proprietors.

Emigration.

§ 56. The tenant-farming system of Great Britain and Ireland is practically unknown in the Austrian Empire. In Bucovina the scarcity of labour is so great, that contracts are constantly made between the great and small proprietors, whereby the former provides the land and seed, the latter the labour, and the produce is divided between them. The Provinces of Görz, Gradiska, Istria, Dalmatia and part of Carniola are traversed by the Karst mountains and have a rocky barren soil, in which only dells and slopes here and there are covered with black earth. These patches of tillage and grass are small. Their cultivation is difficult in consequence of both physical conditions and a great deficiency of labour. The proprietors, therefore, instead of themselves cultivating them, generally let them to the colons, who farm just what they can cultivate with the help of their families. These are the only tenancies usual in the Austrian dominions. As to the rights of landlord and tenant, the lessor is bound to deliver the property in a

Tenant-farming practically non-existent in Austria.

Metayer system in Bucovina.

Tenancies in certain parts of the mountainous districts.

serviceable state. The lessee is bound to keep the farm-buildings in repair, as far as he can do with the materials on the estate. For other repairs the lessor is liable. In the case of a lease without a term, six months' notice must be given in order to determine the tenancy. A lessee, whose lease has not been registered, cannot claim to hold against the assignee of his lessor, but may recover compensation from the lessor for the loss of his lease. Tenancies are usually created, and regulated by written agreement. A tenant may assign without the consent of his landlord, unless restrained from doing so by a stipulation in his lease. He may also sublet, when this can be done without disadvantage to the proprietor, and is not forbidden by the contract. Rent is usually paid by a share of the produce, the landlord's share varying from two-thirds in the most fertile, to one-fifth in the least fertile, lands. The lessor cannot raise the rent during the pendency of the lease; but there is nothing to prevent him from exacting a higher rent, if he can get it, from the old or a new tenant, when a fresh agreement is executed. Under the law of 1868 the landlord may, for the recovery of claims for rent, seize the effects of the tenant to the value of a whole year's rent. When rent is payable in money, it is commonly paid in advance, and the punctual payment of it is secured by caution money to the amount of 10 to 50 per cent. of the rental, deposited in cash or Government paper. A remission of rent may be claimed, when the produce of a farm let for one year has been reduced to half by extraordinary circumstances. If the tenant seek remission of the whole rent, he must without loss of time give notice to the lessor of the misfortune on which his claim is based, and must cause the facts, unless they are notorious, to be investigated judicially, or by, at least, two experts. The tenant is bound to deliver up the farm upon the expiry of his lease in the usual agricultural state of cultivation, regard being had to the season; and the lessor, if he claims compensation for deterioration, must bring his claim within a year. A tenant may be evicted for (1) non-payment of rent,

Assigning and Subletting.

Distraint.

Remission of rent on account of extraordinary circumstances.

Eviction.

or (2) injurious use of the property; but only after application to the proper tribunal and a judicial decision and order. Evictions are said to be infrequent. The question of improvements is generally regulated by the terms of the contract. The law recognizes the right of the tenant to be compensated for improvements in certain cases: any such claim must be made within six months after the surrender of the farm to the landlord. In Dalmatia disputes about contested rights of pasturage and estovers are frequent; but in no part of the Austrian dominions has legislation as yet been considered necessary for the protection of tenants. Tenures created on the principle of 'emphyteusis' are known in some provinces: and they differ in no material respect from similar tenures in other countries, which formerly constituted a portion of the Roman Empire.[6]

Improvements.

Emphyteusis.

[6] See *ante*, p. 6.

CHAPTER VIII.

The Tenure of Land, and the Relation of Landlord and Tenant in Italy (Lombardy, Southern Italy, the Roman States, Tuscany, &c.), Sicily, Greece, and the Islands of Corfu and Cephalonia.

§ 57. The system of land tenure in Lombardy varies with the nature and fertility of the soil and the capabilities for irrigation. Upper Lombardy, consisting of the mountains of the Provinces of Bergamo, Brescia, Como and Sondrio is chiefly occupied by small proprietors holding less than 15 hectares[7] of land each, and who together compose about one-third of the entire population. Central Lombardy, consisting of portions of the Provinces of Milan, Bergamo, Como and Brescia, is occupied by small proprietors, and medium proprietors, which latter hold from 15 to 100 hectares each. Here the proportion of proprietors to the whole population is about 1 to 13. Properties above 100 hectares are to be found in the irrigated plain of Lower Lombardy, which contains the Provinces of Milan, Pavia, Cremona and Mantua. Small proprietors are also to be found here in the less or non-irrigated lands. Whenever irrigation is necessary, cultivation requires capital, and small proprietors could hardly exist, unless they formed associations, which they have not yet attempted in those provinces. The proportion of proprietors to the total population is as 1 to 20; and there is a tendency to increase the size of the estates. The small mountain freeholds are cultivated by the proprietors themselves, who, under a system of *petite culture*, devote the most untiring industry

Occupation of Land in Lombardy.

[7] One hectare = 2·47 acres.

to render the rocky slopes productive. They are assisted by their families, and do not usually employ hired labour. Some of these properties are very small, containing from one-third of a hectare to three hectares of land only. The condition of these cultivating petty proprietors used to be sufficiently prosperous; but since the failure of the two chief products of the country, silk and wine, they have found great difficulty in maintaining their position. Some of them have emigrated; and in some parts of the country many of them, though still the nominal owners, have become the mere tenants of their creditors. It has hitherto been the general opinion that these peasant properties are the best mode of land occupation in the mountainous districts, because the industry and perseverance necessary to successful cultivation are particularly developed by the sense of ownership; and *la petite culture*, which is the special system of cultivating peasant proprietors, is the best agriculture for mountain slopes and culturable patches unevenly distributed amongst barren rocks and sterile ridges. There is another class of small proprietors, chiefly in the vicinity of the towns and villages, who belong to the trading or middle class. These have their land cultivated either by hired labourers, or by persons who receive a share of the produce in return for the work of cultivation. Many of the small peasants, who occupy a position very little superior to that of day labourers, enter into these agricultural contracts, and obtain a better living than if they worked for money wages merely.

Condition of the small Cultivating Proprietors.

Small Proprietors of the Trading or Middle Class.

§ 58. Tenancies of several kinds and subject to various conditions are found in Lombardy. In the fertile irrigated plains large farms of 100 to 300 hectares, let for money rents, are most usual. The ordinary term of the lease is nine years on the smaller estates, and nine to twelve and occasionally fifteen to eighteen years on the larger properties. The tenant enters on his farm on St. Martin's day (11th November), and quits on the same date upon the expiry of his lease. He must, however, make over to his successor in the previous July some of the farm-buildings

Various Tenancies in Lombardy.

Tenancies of large farms at money rents.

and a third part of the arable land. The tenant receives the farm from the engineer of the estate with a detailed inventory, in which are minutely described the extent, shape and particular cultivation of each field ; the plantations, canals, bridges, locks, roads, paths, farm-buildings and their accessories. The tenant binds himself in general terms to improve and not deteriorate the land, to maintain a fixed number of cattle, and to use up all the hay, as well as, with some exceptions, the straw, and Indian corn leaves and stubble. The landlord has by law a lien for his rent on the tenant's farming implements and live stock ; and the tenant further gives security, or pays a year's rent in advance, for which he receives interest at the rate of five per cent. The Government taxes are paid sometimes by the landlord, sometimes by the tenant ; but even in the former case the tenant has to advance the money, when payment is required. The communal and provincial taxes are generally, if not always, payable by the tenant. In addition to the money rent, the tenant often agrees to certain obligations, such as the loan of his draught-horses, or the carriage of materials and the payment of extras (' appendizi '), such as fowls, butter, eggs, flax and the like. The money rent is, as a rule, paid annually on St. Martin's day ; but sometimes the parties agree that it shall be paid half-yearly, or even in three instalments. Improvements to the farm-buildings, as well as all repairs necessary to keep them in a habitable condition, are made at the expense of the landlord. If the tenant desires any special additions to be made for his own convenience, he must pay over and above his rent a fair interest on the amount laid out by the landlord in making them. Improvements made by the tenant without the landlord's consent are at the tenant's own risk, and do not entitle him to compensation. Improvements of the land itself are made at the tenant's expense, who, according to the Italian Code, is bound to cultivate as a good father of a family. The relations between landlord and tenant are on the whole sufficiently friendly. Some think that leases ought to be

Payment of Rent how regulated.

Law as to Improvements.

Relations between Landlord and Tenant.

given for a longer period than nine to twelve years, this being too short a term to enable the farmer to do justice to the land and to himself. It has been suggested that leases should be introduced with a clause to the following effect, that, upon the expiry of the lease, if the tenant offer to renew at an increased rent, the landlord may either accept or refuse his offer; but, if he refuse, he must pay the tenant a sum of money equal to three times the amount of the increase of rent offered. Thus, if the tenant were paying eighty francs per hectare, and offers to renew at 85 francs, the landlord, if he refuse to accept, must pay the tenant fifteen francs per hectare, or allow this amount to be deducted from the rent of the last year of the term.[8] Difficulties occasionally arise in consequence of the non-payment of rent, but the landlords are said to be patient and considerate; and nothing has yet occurred to render necessary any legislative interference between landlord and tenant, or for the purpose of protecting the tenants against the landlords.

§ 59. In the mountain and hill districts, and in the non-irrigated plains, some small holdings, chiefly detached fields or meadow land, are let for a money rent, but the general system of tenure is the metayer—'mezzadria' or 'masseria' or 'colonia'—which assumes different forms in different localities. This tenure is also found, though less sparingly, in the irrigated parts of the country. The true 'mezzadria' is to be met with only in the Province of Bergamo. It is a contract between the owner of the soil and the peasant, by which the former supplies a habitable house suitable for farm use, with a certain quantity of land not only under proper cultivation, but planted with mulberry trees and vines, the latter with their props. For house and meadow land a money rent is paid in some parts of the country; in the most fertile districts, this rent is paid for the house only. The peasant

The Metayer System prevails generally.

The true Mezzadria.

[8] Leases containing this clause are not uncommon in the plain of La Beauce, in Central France.

contributes his labour, and also the working capital in seed, farm implements and cattle. West of the Adda, the land-tax and other taxes are generally paid in equal shares by the landlord and tenant; east of that river they are usually paid by the landlord. The produce of the soil is shared equally by the landlord and tenant. This is the general rule, but special stipulations often regulate the division of the grapes and the mulberry leaves, the latter being the most important product of the territory. In all cases the total yield of grapes is handed over to the landlord, as being more capable of disposing of the produce to advantage, and he credits the metayer with his share. The account between the parties is usually made up every year on St. Martin's day (11th November). In addition to the money rent of the house, or house and meadow land, and the share of the produce, the metayer sometimes agrees to give extras—'appendizi,' 'onoranze,' such as fowls, eggs, so many days' labour, or carriage of materials; and these are sometimes commuted for a money payment. Associations of four or five families under a patriarchal head were at one time an important feature of the *Mezzadria* System. Though still to be found in some districts, they are gradually disappearing under modern influences. One great disadvantage of the *Mezzadria* System is the stationary character of the cultivation. The system itself depends on the good faith of the parties to the contract, and was better suited for patriarchal times than for the present generation. There is a tendency to substitute tenancies at money rents, where the method of cultivation admits of the change. This alteration of system is generally considered detrimental to the interests of the peasant. Even where the substitution of money rents has not yet been introduced, modifications of the system have been made, which have a tendency in this direction. In the Upper Milanese and the Province of Como, the vines and cocoons are divided 'à mezzeria,' the money rent for the house and meadow land, and the *appendizi* are the same, but the immediate products of the soil are the subject of a fixed

Mezzadria System not well suited to the present time. Tendency towards modification and disuse.

Corn-Rents.

rent in kind, generally *wheat*, as the most marketable cereal and less liable than the others to be injured by atmospheric influences, because it is harvested before the season of hailstorms. In light soils part of the rent is occasionally allowed to be paid in *rye*. The quantity of grain to be paid as rent varies from 2·75 to 8·28 hectolitres[9] per hectare, according to the fertility of the soil. Where this contract exists, the peasants are divided into two classes—'massari,' who, like the regular *metayer*, possess their own cattle and ploughs; and 'pigionanti,' who are able to give only manual labour. The former cultivate 5 to 14 hectares, the latter one to four hectares, of land. A further modification of the *Mezzadria* System is found in the Province of Brescia under the name of 'terzeria,' which varies in different localities. In some places the produce of the vines and mulberry trees, as well as the grain, are divided into *three parts;* and the landlord takes two-thirds of the grapes and mulberry leaves, while the tenant takes two-thirds of the grain. In less fertile localities, the grapes and mulberry leaves are divided equally, while the peasant keeps two-thirds of the grain. In the eastern part of the province the peasant becomes a mere 'terzaniolo,' and receives only one-third of all products, or, at most, half of the cocoons. The farms held on the metayer and corn-rent systems are let out by the year, six months' notice being required on either side in order to terminate the tenancy; but they are, in general, allowed to run on without formal renewal for an indefinite period. Of late years, owing to the disease of the vine and the silkworm, nearly all metayers are in arrears with their landlords. The condition of the 'famigli,' or farm servants, differs according as they are married or single. The unmarried men receive food and money wages of about 207 lire per annum. The married men are paid less wages, but obtain gratis a cottage and garden plot, firewood, half the greens and flax cultivated on a small plot of ground; and have, moreover, the

Terzeria in the Province of Brescia.

Condition of the Famigli or Farm Servants.

[9] One hectolitre = 2·75 bushels.

'diritto di zappa,' or right of culture, which consists of the cultivation of a portion of land sown with Indian-corn or rice, the produce of which the cultivator shares in unequal portions with the farmer. The labourer provides the seed, and with the exception of ploughing, manuring and threshing, bears all the expenses of the cultivation. Of Indian-corn, his share is one-third, sometimes only one-fourth, of the gross produce; of the rice, generally one-fourth. But the shares differ with many variances according to the locality and the fertility of the soil.

Occupation of Land in Southern Italy.

§ 60. The land of Southern Italy is occupied chiefly by tenants under proprietors; to a less extent by small proprietors; and to a still less extent by subtenants under intermediate tenants or middlemen. The small proprietors hold 10 to 60 acres in the provinces near Naples; 8 to 10 acres in the Calabrias; and less along the Adriatic Coast. They usually live in villages adjacent to their farms. They are said to be tolerably well housed, clothed and fed, except in the Calabrias, where their condition is not flourishing. There is little or no emigration, and there are no statistics as to the increase or decrease of population. The sale, transfer, exchange and division of property is effected by public notarial act, which must be registered, the tax for the registration of sale and transfer being 3·30 per cent. on the value of the property dealt with. A proprietor, who has children, may dispose by will of half his property, if he have made no alienation during his lifetime. If he have alienated, he can dispose by will of so much only as with the portion alienated makes up a moiety. The remaining half, or, where there is no will, the whole, is, on his death, divided equally between his children, without regard to sex. Farms let to tenants vary greatly in size—from 2 to 200 or 300, or even 1,000 acres. The letting is usually by written agreement, for a term of 4 to 6, and rarely 8, years. The lease must be registered under a penalty. If not registered, and legal action is subsequently taken thereupon, double tax and fines have to be paid. The rent is matter of contract, and is usually a fixed

Transfer of Property—Succession & Inheritance.

Relation of Landlord and Tenant.

amount in money paid yearly or half-yearly. It is rarely payable in kind, and still more rarely the *Mezzadria* System regulates what the landlord receives from the land. The tenant binds himself to cultivate carefully and properly, to pay the rent at the stipulated periods, to give up the arable land in the condition in which he received it, to replace the trees which may die or be blown down, and to cut none without the landlord's permission. The number of fruit trees and vines is generally inserted in the lease. Upon the expiry of the term the tenant pays for any that may be deficient; and the landlord pays for any in excess. In the case of large farms, the landlord sometimes stocks the farm, supplies farming implements, cattle, seed and manure to the incoming tenant, who enters into possession without investing a farthing of capital, but is bound to give security either by mortgage of property of his own or by the guarantee of some responsible person, that he will pay the rent and restore the farm and stock without depreciation. The landlord may evict for non-payment of rent, or for breach of the conditions of the lease; but this can only be done through the Court, and evictions are not of frequent occurrence. There is no law or custom by which the tenant is considered to have a right to remain in occupation after the termination of his lease. Improvements are made by the landlord, who gives over the buildings in a habitable state and maintains them in repair during the tenancy. The tenant has not by law any absolute right of compensation for improvements not specified in the lease. Where such improvements have been made, the landlord may retain them, paying their value, which, in case of dispute, will be assessed by surveyors appointed by the Court; or he may call upon the tenant to remove them, who must do so at his own expense. There has been no legislative interference between landlords and tenants; and no necessity for such interference has arisen.

Evictions.

Improvements.

§ 61. The total population of the Roman States is 683,464, constituting 143,525 families; and the total num-

ber of landed properties is 103,089. It is said that ninety-four out of every hundred families are in the possession of some landed property. In the Agro Romano, or territory round about Rome, and extending down to the Mediterranean, large properties prevail, the small properties being limited to the vineyards and orchards in the immediate vicinity of the city. Large properties are general in Civita Vecchia. Also the Provinces of Frosinone and Velletri are occupied chiefly by small proprietors. The Roman Campagna is not inhabited on account of its unhealthiness. The proprietors of the land do not cultivate it on their own account; they let it to tenants, and live in town on the rents, which they endeavour to raise as high as possible upon every renewal of a lease. The tenants descend into the Campagna in the autumn for the work of cultivation, which takes ten or twelve days; and they return in June for the harvest. They are said to be a wealthy class, who, besides this cultivation, which occupies but a small portion of their time, have large herds of cattle, yielding milk, butter and cheese, with which they supply the city to their own great profit. In Velletri and Frosinone, the land is much divided. There are no manufactures, and the entire population obtain a living from the soil. In Frosinone the peasantry live upon the lands which they cultivate. In Velletri, on the other hand, they live in the towns at some distance from their holdings. The *Mezzadria* System, with numerous variations, is to be found in many parts of the Roman States. In the Province of Viterbo the proprietor receives sometimes a third, and sometimes a fourth or a fifth part, advancing the seed, which is repaid by the tenant; and there is also a special custom by which the landlord is paid his share not in kind, but in money. In other places the seed is contributed, and the produce divided, in equal shares. In other places the proprietor supplies the whole of the seed and receives a half or a third of the produce; and again, in some localities he receives a third, a fourth, or even a tenth, the cultivator supplying the seed. The tenants of the vineyards round the City

Large and Small Properties in the Roman States.

The Roman Campagna.

Varieties of the Mezzadria.

obtain two-thirds of the produce, and deduct from the proprietor's share certain expenses payable by him for keeping the property in proper condition. Many landed properties in the Roman States are subject to have portions of them used as public pasture by those who take their cattle to graze thereupon. Inferior lands are generally set apart for this purpose; and there is a law which enables proprietors to redeem their estates from this burden.

Common of Public Pasture.

§ 62. Three kinds of emphyteutic[1] property exist in the Roman States—(1) where the contract of emphyteusis is perpetual; (2) where it is for a long but a definite period, often for ninety years; (3) where it is to continue to the third generation. One form of the last mentioned grant was often made by religious corporations to those who had done them good service, the grant being to the third generation without right of alienation from the direct heirs of the grantee. Some emphyteutic properties are sublet upon similar conditions.[2] Then, again, some estates are subject to a rent-charge or 'censo.' This was created by the owner selling a certain portion of the revenue or income of his property on condition that, on repayment of the price, the income so alienated should revert to him. It was, in truth, a mode of borrowing money without giving up the position of proprietor. The owner of property may dispose of it by will if he have no heirs. If he have heirs, he is bound to leave them a certain share, termed 'legittima,' which is a third part, if the children are four or fewer; one-half, if more than four. In calculating the number of children, daughters count, although they are excluded from the inheritance in favour of sons and receive dowry only. If there is no will, the sons share equally, and no distinction is made between movable and immovable property. The heirs must give notice of succession at the Registry Office; and pay a succession duty, which varies from two to eight per cent. according to the degree

Emphyteutic Contracts—and Censo.

Succession and Inheritance.

[1] See *ante*, p. 6.

[2] The *darpatni* in Bengal is similar.

Sales: Transfers: Registration, &c.

of propinquity of the heirs. Sales, transfers and gifts, in order to be valid, require three formalities—the agreement, the registration, and the transfer at the Cadastre. The agreement may be made by a private writing, or by a public instrument. In the case of a private writing the parties merely sign their names at foot. The contract is validated by entering it at the Registry Office and paying a duty of two per cent. A public instrument requires the intervention of a Notary, and must be written on stamped paper. It must be registered within ten days after execution. The transfer is then entered at the Office of the Cadastre, and in the Office of Mortgages. The latter entry has the effect of protecting the purchaser against claims by third parties. Certain properties are inalienable, namely, those belonging to religious corporations and pious institutions, and those subject to primogeniture and *fidei commissa*: and these classes include a very large portion of the Roman territory.

§ 63. A lease is generally made by a private writing, occasionally by a public instrument. Verbal agreements, though not forbidden by law, are not usual. The only formality necessary to the private writing is the signature of the parties; but if a dispute arise, the written agreement must be registered before it can be used in Court. The document is usually made in duplicate, each party keeping one copy. The term of the lease is generally not less than six, and not more than twelve, years. The rent is settled by competition, the landlord giving public notice and inviting formal offers. Having received the offers, the landlord, subject to Papal sanction easily obtained, can try the experiment of the 'vigesima,' which is done by a public notice asking offers of an increase of *one-twentieth* on the highest offer made as a response to the first notice. Any increase, even less than one-twentieth, may be proposed. The landlord may then try the experiment of the 'sesta,' which is the augmentation of one-sixth on the highest offer received under the vigesima. When, after every effort made to raise the rent to the highest, the

Relation of Landlord and Tenant in the Roman States.

Rent how settled by competition.

terms have at length been settled, the lease is signed, and it is rather a formal document, containing a very minute description of the property, buildings, stock, implements, &c., and a number of stipulations, including the following. The tenant is to pay the rent quarterly in gold or silver. In addition to the rent, he is to furnish a quantity of oats or other articles of consumption. He is to pay his rent notwithstanding any misfortune, even of the most extraordinary nature, and is to have no claim whatever to remission. If payment of the rent be delayed, the landlord may annul the lease at the end of the agrarian year. The land-tax is to be paid by the landlord ; all other taxes and duties by the tenant. The tenant must, at his own expense, keep, maintain, ameliorate and renew every object of any kind or nature except the walls and beams of the buildings. The cultivation and rotation of crops are provided for ; and no crop is to be cultivated that will enervate the soil. The tenant may not introduce upon the property pigs, buffaloes or other obnoxious animals. The landlord's agents, if they desire to inspect the property, are to be provided with "the necessary treatment," the use of horses, hay, oats, &c., without compensation. Everything that may be found to exist under the ground is to be the property of the landlord, who may make excavations, paying the tenant for the land occupied therewith and the proportionate rent. Sub-tenancies are prohibited. The landlord may, at any time, and at the tenant's expense, convert the agreement into a public instrument. By these and a number of other stipulations, the landlord's interests are very carefully guarded. For the recovery of his rent and other dues the landlord has a prior lien to other creditors upon the produce of the soil and the tenant's property. In the case of 'censo,' the landlord may take temporary possession of the land for the purpose of paying himself from its produce. At the expiration of the lease, the landlord has a right to evict the tenant ; and the Court cannot interfere to prevent him. The lease usually contains a clause dispensing with notice, and then the tenancy

Conditions of the Lease.

Recovery of Rent.

ceases upon the expiry of the lease. When this clause has not been inserted, the landlord must give notice; and if he do not, the tenancy continues on the same conditions for another year, and so on, year by year, until either party gives notice. The respective rights of landlords and tenants are enforced through the medium of the regular tribunals. If the case is a clear one, judgment is usually pronounced at once; if it depends upon disputed questions of law or fact, the proceedings are more formal and may take some time.

Holding over on the Expiry of the Lease.

§ 64. As will have appeared in some measure from the description already given, the systems of land-occupation in Italy are of many and diverse kinds. There are proprietors of considerable estates varying in extent, some of whom let to tenants; while others cultivate their lands, employing hired labour for the purpose. There are peasant proprietors who cultivate their own properties, which also present many variations of size, from a quarter of an acre to fifty acres. There are tenant-farmers, holding under formal leases, the terms and conditions of which are purely matters of contract. There are middlemen, who divide the land into small holdings. There are occupiers from year to year, who share the produce of the soil with the owners. There are money-rents, rents in kind, corn-rents, labour contributions, and various combinations of some or all of these. Nearly half the peasant proprietors of Italy belong to Piedmont and Liguria, where they greatly outnumber all other classes of occupiers, and constitute more than 45 per cent. of the whole agricultural population. The irrigated plains of Piedmont, like those of Lombardy, are usually let in large farms to substantial tenants, who pay rent in money. There is a great preponderance of 'Mezzadri' over small proprietors and leaseholders in the Emilian Provinces, the Marches, and Umbria. The land of the Duchy of Lucca is extremely subdivided into small patches of freehold, occupied by peasant proprietors, but (though cultivated with the greatest care) insufficient to afford subsistence without resort to day labour or other employment. There is also found

Many variations of Land-occupation in Italy.

in this Duchy a system of leases for three generations. In the Maremma, or Coast District, the land is occupied in extensive properties and large farms let to tenants, or (which is more usual) in the hands of the owners. In other parts of Tuscany the 'Mezzadria,' or as it is termed in that part of the country the 'Mezzeria,' system prevails; while in some places peasants occupy small portions of land upon the tenure called 'livello' or 'enfiteusi,' which is a modern form of the Roman emphyteusis. In the Neapolitan provinces there is a considerable number of peasant proprietors. There are no accurate statistics, but the number is supposed to be less than that of the tenant-farmers. The condition of the day labourer in Italy is very miserable, and more miserable in the South than in the North. His wages vary from 60 centimes in winter and in some parts of the country to one franc (or lira), sometimes a franc and a half, and in the harvest time two francs. His clothing is of the poorest description; and it is said that, in consequence of the increased consumption of certain kinds of food, which is easily produced and therefore cheap, the 'pellagra,' a kind of disease resembling elephantiasis, which affects the mind and generally proves fatal, is spreading amongst this class. There is some emigration to South America, chiefly from the agricultural class; but many, who would gladly go, have not the means of doing so.

Occupation of Land in Tuscany.

Condition of the Labouring Class.

§ 65. The 'Mezzeria' system is found in its most perfect form in Tuscany. The agreement to hold and cultivate land upon this system is made for one year, beginning on the 1st March; but it runs on from year to year unless due notice of an intention to terminate the tenancy be given by either party before the 1st December. There are very many cases in which the tenant's occupation continues undisturbed for a long succession of years, and many in which it has continued for several generations; and this has led some persons to believe that the Tuscan 'mezzainolo' enjoys a virtual fixity of tenure. But although evictions are not very frequent, they can and do take place

The Mezzeria System in Tuscany.

at the good pleasure of the landlord ; and the occupier has absolutely no security against removal at the end of any year. It has moreover been decided by the Courts that the tenancy may, at any time, be summarily terminated by judicial sentence on such slight grounds as irregular cultivation, premature harvesting, the abandonment of the holding by some of the members of the tenant's family, and the like. The precariousness of the mezzainolo's position is constantly observed upon by writers on rural matters, and must be regarded as a serious obstacle to the development of thrift and industry. The mezzainolo (called also 'colono' or 'lavoratore') cannot sublet or assign his holding without the express permission of his landlord. He receives the land already brought under cultivation with a house and buildings, live stock, manure, hay and straw, seed (sometimes), and the principal agricultural instruments. The smaller instruments, such as spades, hoes, pickaxes, he finds himself. The landlord keeps the buildings in repair, pays all taxes, and bears the expense of permanent improvements. The tenant must cultivate according to known rules and in conformity with the landlord's wishes. He is paid for any extra work that he may be called upon to do. He cannot, without permission, cut trees, begin the vintage, cut or thresh the corn, sell or buy live stock, or use the cattle for any purpose unconnected with farm work. He may not hold or cultivate land belonging to another proprietor ; and neither he nor any member of his family may work anywhere off the holding. He may not engage in trade, the number of persons composing his family may not, without the landlord's consent, be increased by marriage or the admission of strangers, nor diminished by the departure of any of the male members. In the event of the death of the head of the family, the landlord may put in his place any member whom he considers most competent. With the exception of manual labour, which the tenant supplies, the annual expenses of cultivation are, as a rule, borne by both parties equally. The profit or loss caused by the

Binding Conditions of the Contract.

increase or decrease of the live stock is shared by both. The produce is divided equally; but the tenant is bound to deliver the whole at the landlord's house or the bailiff's premises, and is allowed his share in the account that is kept between the parties. The landlord receives, over and above his half share of the wine and oil, a certain allowance for the use of his vats, presses and other machinery necessary for the manufacture; and he has also the advantage of other dues, such as butter, poultry, eggs, ham, fruit and the like. It is customary for the landlord to advance from time to time to the tenant what is necessary for the support of his family; and these advances, as well as the tenant's share, and any sums to which he may be entitled for extra work, are entered in the accounts, which are balanced every year. No final settlement is usually effected, and the debt of the tenant to his landlord has a tendency to go on increasing year after year. When notice has been given before the 1st December in order to determine the tenancy on the 1st March, the outgoing tenant is not allowed to do anything in the interval beyond gathering what becomes ripe. He is entitled to half of the crop of corn sown before service of notice, and has a right to enter on the land in order to harvest it; and the new tenant is bound to allow him all reasonable facility for this purpose.

§ 66. Such are the general conditions of the Tuscan Mezzeria; but these conditions are modified by a number of local usages, and by the particular agreements of the parties themselves, who are free to make such stipulations as they please. The system itself is said to have come into use in consequence of the cessation of predial servitude in the thirteenth century. The peasant's share used formerly to be larger than that of the proprietor; and it would seem that, in course of time, the owner of the land, taking advantage of his superior position and the competition arising out of increasing population, has altered the terms of the arrangement materially to his own advantage. The policy of this system of agricultural occupation has been a subject of keen controversy, not only amongst English writers, but

Advantages and Disadvantages of the Mezzeria System.

amongst Italians writing on the spot with actual knowledge and experience. Mr. John Stuart Mill, accepting for the most part the favourable description of M. Sismondi, finds many satisfactory features in the system, which, however, he considers very inferior to peasant proprietorship.[3] The Mezzainolo, or metayer, has, it is said, a plain interest that the whole produce should be as great as possible, in order that his own proportion may be so. If the tenant received his share to dispose of as he pleased, this interest would exercise a direct influence. The benefit which the tenant would receive as the reward of greater exertion and industry would be a tangible one, directly perceptible by the senses ; and with the poor and ignorant this kind of advantage has greatest influence. But this influence is wanting, when the tenant has to make over the whole of the produce to the landlord, merely getting credit for his share, be it much or little, in an account, which from year to year he understands no further than to know that the balance is against him. If his industry be more, or if nature be more bountiful, the balance may be less, but it is still against him ; and he knows no exaltation of spirit from increased means of comfort or enjoyment, when a rich harvest blesses his labours ; while failure or scarcity diminishes his landlord's power and will to make further advances, and brings starvation to his door. His greatest prosperity is to have enough to eat, and he lives on the brink of suffering and deprivation. The misery of his condition has, no doubt, been greatly aggravated of late years by the grape disease ; but there is strong testimony that, before this calamity visited the country, his ordinary condition was one of hopeless indebtedness. The late Marquis Cosmo Ridolfi, who must be accepted as an authority on the subject, told the Academy of Georgofili in 1855 that, except in certain privileged places, where half the produce afforded the mezzainoli even too large a remuneration for their labour, they had, for the most part, been

Indebtedness of the Mezzainoli.

[3] Political Economy, Book II, Chapter VIII, § 2.

always in debt to their masters ; and that, if it had not been the custom at one time in great houses to absolve the peasants from their debts at the death of the landlord, the amount would have made the most unobserving perceive the necessity of a reform of the system. In some localities the extras "appendizi" have been converted into money, and gradually increased. In the Province of Parma, for example, the peasant had formerly to pay 10 francs in money per hectare, and poultry worth three francs in addition to half the produce ; the money-payment has been gradually increased to 16 or 17 francs, and the poultry-payment to 4 or 5 francs. In the Provinces of Reggio and Modena similar payments have, in some cases, risen from between 10 and 18 francs to 30 or 35 francs, the result being that, in ten years, the debts of the peasants were doubled. Distress and neglect of cultivation ensued ; and this latter impoverished the landlords, whose impoverishment reacted to aggravate the misery of the peasantry.

§ 67. It must not, however, be supposed that the Mezzeria System is, under all circumstances and in all localities, disadvantageous to the peasantry and inconsistent with their well-being and prosperity. The Marquis Ridolfi has borne testimony to its admirable success on a good soil with a favourable aspect, where olives, grapes, mulberry leaves, wheat, Indian-corn and some materials for manufacturing purposes, besides the produce of the kitchen-garden and orchard, can be easily obtained. "There," says he, "we see the peasant as he has been depicted by Sismondi. But in less privileged places you see him worn out with toil in extracting the same products but of inferior quality, or in such small quantities that they hardly suffice for his subsistence, and sometimes fall short of what is necessary. Here he is miserable, rude, in debt, while the landlord gets no return for his capital, and perhaps does not even obtain enough to cover the taxes." In some instances it has been found upon an examination of the accounts of twenty years, that, owing to advances not recovered, losses in live stock from neglect, and deterioration of the land,

Mezzeria System successful under certain conditions.

the proprietors have not only obtained no return, but have even been actual losers. The worst results have been in those places in which the management has been left in the hands of agents or bailiffs. Even where the system has been successful in average years, it has been found alike unable to bear either the strain of a few successive bad years and the failure of any particular staple, or the reduced prices occasioned by an abundant harvest and greater plenty. In fact it requires for safe working a dead level, a perfectly smooth surface; the least disturbance, any abnormal circumstance puts the machinery out of gear. Then there are certain defects inherent in the system. In the first place, if the Mezzainolo is prosperous and is able to effect some savings out of his profits, he will not invest them in improving his holding, seeing that his position is precarious, and even if he be not disturbed in his occupation, his landlord will be entitled to half the increased return due to these improvements. In the next place, the Mezzainolo has no independence. He must run in a groove, must carry on all his agricultural operations at the will of his landlord. This fetters his industry, prevents him from thinking for himself, represses his foresight, discourages habits of providence. Then the system is conservative, so as to be stationary and obstructive to agricultural improvement. The tenant, ignorant and opposed to change, so far as he has a voice in the management of the partnership concern, sets himself against innovation, which to him appears hazardous. Moreover, as he has to live upon his share of the produce, he seeks to make the cultivation subservient to his wants, the consequence being that everything is grown in scraps and patches. Finally, the landlord is unwilling to spend capital upon improvements, the half of the benefit of which will go to the tenant, while the other half may perhaps not be an adequate return for his outlay. Neither party has a direct personal interest in improvement; and so neither improves. The reform, which has been advocated, is a more accurate regulation of the peasant's share with regard to

Defects inherent in the System.

the extent and productiveness of land, degree of labour required, nature of the crop and other circumstances, so as to secure him a fair remuneration in all cases: but as landlords will make what they conceive to be the most advantageous bargain to themselves, and competition enables them to do this; and as legislation cannot give effect to a principle, the application of which to each case must depend upon particular circumstances—such circumstances differing immensely in a country of many soils, and elevations and climates and productions—there is not much likelihood of this particular reform being carried out. Whatever opinion may be formed, after examining both sides of the question, as to the success or non-success of the metayer system in Italy, few will rise from a study of the controversy, impressed with the idea that its merits and advantages are so undoubted as to recommend its adoption to those seeking materials for domestic reform.

§ 68. In Sicily the feudal tenures, which originated from the Norman Conquest, were abolished in 1812; and the tendency of legislation has since been to favour alienability and the division of property. In 1819 entails were abolished, and the testamentary power of the father was limited to one-half of his property. In 1824 the sale of incumbered estates in order to the payment of debts was provided for. In 1862 provision was made for the sale of Church lands (the total value of which represented one-sixth of the landed property of Sicily) in small portions upon perpetual leases. Between June 1864, when the operations under this law began, and the end of December 1869, when they were almost completed, 19,427 lots of the average size of 23 acres were disposed of. Some of these were bought by the peasantry, but the greater number are said to have been purchased by the wealthier classes. Similar grants of land to be held in perpetuity on a fixed rent were formerly made by the feudal lords, and still exist. There are also some small freeholds occupied by their owners. In some localities there is considerable subdivision; but notwithstanding the changes that have been

Legislation connected with Land in Sicily.

Conditions of Land Occupation.

effected since the beginning of the century, the greater portion of the land of the island is still in the possession of a small number of large proprietors. Some few of these conduct the cultivation with hired labour; but this requires capital and supervision, and has hitherto been rendered inconvenient and difficult by the insecurity of the interior and the want of proper means of communication. The more usual practice, therefore, is to let the whole estate to a tenant for three, five, seven or nine years. This tenant, 'gabelloto,' sublets in portions to persons who again divide and sublet, the process being repeated so as to create several middlemen.[4] Of late years, however, landlords have grown more alive to the evils of the middleman system, and subletting is more or less generally prohibited. The practice which now more generally prevails is this. The tenant himself cultivates a portion, and he distributes the rest into small lots, which the neighbouring peasants cultivate upon terms of occupation for a single year under one of two kinds of arrangement known as 'metateria' and 'terraggeria.' The former is the 'messeria' of Tuscany, the 'messadria' of Lombardy, the 'metayer' system of France; and presents numerous variations of the share of the produce which each party receives, as well as of the other conditions of the contract. The latter is where the cultivator has to make a certain stipulated payment in kind, generally wheat. Under one form of the 'metateria' arrangement the landlord does the ploughing and advances the seed. When the crop is ripe, he first takes nearly half, which represents what he has expended together with interest on his capital. The remainder is then divided equally between the proprietor and the cultivator, the latter getting about one-fourth, which is not sufficient for his subsistence without the proceeds of day labour, the wages for which are 1*s.* 4*d.* per diem, except in harvest time, when as much as 3*s.* and even more are paid. In the Province of Catania, there is an arrangement called 'retrometateria,' under which the land-

Metateria and Terraggeria.

Retrometateria.

[4] This is similar to the *ejarah* system of Behar.

lord does the ploughing and sowing, and finds the seed, the rest of the labour being done by the cultivator. When the crop, usually wheat, is ripe, the landlord first takes a quantity equal to the seed with an addition of 25 per cent. What remains is divided into four parts, of which the proprietor gets *three*, and the cultivator *one*. There is great competition—the competition of poverty—amongst the cultivators for patches of land let under the *metateria* and *terraggeria* arrangements; and in consequence the cultivators have come to accept conditions too onerous to leave them even a moderate compensation for their labour.

§ 69. Only one-sixth or one-seventh of the superficial area of Greece is under cultivation. Agriculture is the principal resource of the people, the manufactures being few and unimportant. The only other considerable employment is afforded by maritime trade. Agriculture is considered one of the meanest occupations, and is left by the large proprietors and the better class to those whom they consider the lowest of the community. Even the children of the well-to-do peasants, ambitious of education, despise the cultivation of the soil and seek acquirements, which do not afford a contented useful life, or the means of a comfortable subsistence. While Greece was subject to Turkey, few Christians were owners of landed property, as all the best lands were appropriated by the ruling race. When, as the result of the War of Independence, Greece obtained her liberty in 1829, the Turkish estates in the Morea and in some other provinces were confiscated and became the property of the new State; but in Attica, Bæotia, Eubœa, Phthiolis and other provinces the Turks were permitted to sell their estates to Christians. These estates were bought up at exceedingly low prices by those who had available funds, and it thus happens that, in these last mentioned provinces, large properties prevail. The peasants who, during Ottoman rule, cultivated the soil for their Turkish masters, have merely exchanged wealthy, and, generally speaking, liberal landlords for needy and exacting investors, for whom they are obliged to labour

Ownership of Land in Greece.

on no improved terms. Small proprietors cultivating their own lands are found in the provinces just mentioned, more sparingly, however, than in the other parts of the country. It is calculated that about one-third of the cultivated area and about one-half of the waste territory are the property of the State. In 1836 a law was passed, which conferred on each family of Hellenes the right to purchase from the State by public auction 120 stremas, equal 30 acres, of land. To enable them to do this, the head of each family was allowed *credit* on the Treasury to the amount of 2,000 drachmas (about £72), which was to be reimbursed in 36 years at the rate of six per cent. for interest and sinking fund. Sums above this amount were to be repaid in ten years, and to bear interest at eight per cent., if they exceeded 6,000 drachmas. The principal object of this measure was to relieve the necessities of the Public Treasury by the annual payments; but in a financial point of view, it proved a failure. The lands, when put up to auction, were sold at such high prices owing to local causes and the underhand proceedings of the Government officers, that the purchasers have since been partly unable and partly unwilling to meet their engagements. In 1855 a law was passed, remitting all arrears due up to that year. This measure also proved a failure; and the Act of 1836, called "The Law of Dotation," has fallen into disuse. In 1864 the Government proposed to leave the peasants in possession of their purchased lands on condition of their paying the State the price of the land at a moderate valuation.

The Dotation of the Hellenic Families.

§ 70. There are no accurate statistics as to the number or proportion of small proprietors in Greece. According to one authority they include more than half of the agricultural population. The proportion of small to large proprietors is variously estimated as 16 to 1, and 30 to 1. As to the average quantity of land held by the former, accurate information is also wanting. One authority calculates a rough average to be 15 to 25 acres, and in some districts 40 to 50 acres. One hundred acres are stated to be an outside margin for the generality of the

Small Proprietors in Greece.

larger holdings; and 260 acres to be an exceptionally large holding. The term "zevgaria," or, what may be ploughed with one yoke of oxen, is commonly applied to the holding of a small cultivating peasant proprietor. The average size of the holdings is smaller in the currant-lands, 2½ to 15 acres being the quantity occupied by a single proprietor. In some of the mountainous districts, there are petty proprietors who own as little as half an acre. They do not, as a rule, live in detached houses upon their properties, but in towns and villages adjacent thereto. They may be said to be in general tolerably well housed and fed, regard being had to their extremely frugal and parsimonious habits and their standard of comfort, which is not a high one. The possession of greater wealth does not induce them to alter their habits of living. They either bury their money for security or lay it out in the purchase of additional land. Instances have occurred of estates offered for sale being purchased by the neighbouring peasantry, who found no apparent difficulty in paying off the purchase-money within the stipulated period. The law of Greece makes no distinction between movable and immovable property in respect of succession and inheritance. A man who has four or fewer children, can dispose by will of two-thirds of his property; a man who has more than four, can dispose of one-half. In the case of an intestacy, sons and daughters share alike; but the females, instead of taking an actual share of the land by partition, usually receive the money-value of their share or a mortgage therefor upon the property. If the widow was poor and brought her husband no dowry, she takes an equal share with the children. If she had a dowry, her claim on the estate takes precedence of those of all other creditors. Married daughters have a right to participate, but only on bringing their dowries into hotchpot; but this they are seldom willing to do, because the dowries given to girls usually exceed the shares which they would receive upon partition. The death of several members of a large family might, however, make it worth their while to avail

Their General Condition.

Succession and Inheritance.

themselves of their right. Large dowries are given with Greek girls; and in all classes sons rarely marry until their sisters are settled. There is no legacy duty upon property descending in the direct line,—*i.e.*, to children, grandchildren, &c. Indirect heirs pay a duty, the amount of which varies according to their degree of propinquity.

Sale or Transfer of Land how effected.

The transfer, sale or exchange of land in Greece is effected cheaply and easily by a notarial contract signed before two witnesses, and subsequently registered in the Official Registry of the Demos or Municipality. The notarial charge is 2½ drachmas per 1,000 drachmas, or a quarter per cent.; and for registry 2 drachmas (1*s.* 6*d.*) for the first sheet, and one drachma (9*d.*) for the rest.

Registration and Prevalence of Mortgages.

Mortgages are legalized by being entered in a Register specially kept for the purpose in the same office, in which other transactions connected with land are registered. This Register is always open to inspection. Land in Greece is heavily mortgaged. It has been said that three-fourths of the land is mortgaged for its full value. Whether this statement be strictly accurate or not, there seems to be no doubt that land in and about the towns is mortgaged more frequently and more heavily than land in the country; and the larger properties, more generally than the smaller ones.

§ 71. Greeks, as a rule, have a very decided repugnance for agricultural pursuits, which they regard as degrading and only fit for those who are totally uneducated. Every one who can, seeks to enter amongst the townspeople and follow their employments.[5]

Relation of Landlord and Tenant in Greece.

The great superabundance[6] of land for a scanty population and the want of capital combined with this feeling make it impossible for the large proprietors to find tenants in the English sense of the term, or to obtain anything like a competition rent. Proprietors, therefore, enter into a kind of partnership with peasants, who are termed 'collegas' or copartners, from

[5] Bengalees have similar ideas, and act similarly.

[6] This superabundance probably accounts for the fact that there is little or no emigration from Greece.

whom they receive a certain share of the produce. This kind of tenancy is usually created by writing before a public notary, who retains the original agreement, giving the parties copies of it. When there is no written agreement, the tenancy is presumed to be from year to year, expiring when the crops have been gathered, in the month of August. But the instances are rare in which a peasant cultivates land not his own without a written agreement. The quantity of land held by tenants varies from 12 to 75 acres. The proportion of the produce which is paid to the landlord as rent differs with the province and with the quality of the land. The landlord's share is delivered on the threshing floor when the crops are gathered; and it is an ancient and universal rule that the tenant can dispose of no part of the produce until the rent and taxes have been levied on the spot. The infraction of this rule exposes him to a heavy penalty. The proprietor's share is never less than 10, nor more than 50, per cent. of the gross produce. On poor lands 15 per cent. of the net produce, after deducting the seed and the payment of all expenses, taxes, &c., is a very common proportion. The State permits the cultivation of the national lands on the principle of receiving 15 per cent. of the gross produce in addition to the dimes and other taxes, amounting to about nine per cent., all of which must be paid in cash, at the market-value of the grain, which is determined by assessors. When the proprietor of arable land furnishes the seed and the oxen for ploughing, one-tenth of the produce is first deducted to meet the taxes,—*viz.*, the dime or Government tax of 8 per cent. on agricultural produce, and the local taxes equal about 2 per cent. The proprietor then takes a quantity equal to the seed supplied, and the remainder is divided equally between landlord and tenant. When the proprietors merely provide the land, they receive according to its quality from 10 to 25 per cent. of the produce, the amount of the taxes having first been deducted. The proprietors of currant vineyards, after being reimbursed the advances made to tenants to enable them to meet the expenses of

Proportion of the Produce paid as Rent.

cultivation, receive one-half or two-thirds of the gross produce.[7] Money-rent, though unusual, is not unknown. It is sometimes paid for the national lands; and it is to be found occasionally in Attica and more frequently in Argolis. It is payable half-yearly. Evictions are not frequent, as landlords find it sufficiently difficult to obtain tenants and seldom seek to get rid of them when obtained. The Courts have the power to evict. This is exercised summarily, when there is no written agreement; when there is a written agreement, there may be a tedious lawsuit. The question of improvements does not present much difficulty, as landlords or tenants seldom make any. If the tenant makes improvements, it appears that, in the absence of any express stipulation, the landlord will have a legal right to them, on resuming possession of the holding. Where such improvements are ornamental, or merely made in carrying out the ordinary course of cultivation, it is doubtful if the tenant could recover compensation; but it might be different if waste or even arable land were converted into valuable fruit gardens or vineyards. The mutual rights of landlords and tenants are regulated more by local usage not always very well defined, than by positive enactment; and while the administration of justice is extremely imperfect, the decisions of the Courts are not uncommonly evaded. Under such circumstances it is not surprising to find that these rights are not altogether certain, and that the opinions given concerning them by different persons do not exactly agree. Tenants occupying national lands are proceeded against as debtors of the State, if they fail to pay their rent and taxes. There are occasional complaints that the Government "dime" is levied in an oppressive manner; and that in return for it little or no benefit is received either by the construction of roads to facilitate the transport of produce, or by proper measures

Evictions.

Improvements.

Rights of Landlords and Tenants not very definite.

[7] It will be observed that there is an essential difference between the systems of Italy and Greece in this, that in Italy the landlord gets possession of the whole of the produce and credits the tenant with the value of his share, while in Greece the tenant keeps his share to dispose of as he pleases.

being taken for the maintenance of public security and the suppression of brigandage.

§ 72. The system of landholding in Corfu is mainly derived from titles and customs established by the Venetians, who, after the expulsion of the Turks in 1502, planted military colonies in the Island. The colonists having obtained tracts of land which they themselves were unable to cultivate, made them over to others upon conditions subsequently recognized by law. The following tenures were thus created. I.—Portion-tenure or a kind of co-partnership with the landlord, the tenancy being for a term of years or in perpetuity. The landlord receives as rent a certain proportion of the produce either in kind or in its money equivalent. In the latter case the rent is usually determined by appraisement of the crops at prescribed periods, upon fixed principles laid down by law with a view to regulate fluctuations. This form of tenure obtained in the great majority of cases. II.—Long leaseholds at a fixed rent, the term of which must, according to law, be not less than twenty years, and assignments in perpetuity at a fixed rent. Both these tenancies are liable to be avoided in certain cases of default or contravention, and they partake in many respects of the nature of the Roman emphyteusis. III.—Leaseholds for definite terms. All these tenures are created by, and depend upon, written engagements. In order to prevent the tenants from appropriating the whole of the produce and neglecting to give the landlords the share to which they are entitled under their respective agreements, or its equivalent money-value, the landlords had the right of personal arrest, and the further right of taking possession of the holding in any case in which the tenant neglected to cultivate or to pay his rent in kind or money for three years. In 1866 an enactment was passed to assimilate the laws and ordinances of the United Kingdom of Greece, and its effect was to abolish in the Island of Corfu (1) the appraisement of the olive crop for the purpose of settling the rent; (2) the landlord's power of personal arrest; and (3) the landlord's rights of reversion. The conse-

Landholding in the Island of Corfu.

Three kinds of Tenure.

Legislation of 1866, and its Results.

quence of this enactment was the subversion of the whole system of ancient tenures. The cultivators assumed that they had been converted into proprietors; and when the usual time arrived for appraisement of the crop, they denied all liability to their landlords. A Proclamation was issued with the view of inducing them to come to some amicable arrangement; but the cultivators persisted in asserting their independence, and the landlords were deprived of their share of the produce. An attempt was made in 1867 to remedy the mischief, which had thus been done by making an uniform system of law applicable to different territories in which different systems of rights had previously existed. Either party to the contract of Portion-tenure was now allowed to terminate the partnership. The absolute ownership of the land of the holding was to vest in the person entitled to the larger share (usually the tenant), who was to indemnify the minor sharer (usually the landlord) for the value of his interest by commuted payments in ten annual instalments, such value to be settled by appraisement. One of the principles on which this appraisement was to be made was that the tenant should be allowed the value of all buildings appertaining to agriculture. The landlord was, however, allowed the option of taking a share of the land itself, corresponding with his proportionate interest. Where the original contract was such that the tenant had thereby acquired no right to the land itself, he was declared entitled to receive, on the dissolution of the tenancy, compensation equal to the increased value of the holding resulting from his labour and industry. In the case of tenures falling within Class II, the tenant was allowed to purchase the absolute ownership on the basis of his capitalized rent with six per cent. interest, the amount being payable in ten annual instalments. If, however, the tenant were evicted for default or contravention, he was to be entitled to compensation upon the principle just stated. Finally, the landlord's right to recover possession, where the tenant failed for three years to pay his rent in kind or money

Remedial Legislation of 1867.

Conversion of Portion-Tenures into Absolute Ownership at the option of either party.

was restored. A separate law was also passed, defining the principles upon which the appraisement of the olive crop should in future be made, when neither party had elected to put an end to the partnership. In order to enforce payment of rent, it has been provided that a tenant who fails to pay his rent within two months after it becomes due, may be provisionally evicted until payment is made, the landlord being put in possession. The right of the tenant to transfer or sublet is in many cases regulated by the conditions of his written contract. In the absence of express stipulation, a tenant of Class I may not transfer without his landlord's consent in writing. A tenant of Class II is bound under penalty of forfeiting his tenure to give the landlord notice of any contemplated transfer, with full information as to its terms and conditions. The landlord is allowed one month to exercise a right of pre-emption. If he does not elect to exercise this right, and refuses his assent to the transfer, the old tenant remains liable for the rent jointly with the new one. The tenant of Class III may sublet, unless expressly prohibited by the terms of his contract. The general condition of the peasantry in the island is not very solvent or flourishing. They are improvident, extravagant when they have the means, involved in debt, and wanting in thrift. Accustomed to receive advances from their patrons before the disturbance of the old relations, they did not learn to secure themselves by industry and foresight against future distress. Recent changes may, however, have the beneficial effect of teaching them the great lesson of self-reliance and providence.

Provisions to enforce Payment of Rent.

Tenant's Right to Transfer or Sublet.

§ 73. The system of land tenure in the island of Cephalonia resembles that of Corfu in many essential particulars, which is explained by the fact of both having been subject to Venetian dominion. There is, however, a class of small proprietors holding from 5 to 25 acres, which does not appear to exist in Corfu. These small proprietors were created by the Venetian Senate. They live in villages adjacent to their little estates and are remark-

System of Landholding in the Island of Cephalonia.

able for their habits of industry and economy. The holders of tenures similar to those in Corfu do not sublet, and subtenancies are unknown. There appears, however, to be a well-established custom, that the tenant may transfer his interest, giving previous notice to his landlord, who has a right of pre-emption. The landlord has a prior lien to other creditors on the produce of the holding for the recovery of his rent. A lessee may hold over after the expiry of his lease; and if he continues to hold for thirty years, he acquires a prescriptive right of possession and cannot be removed. The condition of the people is sufficiently prosperous, and this is due in some degree to the fact that large numbers visit the mainland annually in search of work in Morea, Macedonia and the Danubian Provinces, whence they return with their gains in time for their own vintage in the autumn. Properties in Cephalonia are heavily mortgaged; but here as elsewhere, this is probably due in no slight degree to the operation of the laws of inheritance, under which all the sons share alike, while the daughters are entitled to portions. Mortgages are contracted in order to pay these portions, and occasionally to buy out some of the male sharers and prevent partitions of the land.

Annual Emigration to the Mainland.

CHAPTER IX.

The Tenure of Land, and the Relation of Landlord and Tenant in Spain, the Balearic Islands, and Portugal.

§ 74. The population of Spain is over 16 millions. Of this number of persons some 3½ millions are landed proprietors: but only 3,900 of these proprietors have an income of more than £400 a year derived from land. The system of landholding varies in the different provinces, and occasionally within the same province. The local and other customs are numerous, having many and diverse sources of origin in the usages and traditions of the races, which are combined in the population. In Galicia and Asturias the land is occupied and cultivated in about equal proportions by small proprietors, and tenants under large proprietors. Sub-tenants are not numerous, and there are apparently fewer in Galicia than in Asturias. Both tenants and sub-tenants are frequently themselves the owners of small properties, which are too small to support them and their families. They accordingly rent other land in the vicinity, and thus obtain a sufficient subsistence. The quantity of land owned by the small proprietors, and owned or rented by the smaller proprietors, is from 10 to 14 acres. In Carthagena the average size of small properties is larger, being from 40 to 50 acres; and tenants commonly hold from 10 to 20 acres of irrigated land, and from 30 to 100 acres of land not irrigated. In Guipuscoa small proprietors are more general than tenants under proprietors, which last form but one-twentieth of the total number of cultivators. The average of small properties is about 15 acres; and of tenant-hold-

System of Landholding in Spain not uniform.

General View of small Properties and Tenant-holdings in the different Provinces.

ings about 8 acres. In Biscay these averages are smaller, being about 5 acres for each. In Malaga, Granada, Almeria and Jäen there are large proprietors, small proprietors, tenants under proprietors, and but few sub-tenants. Statistics do not furnish accurate information as to the proportions in which these exist respectively or the average quantities of land held by them. Few cultivators own or rent less than 15 acres of arable land ; but vineyards, orchards and land in the immediate neighbourhood of villages are owned and rented in small plots, some as small as one-eighth of an acre. In Ilicante small proprietors holding from 6 to 60 acres are supposed to form about one-third ; tenants holding 6 to 300 acres under larger proprietors forming the other two-thirds. Sub-tenants, if they exist at all, are exceedingly rare. Finally, in Valencia small proprietors greatly predominate, but the land is much divided, and the average of small properties is only 4 acres. The lands of Valencia are the most fertile in Spain owing to the excellent system of irrigation, which was constructed by the Moors and has existed ever since. In Castile and Aragon the properties are also of small extent, and many of the proprietors cultivate their own lands. There is no very perceptible difference between the food, clothing and dwellings of the small proprietors and those of the tenants. Both practically belong to the same class, and the standard of comfort amongst them, so far as appears from these external indications, is not a very high one. The management of all landed property is conducted with great negligence and want of system. Owing to the want of security for person and property capital keeps out of the country, and there is a want of energy and enterprise in agricultural as in other operations.

Standard of Comfort amongst small Proprietors and Tenants.

§ 75. There is no difference between immovable and movable property in Spain (with the exception of Catalonia) as regards succession and inheritance. If the owner die intestate, the property is divided equally between the children or other heirs without distinction of

Law of Succession and Inheritance in Spain.

sex, grandchildren taking *per stirpes.* An owner who has no heirs, ascendants or descendants, may dispose of the whole of his property by will: but the widow if poor is entitled to a life-interest in one-fourth. If he have ascendants but no descendants, he may dispose of one-third. If he have legitimate descendants, he can dispose of one-fifth only in favour of strangers amongst whom the widow is included; but he can, if he wish, give one-third to any descendant, excluding the other descendants to this extent. The law provides no specific rules as to the mode in which partition is to be made amongst heirs; and in Spain, as in many other parts of Europe, the landed property, especially if small, is frequently taken by one heir, the others receiving the value of their shares in money. In Biscay property is divided into *urban* and *rural.* The former is governed by the general law just stated. The latter is subject to 'fuero,' which allows the owner to leave the whole of his property to any one or more of his children, a life-interest in one-half being reserved to the widow. Transfers of immovable property *inter vivos* by sale, exchange or gift are effected by means of a written instrument drawn up by a public notary, in whose presence the parties sign. The original instrument remains in the possession of the notary and is bound up in a book with similar instruments, which are arranged in the order of their consecutive dates. The notary makes a monthly return to the Superior Court of all instruments executed and lodged in his office. The parties are furnished with a copy of the original instrument upon which the notary certifies the fact of such original having been executed in his presence. This copy is then presented to the Registrar of the Judicial Circuit, who enters full particulars of the transaction in his Register, in which a separate folio is allotted to each property. He then certifies at the foot of the notarial copy the fact of such entry having been made, noting also the date and folio, and returns the copy to the transferree, who holds it as his title-deed. If this copy should be lost, another copy can

Rules for the Transfer of Immovable Property and the Registry of Transfers.

be obtained from the notary's office, and also a copy of the registry inscription. When the transfer is effected in consequence of a testamentary disposition, a similar course is followed, a true copy of the will being exhibited to the Registrar. Where a number of heirs being of full age, *i. e.*, twenty-five years, agree to a division of the property, a formal instrument is drawn up by a public notary and registered in the same manner. Where in consequence of a dispute there is a judgment of a Court of Justice, this judgment is lodged in the notary's office, and the parties receive copies for registry as in the case of instruments of transfer. As soon as an instrument is executed by the parties thereto, it is binding on them, but it is not binding on third parties until registered. If therefore a man should fraudulently sell property twice, and the second purchaser should first present his deed for registry, he would, unless aware of the first sale, have a good title against the first purchaser. The cost of a deed of transfer is generally the notary's fees and the price of the stamp paper, which together average one and a half per cent. of the purchase-money. There may be additional expense, if title-deeds have to be examined and an advocate employed for this purpose. The chief cost of registration is the Government duty of 3 per cent. on the price or value in cases of sale or exchange, 10 per cent. in cases of gift, and of 1 to 10 per cent. on successions according to the propinquity or remoteness of the person succeeding. In addition to this duty there is the Registrar's fee, which varies according to the length of the instrument, but never exceeds 3 per mille of the price or value of the property.

Effect of Registry.

Cost of Transfer and Registry.

§ 76. The size of tenant-holdings may be said to vary in different parts of Spain from 8 to 300 acres; and the rent may be said to vary, according to the quality and situation of the land, from 4*s.* to 16*s.* per acre. The relation of landlord and tenant may be created by parol as well as by writing. Where, however, the contract is for a term exceeding six years, it must be in writing and registered; and the same rule applies where the rent of three or more

Relation of Landlord and Tenant in Spain.

years is paid in advance, or the landlord undertakes not to sell his interest until the expiry of the lease. In some parts of Spain land is let for the life of the tenant, sometimes for the lives of his children, and occasionally for the life of the landlord. Rent is variously payable in a fixed sum of money, in a fixed quantity of grain, or by delivering a share, usually one-third or one-fourth, of the produce. In the Province of Asturias payment in produce, often one-third of the corn crop, is most usual. In Carthagena a fixed money-rent is usually paid for irrigated land. In the case of land not irrigated, a fifth of the produce is usual. Half the crop is common for olive-vineyards. In Guipuscoa and Biscay money-rents are most general; but the produce is sometimes shared equally by landlord and tenant, and occasionally the rent is paid partly in money and partly in produce. In Malaga, Granada, Almeria, Jäen, Ilicante and Valencia rent is usually paid in money, but frequently in kind, as in corn-oil and the like. In Ilicante half the grain is given for rich land; and for poor lands two parts out of seven. In Valencia a practice has been recently introduced in the rice plantations, by which the tenant, at his own expense, manures and cultivates the land, and the produce is divided, the landlord receiving one-third and the tenant two-thirds. The law of Spain gives the landed proprietor the most absolute freedom in the exercise of his proprietary rights; and the tenant is wholly dependent upon the terms of the contract, which he may make with his landlord, whose power to raise the rent is limited only by the terms of the contract in any particular case, or by the willingness of tenants to accept or continue a tenancy, where a contract is about to be made or has expired. As a general rule, a tenant has no right to remain in possession of the land so long as he pays a reasonable rent as settled by agreement or by a legal tribunal. The landlord is entitled to possession at any time upon service of a reasonable notice. In some places, however, for example, in Valencia, the tenant is, as a matter of fact, not disturbed so long as he pays his rent punctually, unless the landlord should

Rent how payable.

Proprietary Rights of Landlords unlimited by Law.

wish to cultivate the land himself; and thus a custom of continued tenancy may possibly spring up, when the landlord's power of eviction has long lain dormant. The relations between landlords and tenants in Spain have hitherto been friendly as a general rule, and no exact definitions of rights have become necessary in order to regulate them.

Tenant may not Transfer or Sublet.

§ 77. There seems to be a general unanimity of opinion that a tenant cannot sell his interest without the consent of his landlord; and such sales even with this consent are by no means common. A tenant is not allowed by law to sublet, unless he is authorized by his lease, or has obtained his landlord's permission to do so. When default is made in payment of rent, the landlord may summon the tenant before a Justice of the Peace, who has power to adjudicate upon claims not exceeding £6 in value. If the parties are not satisfied with his decision, they can carry the matter before the District Judge of First Instance, before whom all claims exceeding £6 must come as original cases. From the judgment of this functionary there is a further appeal to the Superior Court. The landlord may also, in order to recover his rent, distrain all the goods, produce and cattle belonging to the tenant, which may be on the property; and he has a prior lien to other creditors upon the produce of the two years immediately preceding the date of his claim. The judicial tribunals in some parts of the country, as for example in Asturias, appear to have a certain limited power of allowing abatement of rent to the extent of one-fourth or one-third when the whole produce is destroyed by some unforeseen accident, or when the utility of the soil is very considerably lessened. No reduction, however, is allowed in respect of bad seasons, which in the ordinary course may be supposed to be compensated by good ones. Tenants may be evicted upon the expiry of their tenancies, when the contract has been for a definite term; or after reasonable notice, when no such term has been fixed by agreement. During the term there may be eviction for non-

Procedure for the Recovery of Rent.

Eviction in what cases.

payment of rent or for breach of the conditions of the lease. A tenant is evicted through judicial intervention, the first resort being to the Justice of the Peace. If the case is clear, and there is no real defence, sentence is at once pronounced. Where the matter is not clear, and the tenant has an apparently good defence, there may be a more formal trial and a resort to the higher tribunals. Buildings and all necessary improvements are usually constructed by the landlord. Improvements made by the tenant are usually matter of agreement between the parties. A tenant, who has made improvements with the consent of the landlord, is entitled to retain possession of the holding until he has recovered the value of them from the rent. A tenant who has made improvements without the consent of the landlord, may remove them, if this can be done without injury to the property. When improvements have been made, which increase the value or the rent of the land, the tenant is entitled to a fair compensation for his expenditure ; such compensation to be fixed, in case of dispute, by an appraiser appointed by the Court or by legal arbitration. Not infrequently it is stipulated in the lease that the tenant shall, on quitting the land, have no right to make any claim in respect of improvements. There are in some parts of Spain, for example Galicia and Asturias, certain emphyteutic tenancies which appear to have originated in grants of waste land made, with the object of bringing it under cultivation, by monasteries and chiefs who had obtained large tracts upon the restoration of the monarchy after the period of the Moorish Conquest. These grants were not perpetual, but were made to the tenants for the lives of three kings. Attempts were made to resume them upon the expiry of this term, but were strenuously resisted ; and the Legislature finally stepped in and suspended all suits brought for the purpose of resuming these tenures.

Rules as to Improvements.

Emphyteutic Tenancies.

§ 78. The inhabitants of the Balearic Isles are chiefly employed in agriculture. Property, both in Majorca and Minorca, is very much divided. In Minorca there are more than 7,000 lots, varying in size from one to twenty

Occupation of Land in the Balearic Isles.

acres, and belonging to 5,000 different owners. In Majorca the larger proprietors usually let to tenants. Smaller proprietors also let their lands other than those which, being in the immediate vicinity of the villages where they reside, can be conveniently cultivated by themselves. In Minorca the land is occupied by farmers in partnership with large proprietors, and small proprietors also cultivate their own lands. The Cultivating class in Majorca is richer and better off than the same class in Minorca; but in both islands there is a considerable degree of comfort, and the people are frugal and industrious and clean in their habits. Succession and inheritance are regulated by the Roman law. The transfer of property and registration are regulated by rules similar to those already described as in force in Spain. Properties in Majorca are heavily mortgaged. Those in Minorca are mortgaged, but not to the same extent as in the larger island. There are in Majorca some tenants who cultivate several farms, some of which contain 2,500 acres or more. Tenancies are usually created by written agreement, and for terms of six to nine years. Where there is no such agreement, the tenancy is generally for a year only. The conditions of the tenancy are settled by agreement of parties. Rent is usually paid in money, but occasionally the produce is divided in shares regulated by the quality of the land. The practice as to eviction is the same as that in Spain. The tenant has no right to continue in possession of the land after the expiry of the lease, and he has no claim to compensation for improvements made without his landlord's consent. The partnership system in Minorca is like the metayer arrangement of Northern Italy. The landlord delivers to the farmer the land, buildings, dwelling-house, mill, &c., all in working order; also agricultural implements and utensils specified in an inventory, and the cattle necessary to work the land and keep up sufficient stock. The farmer supplies labour and seed, and cultivates according to the custom of the country and with due regard to the interest of the proprietor. The produce, as well of the land as of the cattle, is then equally divided between the landlord

Condition of the Cultivating Class.

Conditions of Tenancies in Majorca.

Partnership between Landlord and Tenant in Minorca.

and tenant. Under this system many families in Minorca have held the same land for generations, and the relations between landlords and tenants are of the most amicable character. Any questions that arise between them are settled without resort to litigation, by friendly arbitration; but their differences are few, because the tenants show great good faith and honesty in all transactions with their landlords.

§ 79. The area of Portugal is about thirty-four thousand square miles, and the population about four millions. Speaking roughly, one-fourth of this population is urban, and the other three-fourths rural. There are over four hundred thousand of landed proprietors, including *emphyteutas*, and nearly one hundred and forty thousand tenants. Many of the properties are very small. The cultivation of the soil is therefore carried on mainly by small proprietors. Portugal is chiefly an agricultural country, manufactures and other industrial pursuits employing but a small proportion of the community. The tenure of land is favourable to thrift and industry. Nevertheless, the condition of the people is not as prosperous as might be expected; and it is a remarkable fact that Portugal has not within living memory produced enough of corn to supply her own wants. There are no accurate statistics as to the quantity of land which proprietors possess in different parts of the country, but there must be a very large number of landowners, the size of whose properties is inconsiderable; for if the total cultivated area be divided by the total number of proprietors, the result will be an average of some eleven acres for each individual. Then if allowance be made for the large properties which are general in Southern Portugal, and occur occasionally all over the country, it is clear that this average will be reduced for the majority of landowners. The division of land has in fact been carried to excess, and the present condition of Portugal shows that no system of peasant proprietorship or protected tenure will preserve a purely agricultural people from a low standard of comfort, and even positive distress, unless a minimum limit be set to the subdivision of holdings. Por-

Area and Population of Portugal —Number of Landed Proprietors.

System of Landholding in Portugal.

tugal contains a large number of emphyteutic tenures, which are supposed to have been created upon the model of the Roman 'emphyteusis.'[8] In the time of the Roman Empire there can be no doubt that the genuine emphyteusis existed in ancient Lusitania. But the conquest of the Visigoths, and afterwards that of the Saracens, had the effect of substituting new laws and new tenures for those of the Romans. Persons who have investigated the subject say that the old emphyteusis fell at that time completely into disuse, and that this kind of tenure was again introduced upon the establishment of the Monarchy. King Diniz directed the Civil Law to be taught in the recently founded University of Coimbra; and Dom John I. caused a translation to be made of Justinian's Code. Finally, the Portuguese Code, which bears the name of Alphonso V., contained a complete set of rules on the subject of Emphyteutic contracts; and from that time forward this became one of the chief tenures in Portugal.

Origin of Emphyteutic Tenures in Portugal.

§ 80. The Emphyteutic tenure thus established in Portugal, while preserving a general similitude to the Roman emphyteusis, constituted a much more ignoble and servile relation. The monarch, the great lords, the monasteries and the churches granted upon this tenure waste or other lands which they could not sell because there were no purchasers, and could not cultivate because they had no available labour. The grantees, being poor and helpless, were forced to accept these grants upon any terms which the grantors thought fit to impose upon them. The rents and services reserved were in consequence so exorbitant and oppressive that the tenants found great difficulty in discharging them, while supplying themselves with the barest necessities of life. Not only was the 'foro' or canon[9] excessive as regarded the amount to be

Oppressive Nature of the original Portuguese Emphyteutic Contracts.

[8] See *ante*, pp. 5-6.

[9] The 'canon,' or quit-rent of the emphyteusis became the foro of the Portuguese contract, which included the rent and services to be rendered by the tenant; and is also used to express his interest in the tenure.

paid, but it was frequently vexatious in respect of the services to be rendered, and the things to be delivered, which were often procurable with difficulty. These things often included a quantity of incense, a number of poringers, iron tools, or shoes, or a quantity of sea fish, where the lands lay in the interior and there were no regular means of communication. The tenant was frequently bound to kill for his landlord so many brace of partridges, or so many couples of rabbits, to catch so many dozen of trout, to furnish oxen or beasts of burthen for a journey of a certain distance, to work in his landlord's fields one day in the week, or to break up a certain quantity of land for him. The tenant had to bear the full incidence of all casualties and natural deterioration short of the actual destruction of the land. If in despair of turning his holding to profitable account, or even of obtaining a livelihood from it, he made up his mind to sell, he was bound to pay to the landlord a fine on alienation, which varied in amount from a fortieth to a tenth, a fifth, or even a third of the purchase-money. In order to avoid payment of the fine on alienation the emphyteutic tenant sublet, and the system of sub-emphyteusis thus introduced exhibited the bad characteristics of a cottier tenancy. In the Province of Minho, the population of which is about a fourth of the whole population of Portugal, nearly all the land is held under emphyteutic tenure. This is stated to be the best cultivated part of the country and that in which least poverty exists. Of the whole of the inhabitants there are said not to be 500 who do not possess a small parcel of land. Some of these parcels are so small, that the rents of them is merely a few pence. An instance is given of a proprietor whose income of about £1,600 a year is derived from more than 500 tenants, some of whom pay a rent of a few shillings merely. Having regard to all these circumstances it is no great cause of surprise that a system of land-tenure which has given ten per cent. of the population a beneficial interest in the soil, and which is calculated to encourage the extension of agriculture and stimulate

Sub-Emphyteusis.

Morcellement.

thrift and industry, has failed to produce in Portugal those satisfactory results which might be achieved if the system were freed from abuses, and its operation properly regulated. The Government of Portugal has made more than one attempt at reform, and some of the worst abuses have been swept away by legislation. The rents and services, which were so various and onerous, were, by a law passed in 1832, reduced to a fixed rent; and where the contract contained no provision to the contrary, the tenant was allowed the option of paying in money or in kind. The amount of fine upon alienation, where not expressly provided for, was fixed at one-fortieth. The tenure was formerly granted for one, two, or three lives, with or without a clause providing for renewal. Where there was no such clause, the renewal was wholly within the discretion of the landlord. The law of 1832 made the tenure perpetual, and applied the same rule to new grants. By the same law there is to be no fine upon the alienation of tenures created after 1832: and there are to be no charges or services except the quit-rent. Such tenures may not be divided without the consent of the landlord; and, in consequence, when several heirs cannot agree as to which of them shall take the tenure, it must be put up to sale. The interest of the emphyteuta commonly sells for twenty-five times the annual rent. The Civil Code subsequently introduced other improvements, providing amongst other things that the emphyteuta may not sublet. It is said that these changes have been productive of beneficial results, and that further gradual improvement may be expected.

Legislative Reform.

§ 81. The descent and division of landed property in Portugal are regulated by the following rules. Where the owner dies intestate, the property goes to the following in order, each class excluding the preceding one:—(1) lineal descendants, (2) lineal ascendants, (3) brothers and sisters and their issue, (4) surviving husband or wife, (5) collaterals not included in three, to the tenth degree, (6) the State. Relatives in the same degree take equal shares without

Succession and Inheritance in Portugal.

regard to sex. The owner may, by will, dispose of one-third. When the owner is married, and there has been no marriage settlement, the widow surviving is entitled to a life-estate in half the property. When the inheritance falls in, the co-heirs, if all of full age, may make any arrangement which they wish as to the division of it; but this arrangement must be embodied in a public instrument. Where any of the co-heirs are minors, absent or outlawed, an inventory and valuation must be made in due form according to law, and the heirs have then a private auction, at which they settle the terms on which each is to retain such particular tenement as he may select. Where the heirs being of full age cannot agree, or, the interests of minors being concerned, it is found impossible to settle the price of any particular lot, such lot is put up to public auction and the proceeds are divided amongst the heirs. All the lots remaining after the amicable distribution or public sale are then divided equally amongst the heirs in accordance with the legal valuation. Any object incapable of division may be sold or allotted to one heir at a settled valuation, or may be held in common by all. All transfers of immovable property must be registered. If not registered, they are binding upon the parties or their representatives; but without registration they have no effect as against third parties. Even possession without registration cannot be pleaded as proof of ownership, the mere act of registering a transmissive title without any other formality transfers the legal interest to the person in whose favour such title is registered. Contracts for the sale, transfer or exchange of land must be in writing, and are usually drawn up by a public notary. The expense of such instruments and the cost of registration are moderate. The Civil Code provides for the appointment of a public Registrar in each 'Concelho' or subdistrict of the kingdom; and prescribes the registers which are to be maintained. There is a special register for Mortgages; and all such transactions, in order to make them legal and binding upon third parties, must

Sale, Transfer, &c. of Landed Property by Registration.

be entered therein. Landed property in Portugal is, as a general rule, heavily mortgaged.

Other Tenancies usual in Portugal.

§ 82. Besides emphyteusis, which, as conferring a beneficial ownership in the soil, is a kind of proprietary interest, the other kinds of tenancy usual in Portugal are metayage and short leases at money-rents. Metayer tenancy is usually from year to year, and the share of the produce to which the landlord is entitled depends upon the agreement of the parties. The landlord commonly gets from one-half to two-thirds according to the fertility of the land. The contract is determined by the death of either party; but in the case of the landlord's death, if the tenant have ploughed the land, dressed the vines, or done other agricultural work, he is entitled to maintain the contract until he has recouped himself his expenses, unless the heir wishes to reimburse him. The tenant may not remove the grain from the threshing floor, or the wine from the press, nor garner any other produce without notice to the landlord, under penalty of paying double the share to which the landlord is ordinarily entitled. Unless otherwise stipulated, the seed is taken from the tenant's share. The landlord usually provides the stock and agricultural instruments. Occasionally his share is paid not in kind, but in money. Unlike the metayer of Minorca, the Portuguese tenant is said to be frequently guilty of fraud in the division of the produce. The landlord is thus compelled to great vigilance, which has a tendency to become vexatious and oppressive. The Metayer system is generally limited to the poorest and most backward parts of the country, and is not popular with Portuguese Political Economists, who consider it antagonistic to agricultural improvement. The great majority of lettings at a money-rent are in the nature of tenancies-at-will from year to year. A five or six years' lease is in practice a long one, and leases for a still longer term are very exceptional. A longer lease is readily obtainable for arable or pasture land than for vineyards, oliveyards or orange-groves, because a dishonest tenant can do less damage by

Metayage.

Tenancies at Money-Rents.

exhausting the former than the latter, while in possession. Where the parties have not agreed upon any term, the law presumes that the tenancy shall continue sufficiently long to enable a single crop to be prepared and garnered, whatever may be the crop which the land produces. The relation of landlord and tenant is usually created by a written instrument, which must be registered if the term is more than one year and the rent payable in advance, or if the term is more than four years, although the rent is not payable in advance. The rent is regulated by competition, of which the landlords appear to have taken advantage to exact a rack-rent, while the tenants on the other hand extract the maximum produce from the soil to its injury and exhaustion, the relations between the parties being anything but friendly. According to one description, indeed, they treat each other as declared enemies. In case of non-payment of rent, the tenant is liable to eviction, and the landlord may proceed for its recovery before the ordinary tribunals of the country.[1] No claim to abatement on account of bad seasons or failure of crops is ever recognized. Where the lease has been registered, the law confers upon the landlord an exceptional privilege over other creditors. The tenant cannot sell his interest. He may sublet, unless restrained by an express stipulation in the lease; but if he do so, he continues liable for the rent and other obligations of the lease. There is no law or custom by which a tenant under an ordinary lease is considered to have a right to remain in the occupation of his holding as long as he pays the stipulated or any other rent. The Civil Code, however, provides, that if, on the expiry of the lease, a tenant is allowed to hold over, the original contract shall be presumed to have been renewed for one year. If the tenant do not quit upon the expiry of the term, or if, during the term, he fail to pay his rent, or commit a

Recovery of Rent.

Holding over.

[1] In the case of 'emphyteusis,' application is made for judicial permission to sell the tenant's 'foro,' or interest in the tenure.

Eviction. breach of the conditions of the lease, he may be evicted, after notice, by summary process before the Magistrate. Tenants are said to be occasionally evicted for opposition to their landlord at the elections. The landlord must deliver the property leased to the tenant in good condition with respect to the use for which it is required, and must keep it in serviceable order. The tenant has a legal right to execute necessary repairs at the cost of the landlord, if the latter fails to execute them after requisition. Improvements, when made, are usually executed by the tenant. In the case of agricultural improvements, which have increased the letting value of the land, the outgoing tenant, when the lease is for less than twenty years, is entitled to compensation; but he cannot refuse to give up the holding until he is compensated, unless the improvements were made with the express consent of the landlord in writing, or unless in the case of necessary repairs.

Improvements.

CHAPTER X.

The Tenure of Land, and the Relation between Landowners and Cultivators in Russia.

§ 83. The Russian Mír affords one of the most remarkable instances of that common property in land, which was so usual before the tendencies of modern progress and civilization introduced and established individual ownership. The family group consisted of the descendants of a single ancestor. When, according to the process already described,[2] the Nomad group, with its flocks and herds, settled in a fixed locality and increased the means of subsistence by the cultivation of the soil, the principle of common ownership naturally extended itself to the land, which became the property of the members of the group collectively. When these groups had become settled and prosperous, and possessed of such movables as then constituted riches, they were a tempting prey to other Nomad races, who, still following a wandering life, and uninfluenced by the more peaceful pursuit of agriculture, maintained predatory habits, preferring to enrich themselves by plundering the fruits of the labour of others rather than by undergoing labour themselves. Protection thus became necessary for the settled groups; and those who were able to afford it became the governing power. In the particular development, under the special circumstances of the race and time and locality, the group became the Russian Village or Commune, and the governing power the autocracy of the Czar. This Commune, not the family or the individual, became the constitutional unit of the

Origin and Development of the Russian Mír.

[2] See *ante*, pp. 2, 3.

Russian nation. The land belonged to the Commune, and the individual, as a member of the Commune, had merely the usufruct, the right to the temporary enjoyment of a share. The Commune was responsible to Government for the discharge of those liabilities which, by way of taxation or otherwise, Government was pleased to impose. This community of rights and liabilities, the members of this political unit, the land which belonged to them collectively —this little world and its inhabitants—were called the 'Mír.'[3]

The Mír was originally an Association of Freemen.

§ 84. The Mír was originally an association of freemen; and when the Czar became their father, their ruler, their master, they became his children, his subjects, his servants[4]—but not slaves or serfs. There were, however, slaves, who had become so by the fortune of war. Many of these belonged to the Czar; and the chiefs and captains, who surrounded him and aided him in his military enterprises, naturally received their share of the captives. Unoccupied land was abundant; and all, that was not included in the limits of the Mírs, became the property of the Czar. He had to maintain the *then* nobility, the chiefs and captains, who formed his train of followers; and as the simplest way of doing this he made them grants of the Crown lands, upon which they employed their slaves, while he himself similarly employed his own slaves upon the lands which he retained. In course of time these slavish settlements and the ancient Mírs came to be regarded in the same category by those who exercised absolute power unrestrained by an effective administration of justice, which alone could maintain the landmarks of ancient rights. As the number of those whom it was necessary to reward for serving the Czar increased, while the unassigned and vacant Crown lands diminished in area, a new

[3] Mír means also 'the world,' 'the universe.'

[4] There is no single word in the English language which exactly conveys the idea. The term 'raiyats,' applied to the Indian cultivators of the soil, and meaning 'subjects' but never 'slaves,' embodies the idea more nearly than any other word I know.

form of grant came into use, whereby the grantee received an assignment of the taxes payable to the Czar by one or more villages or Mírs. Such a grant originally conferred no right whatever to the land of the Mír. It was a grant merely of the right to collect and appropriate the Government revenue. But what was *revenue* when paid to the State, became *rent* when paid to a private individual, and the right to receive the rent gradually drew after it the proprietorship.[5] The process was all the more natural, because men, ignorant and beyond the influence of Roman jurisprudence, would naturally make little distinction between the position of the grantee of the State revenue, and that of the noble who, having received a grant of the land, had settled his slaves on it as cultivators. Two circumstances contributed greatly to efface the distinction between the slavish settlements and the free Mírs, and to increase the power of the nobles over the free Russian peasantry, who retained their liberty till the close of the sixteenth century. The first of these circumstances was a Ukase of Czar Fedor Ivanovitch in 1592, which attached the whole of the peasantry to the soil. This measure was suggested by his minister, Boris Godunoff, with the object of putting an end to the migratory habits of the peasants, which deprived the nobles of the increased rents which they might have obtained from an increased population.[6]

Causes which operated to convert the Free Russian Peasants into Serfs.

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[5] The Jagirs conferred by the Mahomedan Emperors of India were similar grants; and many of the jagirdars similarly developed into landed proprietors—zemindars. After all, it was only anticipating modern law, under which a gift of the rents and profits will pass the realty. The grants of the Crown lands by the Czar were usually life-grants. Occasionally, permission was given for the son to succeed the father. But the tendency of all such grants in such a state of society, where the power of the ruler depends upon the support of powerful followers, is to become hereditary.

[6] A very ingenious, and by no means improbable, suggestion has been made by M. Julius Faucher, in his article on "Russian Agrarian Legislation," in the *Cobden Club Essays*, that this measure was borrowed from England through the Russian Ambassador Mikulin—was in fact a Muscovite version of the English Statutes against pilgrims and vagabonds, which ordained, amongst other things, that the abode of persons, who would not or could not do work, was to be fixed in the parish in which they were born or had resided for three

The same minister passed other laws, which further tended to establish serfage. The second circumstance was the conversion of the old house-tax into a poll-tax by Peter the Great, who made the lords responsible for its collection. The authority of the lords over the villages was thus increased. They established registers in which were enrolled all the peasants of the village, each one of whom had to pay the poll-tax. As the lord was responsible for the payment of this tax, he was careful not to allow any peasant to violate the Ukase of 1592, under the provisions of which, moreover, any peasant found wandering about the country without a passport was taken into custody, and sent back in irons to his village, where he was to be punished for leaving it. Catherine II. gave the nobility a Charter of Rights, thus recognizing and establishing their position; but she introduced serfage into Little Russia and Lithuania, by distributing serfs amongst the nobles, some of whom owned as many as 30,000 male serfs.

§ 85. After the national war of 1812 the question of emancipating the serfs began to occupy the serious attention of Russian statesmen; and when the Emperor

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years. The same writer denies the nomadic propensities of the Russian people, while he explains their colonizing tendencies. When the members of a Russian village became too numerous to live in comfort upon the communal lands, a number of them were sent out to found a new village—a daughter village of the mother village. This process was repeated; and thus large tracts were colonized and populated. Little Russia, with Kiew for its centre, was the mother country. Great Russia, with Moscow for its centre, was a colony. But while Little Russia was pure Sclavonic, the Great Russians became a mixed race of Sclavonians as a majority, mixed with Finnic Tribes or Tchudes. The connection between the mother and daughter villages was always maintained, and is a remarkable feature of Russian nationality. A strong colonizing movement in an easterly and southerly direction had set in at the close of the sixteenth century. When a considerable number of the members of a village started off to found a new village, those that remained were sufficient only to cultivate the communal lands. The noble was thus in danger of being left without hands to cultivate his lands, while the prospects of increased profits from the occupation of fresh land by an increased population were destroyed. It was therefore the interest of the nobility to counteract the colonizing movement, and hence the enactment of Boris Godunoff.

Nicholas came to the throne, steps were taken to prepare the subject for the action of the Legislature. A Secret Committee was appointed in 1826, which after sitting for three years produced, under the Emperor's personal supervision, a project of reform, which included amongst other proposals the abolition of serfage by endowing the peasantry with personal liberty, at the same time respecting the proprietary rights of the nobility and gentry in the land. The Ukases for giving effect to the reform thus proposed were ready for the Imperial signature, when the French Revolution of 1830 broke out, and the project was abandoned for the time. Meanwhile the Emperor had issued a Rescript enjoining the landed proprietors to treat their serfs "with legality and as Christians;" and this was followed by a Ukase in 1828, by which the estates of the proprietors, who behaved harshly to their serfs, were directed to be placed under the administration of trustees. A further Rescript was addressed to the Minister of the Interior, insisting on the observance of a law passed by the Emperor Paul in 1797,[7] which provided that no serf should be required to render more than three days' service in the week. In 1842 a Ukase was issued, which permitted lords and serfs to make terms as to the extent of the serfs' land-allotments and the quit-rent ('obrok') payable for them to the lords. The object of this measure was to discover what forms of agreement would prove most popular and acceptable to both parties with a view to the framing of a general compulsory measure on the lines thus provided. The facility thus afforded was not, however, utilized in very many cases, owing to difficulties interposed by mortgagees. In 1847 the serfs were granted the privilege of purchasing their freedom and the lands occupied by them whenever the latter were put up

Question of emancipating the Serfs—Committee of 1826.

Some Preliminary Remedial Measures.

[7] This law had remained almost a dead letter, because, as it did not specify the quantity of land for which the service was to be rendered, the proprietor was able to secure compliance with his own terms by threatening to reduce the quantity of land, of which the serf had the usufruct.

for sale by public auction. In the following year the serfs were allowed to purchase in their own names lands not populated, provided their lord gave his consent. Before this, as serfs had no civil rights, they could not take a conveyance in their own names, and any such instrument was drawn in the name of the lord. This law of 1848 never became well known to the peasantry, and few serfs were able to avail themselves of its provisions. The Emperor Nicholas further enforced an old law, which forbad the sale of peasants without lands (which provision had been evaded by first transforming peasants into household slaves), and also the sale of land without peasants, if such sale reduced the quantity occupied by the serfs to less than four and a half djessatines (12 acres) for each male serf. Further he defined how much labour or what payment in lieu of labour the lords were entitled to claim from their serfs in different places and under different conditions.

More Radical measures in the Western or old Polish Provinces.

§ 86. In the Western or old Polish Provinces, where agriculture was more advanced, and it was therefore the lord's interest to deprive the serf of the land, more radical measures were carried out. The relations between lord and serf were made the subject of minute inquiries between 1844 and 1852, when they were embodied in rules which were applied to the settlement-deeds of the serfs, and of the few Crown peasants in those provinces, who were generally leased out to the landed proprietors. In consequence of allegations that these rules had not been fairly carried out, a Commission was appointed; and upon a revision of the rules the nobles of Lithuania in 1857 presented an address, praying for the abolition of serfage, thus forestalling the Emperor's well-known wishes for the liberation of the serfs. In consequence, a general Commission was appointed to prepare the draft of a law for improving the condition of the serfs in the Western Provinces. His Imperial Majesty desired that the principle of the new law should be the retention of all proprietary rights over the soil, the peasant acquiring the right of redeeming only his

homestead, and of renting under a perpetual lease, either for money or service, such a portion of land as would suffice to support him, and provide for the fulfilment of his pecuniary obligations towards the lord and State. Very considerable opposition was offered to this scheme by the nobles, who honestly believed that ruin to themselves could be the only possible result of abolishing serf-labour, regard being had to the want of capital, the unenlightened condition of the peasantry and the absence of proper local administration. Measures were now taken to quiet the apprehensions of the nobility and gentry, who gradually came to take a less alarmed view of the proposed reforms. In 1858 a Principal Committee was appointed, composed of Ministers of State and some Members of the Council of the Empire, under the presidency of the Emperor himself. This Committee dealt principally with the principles of emancipation, while another Committee (Comité de Rédaction) was appointed for the purpose of preparing the text of the new law. The projected measure was approved by a majority of the Members of the Council of the Empire; but was finally carried only by the Emperor's exercise of his constitutional power of voting with the minority. The new law received the Imperial signature on the 19th February 1861.

Apprehensions of the Result of Serf-Labour were abolished.

Emancipation Act passed in 1861.

§ 87. Before noticing the provisions of the Emancipation Act of 1861, it will be important to obtain accurate ideas as to the condition of the cultivators of the Russian soil before the operation of this measure; to have a correct conception of the position and influence of the Mír; to understand the problems and interests which had to be dealt with; and to apprehend the arguments which were advanced by those who took different sides in the controversy. The peasantry of Russia in 1861 were thus classified: I—Twenty-two millions of serfs attached to the lands of the aristocracy and gentry; II—Twenty-three millions of both sexes constituting the Crown peasantry; and III—Three millions of peasants belonging to the Appanages or private estates of the Royal Family. The Emancipation

Classification of the Russian Peasantry in 1861.

Condition of the Crown Peasants.

Act dealt only with Class I. The condition of Classes II and III was somewhat different from that of the serfs. They paid a money-rent, which was lower and less variable than that paid by the serfs of private proprietors. Their earnings could not be taken from them by any rapacious landowner, and they considered themselves *freemen*, although their right of locomotion was as much limited as that of the serfs.[8] Their position was not, however, without certain disadvantages. After 1837 they were put under a separate administration, conducted by a number of local Inspectors and Sub-Inspectors, who expected to be supported in affluence by the people over whom they were placed. A certain portion of land in each village had been tilled by the villagers jointly, and its produce devoted to create a reserve in case of famine, and for the support of schools and other institutions intended to improve the moral condition of the peasantry. The greater part of the produce thus raised was, after 1837, divided, according to nicely adjusted scale,[9] amongst the officers of the administration of the Crown Domains, the peasants of which had moreover to submit to other exactions of various kinds. The Appanage peasants were dealt with by special legislation in 1863; and the Crown peasants, in 1866.[1] We are

[8] This is Mr. Michell's views, from whose valuable *Report on the System of Land Tenure in Russia* in the Blue Book I have largely borrowed for this Chapter. Mr. Wallace, however, in his *Russia*, thinks that they practically enjoyed a very large amount of liberty, that by paying a small sum for a passport they could leave their villages for an indefinite length of time; and, so long s they paid regularly their taxes and dues, were in little danger of being molested.—Vol. I, p. 160.

[9] This kind of regulated extortion is, or rather was, not uncommon in India.

[1] The object of this legislation was to assimilate their position to that of the private serfs under the Emancipation Act. The Crown peasants paid and still pay a poll-tax and a land-tax. They had formerly to render a certain amount of labour besides, but this (save for the purpose of road-making) has now been commuted into money-payments. The poll-tax yielded ten millions of roubles, the land-tax thirty millions. The poll-tax on each individual varied from 2 roubles 15 kopecks to 2 roubles 86 kopecks. 100 kopecks make one rouble, and 9 roubles 75 kopecks are equal to a sovereign. Roughly speaking, the rouble is equivalent to a rupee. In addition to the three classes mentioned above, there were (1) some freeholders living in detached farm-houses,

at present, therefore, concerned only with the twenty-two millions of private serfs. Of these, three-quarters of a million were domestic serfs, and they were not allowed to claim an allotment of land, unless they were registered as Domestic serfs, or had been converted into domestic serfs after 1858. They had to pay their lords the previous tax, which was fixed at a maximum of 40 roubles for a male and 30 roubles for a female, up to 1863, when they became absolutely free. The total number of proprietors who owned serfs in 1861 was 103,158, of whom 23 per cent. owned more than 100 male serfs; 35·5 per cent., less than 100 and more than 20; and 41·5 per cent., 20 or less. These proprietors owned 301 millions of acres, of which 100 millions, or about one-third, were held by serfs either at a money-rent or upon service, or partly at a money-rent and partly upon service. Each male serf had thus the usufruct of about 10 acres of land, but this high average was made only by taking into account the north of Russia and the steppe country, where the tracts of land were very large. The quit-rent levied by the lords varied greatly in the different provinces, being regulated not so much by the productiveness of the soil, or the means of the serf, as by the lord's necessities. It frequently happened that the lord borrowed money on a mortgage of his lands and serfs,[2] and added to the previous quit-rent of the serfs a sum sufficient to cover the interest of the loan and provide a sinking fund. In the Industrial[3] Provinces of Moscow, Wladimir, Jarosaf, &c., the average rate of quit-rent was 9 roubles 29 kopecks

Domestic Serfs.

Agricultural Serfs.

found chiefly in Great Russia, and supposed to be the russianized remnants of the original Tchudes; (2) some serfs, who had purchased immovable property since 1848; (3) some Russians whose nobility had been lost, and who were *glebæ adscripti* on their own property; and (4) certain Cossacks, whose freedom and right to their property had been previously recognized.

[2] Such loans could always be obtained from the State up till 1859, when Government ceased to advance money on mortgages of lands and serfs. Under the Emancipation Act, Government foreclosed mortgages to the extent of 53 millions of pounds sterling, and deducted the amount from the sums to which the lords were entitled under the Act.

[3] Provinces in which other industries are pursued as well as agriculture.

Average of Quit-Rent per male in different Provinces.

per male. In the purely Black Soil[4] Provinces, the average was 8 roubles 77 kopecks. In the Steppe[5] and other provinces, where there is scarcely any other industry besides agriculture, the average was 7 roubles 89 kopecks. In Central Russia, where the lord had abundance of land, he allowed for each male serf three djessatines[6] (8½ acres) of arable land, besides pasturage, wood for fuel, and timber for building. As the population increased, he added to their allotments, always, however, taking care that the quantity of land which the serfs tilled for themselves should not exceed the quantity cultivated by them for his benefit.[7] When the population had increased to such a point that the serfs held half of the lord's land, it is clear, that while the lord retained the other half, any further increase of population must have had the result of diminishing the allotment per male serf. In the Industrial Provinces the lord found it to be his interest to increase the area of serf-allotments, in order that he might increase the quit-rent. In the Black Soil Provinces, on the contrary, it was more advantageous to the lord to cultivate the rich soil than to take a moderate quit-rent; and, as he therefore kept as much land as he could in his own hands, the size of the serf's allotment had a tendency to decrease.

The Serf a member of the Commune and a member of a Family.

§ 88. It must not, however, be supposed that the serf made his own arrangement with his lord as to the land which he was to cultivate and the rent which he was to pay, or that the relation between the parties was exactly that of landlord and tenant. The individual serf was in the

[4] The Black Soil, or 'Chernozem,' Provinces form a large belt to the south of European Russia, and (speaking roughly) lie between Kief, Chernigof, Riazan, Kazan, Saratof and Kishinef.

[5] South of the Black Soil belt.

[6] One djessatine is equal to 2·86 acres.

[7] Three-quarters of all the serf-lands in Russia, and nine-tenths of the allotments in the Black Soil Provinces, were held upon service, not at a money-rent. Two-thirds of the serfs of Russia Proper held upon service. About one-fourth of the total serf-population held not upon service, but at a quit-rent. The proportion of those who held at a quit-rent was larger in the Industrial Provinces, being from one-half to three-quarters.

first place a member of the Commune,[8] and in the second place a member of a Family; and we must now consider the effect of this two-fold position. By the law of Russia every male soul is bound to pay a certain tax to the State. We have seen that Peter the Great made the landed proprietors responsible for the collection of this tax, and they, in their turn laid the duty of collecting it upon the Commune, the Mír. Every Commune had thus to keep a list or register of its male souls. This register was revised at intervals, not always separated by even spaces of time, and upon revision every male, from the infant last born to the oldest greybeard, was entered in the register. No notice was taken of births or deaths between revisions of the register, the last revised register being acted upon until a fresh revision took place. Every Commune was liable to pay the tax for the number of males as shown in the register. Every male who paid tax was entitled to a share of land: in other words, the payment of the tax[9] and the right to hold land were mutually inter-dependent. The lord made over to the Commune a quantity of land proportioned to

Every Male liable to Tax, and entitled to Land.

[8] In most descriptions of the Russian Commune or Mír, the institution is described as if it existed in all the provinces of the Russian Empire. But the Communal System of holding land prevailed only in the provinces of Great Russia, and had no existence in the Southern Provinces. In the Provinces of Poltawa, Chernigof and Kharkof the peasantry had been in the habit of arranging with their lords for the occupation of as much land as they could cultivate with the assistance of their families; and the Government were unable to introduce the Communal System of landholding. In the North-Western Provinces, however, the system of separate holdings was replaced by the Communal System. The Emancipation Act, as will appear from what follows above, introduced the Commune or Mír into all Russia as *an administrative and financial unit*, in order to carry out the principle of local self-government, and collective responsibility for imperial and local taxes; but, except as above stated, this did not alter the system of holding the land.

[9] The Russian peasant pays about half his disbursements in rent and taxes. Each peasant, according to Mr. Michell, pays on an average 15 roubles per annum in taxes and redemption dues, the taxes being more than half. In Great Russia and Little Russia the capitation tax, the imperial territorial tax and the redemption payments together average 10 to 13 roubles per head; and in some places the addition of the local taxes will raise the average to 18 roubles. A peasant household may thus have to pay 30 to 60 roubles per annum.

the number of taxable males; and the Commune divided this land between its families. One family might contain a father and three adult sons, all capable of work; while another family might consist of a widow aud four minor sons, one only of whom could help the labour. In the South, where the land was good, the cultivaton yielded more than enough to support the serf and his family and pay the taxes and the lord's quit-rent. In the North, where the land was poor, the produce did not suffice to pay these dues and maintain the family without other industrial labour. In the former case, the widow could afford to pay others for cultivating, while in the latter she could not. In the former case, therefore, she would willingly take four shares, a share for each male of the family; in the latter, the forced acceptance of the same quantity would be ruin to her. The Commune made the division, having regard to this and other circumstances; and while the lord never interfered, the peasantry accepted the decision of the Mír as an unalterable decree. During the period between the revisions of the register, the Commune occasionally made a complete or partial redistribution of the land in order to meet the justice of changed circumstances arising from deaths, adults being taken for the army, boys becoming old enough to work, and the like. The Commune, and not its members individually, was responsible to the lord for the amount of his quit-rent; and this the Commune assessed according to the partition of the land. The shares were not separate parcels which each peasant could cultivate as he pleased after the partition. The arable land of the Commune was divided into three zones. The first zone was next the village, either a complete circle or a segment of a circle, and was better manured than the second zone, which lay outside the first. The third zone lay furthest off, and was seldom or never manured. Each share contained a strip in each zone, and the shares were distributed by lot. Shares in the pasturage and meadow land were similarly assigned by lot; but while these lands were redistributed every year, a fresh partition

Division of the Land by the Commune.

of the arable lands was not made for several years after a division had taken place, and until altered circumstances satisfied the Mír that it was desirable. To the general rule of partition there was one exception—the peasants' homesteads continued to belong to them and their families, and were never subjected to redistribution.

§ 89. The description just given has assumed that the serfs paid a quit-rent in money; but by far the larger portion of them held not at a quit-rent, but upon service. As the Commune was responsible for the total amount of the quit-rent, so it was responsible for the total amount of labour to which the lord was entitled; and this was regulated by the number of 'tiaglos.' The tiaglo[1] was the labour unit, and consisted of a husband and wife, sometimes a bachelor and a maid, or two young men. Each tiaglo was liable to the lord for three days' labour in every week. It was therefore the lord's interest to multiply the tiaglos as much as possible. The land was generally allotted by the Commune according to the tiaglos, not according to the number of male souls in each family, and this enabled the distribution of the burdens to be made according to the labour power of the families. When the lord required labourers, he or his steward gave intimation beforehand to the Starosta, or head of the Commune, who sent the number required, having obtained them from the tiaglos from whom service was due. The lord never interfered to determine what particular labourers should be sent him, the apportionment of the labour-service as of the quit-rent being left wholly to the Commune. From the fact of the land being the property of the Commune arose the curious custom of regarding the local trades of the village as common property also. Every male soul was liable to pay his taxes and his share of the quit-rent, and

The Tiaglo or Labour unit—Allotment of Lands held upon Service.

[1] Literally 'burden-drawer.' In some places the tiaglos consisted of a man, a woman and a horse. Besides the three days' service, other burdens were frequently laid upon the tiaglo. The lord required lambs, chickens, eggs and linen cloth, and a sum of money from those peasants who were allowed to go away and work in towns.

The Profits of Trade regarded also as Common Property.

was bound to take his share of the land and render his share of labour. If the other members relieved him from the burdens of cultivation and service, it was considered only fair that he should bring into the common stock what he gained[2] in consequence of being left free and so enabled to follow some special pursuit. In thirteen of the central provinces of Russia, the population are very extensively engaged in manufacturing industries. In the Provinces of Wladimír, Moscow, St. Petersburgh and Jaroslav, some 350,000 persons are employed in manufactories. In many villages some particular branch of industry, such as hardware, cutlery, the making of boots and shoes, wooden boxes and the like is pursued. Skilful workmen, who were able to earn good wages in the towns, were bound to bring their gains to the common village stock. Sometimes it happened that a peasant, who had been allowed to leave his village under a passport of the Commune, proved remarkably successful in trade or business or some other pursuit. As long as he remitted his share of the taxes and rent, and perhaps some drink-money for the members of the Commune, he was left unmolested, until a bad season or other adversity caused a difficulty in raising the full amount of the taxes and quit-rent. He would then be called upon for a special contribution; and if he refused, pressure would be put upon him by withdrawing his passport, in which case he would have to return to his village. Occasionally this power was used by a needy or unscrupulous Commune to extort money on less justifiable occasions; and, in consequence, the police were entrusted with a certain discretion as to sending home to the

Power of the Commune to recall absent members.

[2] To those conversant with Hindu law, the somewhat analogous case of the member of a Hindoo joint family will occur, as a similar feature in another system of common ownership. The acquisition of one member belong to the common stock, if any part of the common stock has been used in order to their acquisition; and that some part was used is presumed until the contrary be shown. Even the gains of science are common property, if science has been imparted at the family expense.

villages peasants whose passports had been notified as withdrawn.

§ 90. The Commune consisted of the 'Starosta,' Mayor or Elder, and the heads of families—all of whom had a vote. Its meetings were held in the open air, usually upon a holiday, in order that work might not be interfered with. The heads of families elected the Starosta; and as the office involved trouble and responsibility, and carried with it neither honour nor profit, it was avoided by all, and not infrequently was forced upon the greatest reprobate in the village. As every matter was settled by a majority of votes, those who really had influence with their fellow villagers could exert it without accepting the burdensome post of Starosta. The power of the Commune depended upon custom, not upon any written law. As there was no power of appeal against its decisions, its jurisdiction became somewhat extensive. Besides dividing the land, it fixed the time to commence ploughing and hay-making; decided whether a new member should be admitted; expelled the incorrigibly idle by making them over to the recruiting officer; granted permission to erect new buildings on the communal land; prepared and executed all contracts which it made with its own members or with strangers; appointed the communal tax-collector, watchman and cowherd; decreed the measures to be taken against members who did not pay their taxes; and interfered, when it thought necessary, in the domestic affairs of its members. The mention of Heads of Families brings us to the consideration of the serf as a member of a Family. The power which the lord exercised over his serfs was reproduced within the Family in the power which the Head exercised over the other members. The lord had an almost unlimited right over the person and property of his serf. The law took no cognizance of any complaint made by a serf against his lord. The lord could, therefore, flog him with impunity; send him to colonize a distant province, Siberia for example; cause him to be enrolled for military service;

Constitution and Duties of the Commune or Mir.

Power of the Lord over his Serfs.

and take from him all his property. So the Head of the family could inflict corporal punishment upon any member without appeal ; and his authority extended not only to the persons but to the property of all the members. The Head alone could possess property ; the other members, of both sexes and all ages, worked, as far as their strength enabled them, for the common benefit of the family, giving the proceeds of their labour to the Head, and receiving individually from the common fund only as much as the purse-bearer thought fit to give. All lived in the same house and in common mess ; and except the Head, few received anything beyond food and clothing.[3] Such then was the condition of the serf ; liable to be flogged at the will of his lord ; if not the Head of a family himself, liable also to be flogged at the will of the Head ; tied to the soil and bound to work three days in the week for his master, while from the labour of the remaining days he had to maintain not only himself and

Power of the Head of the Family over the other Members.

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[3] The Head of the family was usually the grandfather, father, uncle, elder brother or other member, who combined seniority and capability.

The above picture of the family and its Head has been taken chiefly from Mr. Michell's description. Mr. Mackenzie Wallace's account differs in assigning a very much less degree of arbitrary power to the head of the house or family, who is termed 'Khozáin,' the administrator ; and in some districts 'Bolshák,' the Big One. According to Mr. Wallace, the Big One, unless he possessed an unusual amount of authority, never bought or sold, or did anything important without the express or tacit consent of the other grown-up males. His position, as described in Mr. Wallace's pages, presents a very close analogy to that of the 'Karta,' or managing member of a Hindoo joint family. The term 'Khozáin' (not unlike the word 'Karta') may be applied equally to a shopkeeper, or the head of an industrial undertaking, and does not necessarily convey the idea of blood-relationship. No doubt, much depended in individual cases upon the intelligence and force of character of the Khozáin, more especially where (unlike Bengal for nearly a century past) there was no formal administration of justice which defined and limited his power. Mr. Michell describes the state of things before the Emancipation Act ; while Mr. Wallace's observation was that of state of the things more than ten years after the operation of the Act had begun. This fact may explain the difference between their views. Another point of analogy between the Russian and Hindoo systems is afforded by the rule of inheritance, under which the males share equally on the death of Khozáin.

his wife and children, but others who from age or non-age were unable to contribute a share of labour; compelled to bear this burden by tilling the soil, in which he had no property, not in the way in which he wished or could make most profitable, but according to the three-field system and as directed by the Commune; liable to pay heavy taxes to the State, not only for himself and the non-working males of his family, but frequently for other non-working males of the Commune, who belonged to a family in which there was no working male; deprived of any incentive to industry by the knowledge that the special gains of his greater exertions must become part of a common fund in which his own share was exceedingly small, and at the same time dependent upon the arbitrary will of another; an inseparable atom of a slavish system, which allowed no freedom of thought, no liberty of action, no individuality, no independence.[4]

General view of the Serf's condition before 1861.

§ 91. As soon as it was resolved to enfranchise the

[4] According to Russian law, the lord might impose on his serfs every kind of labour, might take from them money-dues (obrok) and demand from them personal service, and the only restriction was that they should not be ruined and that the number of days fixed by law should be left them for their own work. He might transform peasants into domestic slaves (in which event they lost their share in the Communal land), and, instead of employing them himself, might hire them out to others. For offences against himself or any one under his jurisdiction he could inflict corporal punishment not exceeding forty lashes with the birch, or fifteen blows with the stick. If he considered any of his serfs incorrigible, he could have them transported to Siberia by paying the expense of sending them there, or could have them drafted into the army. He could call in the Police or the Military to support his authority. Mr. Mackenzie Wallace classes the proprietors who oppressed their serfs thus :—(1) those who managed their own estates and oppressed merely for the purpose of increasing their revenues; (2) retired officers who wished to introduce discipline, and cure laziness, disorderliness and other vices; (3) absentees who lived beyond their means and forced their serf-steward, under threat of sending him or his son as a recruit, to extract from the estate a larger yearly sum than it could reasonably be expected to yield; and (4) in the later years of serfage, men who bought estates as a mercantile speculation, and endeavoured to make as much money as possible out of them in the shortest possible time—See Wallace's *Russia*, II, pp. 260, 262. The last were the greatest oppressors. In Ireland, as we shall see hereafter, Nos. (3) and (4) were the hardest landlords.

Problems to be solved in disenfranchising the Serfs.

Russian serf, the serious question arose—How could this be done so as best to consult the interest of the serf himself, the interest of the lord, and the interest of the State? Should his enfranchisement involve his divorce from the land, in which he believed that he had an interest inseparable from his birthright,[5] and should the grant of his liberty convert him into a landless labourer after the English type? If this solution were adopted, it was clear that the capital was wanting which might create a wages-fund and afford him employment, while he had himself no capital, which would enable him to become a farmer after the English pattern. Was then the example of Germany to be imitated, and the serf to be converted into a peasant proprietor? A strong protest was made against expropriation; and many doubted if it would be safe to confer complete independence upon those whose slavish life and training had tended to repress self-reliance and discourage individual industry. Further, if this course were adopted, the lords must be indemnified, and no feasible scheme of indemnification at first suggested itself. Then all the systems of the Western Nations operated to place the ownership of the land in the hands of a class, more or less limited, outside of which was a larger class, who had no share in the land, and whose increase must, sooner or later, form a hungry and dangerous proletariate. None of the systems, none of the reforms of Western Europe, appeared to give promise of secured prosperity in the future; and more than one party looked to the Russian Mír as the one institution, whose rehabilitation and establishment upon a solid basis could afford the hope of a sound social edifice, safe from those evils which threaten Western Nations. The Slavophils, who venerated everything purely Russian and refused to follow in the wake of Western civilization, regarded the Mír and the common ownership of land as the great safeguard against social disruption in the future. The Conservative party desired to save this institution, if they

None of the Western Systems a satisfactory guide to Russian Reformers.

[5] "We are yours, but the land is ours"—was the serf's common observation to his lord.

could save nothing else, from those radical changes which were about to subvert the ancient order of things. The Socialists, who saw no prospect of obtaining all the reforms which they desired, were willing to accept communism in land as a first instalment of their hopes and desires. Thus several parties, whose aggregate strength was more than a match for all opposition, agreed that the Mír should be restored and strengthened and made an important administrative element in carrying into effect the enfranchisement of the serfs.

§ 92. The arguments in favour of the Mír may be thus briefly stated. That any class of individuals should be able to exact a rent for the use of land from another class is an injustice to the latter. The only rent which is unobjectionable is that which is paid to Government for the purpose of meeting the expenses of the State. As every member of the Commune is entitled to a share of land, this injustice is obviated. As no one will be landless, none will be without the means of earning a living. Thus there will be no poverty-stricken proletariate, without property and without interest in maintaining existing institutions, whose only hope of bettering their condition lies in subverting or at least changing the present state of society, and whose existence in Western communities is an ever-present source of danger. The Mír requires no Poor Law. It is the best of Poor Laws to itself, for it prevents the existence of destitution which requires relief. The feeble infant, the aged, and those whom disease or accident has incapacitated from work, receive equally with the able-bodied an allotment of arable land attended with burdens which necessarily fall upon those members of the family who are capable of working. As the birth of every male child entitles the family to an additional share of land, it is unnecessary to discourage the increase of population, or to prevent it by methods, which political economy may deem expedient, but which morality condemns. As the share of a child is his birthright, over which his parents have no control, the children do not suffer for the thriftlessness or prodigality

Arguments and Considerations in favour of the Mír.

of the fathers, and the transmission of vicarious suffering by inheritance is abrogated. As every member of the community has a stake in the existing institutions, he has a direct interest in maintaining them ; and thus the Mír has a strong inherent element of order. As the stake of all is alike, there is no social inequality ; and thus there is little risk of class-contests and intestine wars, which have undermined and destroyed so many ancient societies. Nor is there that struggle between capital and labour, which is such a dangerous element in the constitution of modern communities. Finally, the Mír is particularly favourable to colonization, the most effective resource for relieving the soil from the pressure of too great a population ; and an expedient particularly feasible in Russia, which possesses, both in Europe and Asia, such vast unoccupied tracts. The arguments on the other side of the question are not so numerous or so weighty. It is said that population, thus encouraged to increase,[6] will rapidly extend itself to the utmost confines of the Communal lands ; and although emigration and colonization may defer the inevitable consequence for a time, the day must come when the size of the allotments will have to be reduced for all ; and then will be felt the want of those other industries which individual enterprize alone can create ; that the final result will be a dead-level of poverty—a communism of misery. Then periodic partition prevents permanent improvement of the soil, because no occupant is long enough in possession to make it worth his while to incur expense or expend industry, the profits of which will be enjoyed by another. Further, Russian agriculture is rude and antiquated ; but the possibility of reform is prevented by the three-field system, compulsory on all the members of the Commune. In reply to these last two objections it has been urged that the Mír could easily be converted into an agricultural association, in which, not the land, but the produce, would be divided, and

Arguments adverse to the Mír.

[6] Russia, it may be observed, has hitherto been one of the countries in which population has increased slowest, and this in consequence of the great mortality (from preventable causes) amongst infants and children.

that the best improvements of the land and in the mode of cultivation could then be introduced. Lastly it is said, that the joint responsibility of all the members for the demands of the State and the lord weakens the motive of individual exertion by making the industrious pay for the idle. The Mír has not yet had a fair trial under conditions of full freedom; and it is suggested that such experience will discover further arguments against it, which are now forthcoming against other systems which have been tried. It is equally fair to say that experience may also discover further arguments in its favour. It may, however, be observed that the strongest arguments in support of the Mír are based, not on the excellencies of the institution itself, but on the defects of other systems, which have been tried under conditions to which the Mír has not as yet been subjected. In a purely agricultural country, in which the pressure of population has, under any system, brought about *morcellement* of the land to such a degree that, in the most favourable years, the parcel belonging to each family will yield it a bare sustenance, it is not easy to see how the Mír as an institution could improve matters. If the Mír had existed in Ireland before the famine of 1848, would the suffering and mortality have been less?

First proposals as to the Homesteads and the Lands occupied by the Serfs.

§ 93. It being resolved to make the restoration of the Mír one of the main features of the Emancipation Act, the other important questions to be settled concerned the peasants' homesteads and the land of which they had been enjoying the usufruct upon condition of rendering service or paying a quit-rent. It was at first proposed that the emancipated serf should be assisted by the State to enable him to purchase his homestead, and that the land of which he had been enjoying the usufruct should be left in his possession for nine, ten or twelve years at a rent to be fixed by the law; and that, on the expiry of this period, the proprietor and the ex-serf should be left to settle the terms of further holding by mutual agreement and without legislative interference. This proposal, however, met with the strongest opposition from the advanced Liberal Party in

Russia and from the Russian Revolutionary Press in London, which had, from the first, insisted on the compulsory expropriation of land in favour of the peasantry, contending that the enfranchised peasant would be as incapable of resisting any rack-rent, which the lord desired to impose, as he had been when a serf of resisting his master's demands. Bound to his homestead and the locality, he must accept the lord's conditions or starve. It was then proposed that the serfs should be assisted to purchase not only their homesteads, but also allotments of land between a certain maximum and minimum. Finally it was decided that they should be permitted, on certain conditions, to redeem, in addition to their homesteads, certain allotments of arable land. The lords themselves suggested this settlement of the question—a majority of them being satisfied that the lands, of which the peasants had enjoyed the usufruct, would never be restored to them; and believing it therefore the wisest course to obtain from the Legislature favourable terms for making it over to the peasantry. The leading principles of the Emancipation Act of 1861 were then the following:—

Leading Principles of the Emancipation Act of 1861.

I.—The cession to the serf of the perpetual usufruct of his homestead and of a certain allotment of land on terms settled by mutual agreement, or, failing such terms, on conditions fixed by law.

II.—The right of the serf to purchase his homestead on terms fixed by mutual agreement, or, failing such terms, on conditions fixed by law, subject however to the lord's right of refusal to sell the homestead without a statute land-allotment.

III.—State assistance to the serf for the purchase of his homestead and a land-allotment (when the lord is willing to sell the latter).

IV.—The conversion of all service into a money-rent on terms fixed by law.

V.—Communal and Cantonal self-government.

§ 94. Let us first examine the provisions of the Act, as they directly affect the serf. In the first place, he nomi-

nally obtained the rights of a freeman — nominally, for there are several provisions which keep him tied to the land and restrain his power of free locomotion. The poll-tax, for example, was still maintained;[7] and the State could not suffer any contributor to its resources to abscond. In one respect, however, the gift of freedom was real. The lord's power of chastising his serfs at his pleasure was taken away, and this personal degradation inconsistent with freedom ceased to exist. Then the peasant's inalienable right to his homestead was recognized; and he was allowed the option of holding it as a perpetual tenant on payment of a small quit-rent, or redeeming it and making it his own. The log-huts, of which the villages consisted, had been constructed by the serfs themselves, generally with their own hands[8] and with timber, which they were allowed to take in any quantity from the forests. These huts were the only separate property of which the serfs had exclusive private possession, and they regarded them as their own. They had seldom, if ever, been assessed in respect of them with money-rent or with service, which were levied in respect of the arable land only. In recognizing the right of the peasantry to their homesteads, the Legislature followed a principle, which was adhered to as far as possible in the whole Act—the principle, that is, of respecting existing circumstances as far as was compatible with the general intention to be effectuated. The amount of quit-rent (obrok) assessed upon the homesteads varied in the different Zones[9] into which the country was divided

The Serf how directly affected by the provisions of the Emancipation Act.

Provisions as to the Peasants' Homesteads.

[7] During the six years next after the passing of the Emancipation Act, this tax was twice increased, the total increase being 50 per cent.

[8] In India the mat or clay-built houses of the raiyats are similarly constructed by themselves.

[9] There were four Statutes passed for the four following divisions of the country :—

I.—Great Russia, White Russia and New Russia; the Zone without Black Soil, including nine regions.

II.—Little Russia, the Zone of Black Soil, including eight regions.

III.—Kief, Volhynia and Podolia (South-western Provinces).

IV.—Wilna, Grodno, Kowno, and part of Witebsk (North-western Provs.)

for the purposes of the Act. In Zone I homesteads were classified into (1) those in purely agricultural districts; (2) those in districts where the peasantry are principally engaged in trade, manufactures, &c., or have extensive or valuable vegetable gardens; (3) those in localities having special advantages or being within 18⅔ miles of St. Petersburg or Moscow; and (4) those in districts where higher rents are payable on account of trade or manufactures conducted on a large scale. The lord placed the homesteads under the classes to which he considered that they fairly belonged; and this was confirmed or otherwise by certain local authorities. The rent of the homesteads varied from 1½ to 2½ or 3½ roubles. In Zones II and III a separate rent was also assessed. In Zone IV no separate rent was required; and if the peasant purchased his homestead only, the payment for his arable land was reduced by six per cent. When the peasant desired to redeem, the price of the homestead might be settled by mutual agreement. Failing this, the legal value of a homestead in Zone I was ascertained by the capitalization of the quit-rent or obrok at 16⅔ years' purchase. In other Zones the normal value of the homesteads was fixed at 102 roubles per djessatine, but this might be increased to as much as 240 roubles per djessatine by special local advantages, such as trade, manufactures and the like. The assistance of Government was not given, when the peasant purchased his homestead without any allotment of land, which, it will be borne in mind, could only happen when the lord consented.

Provisions of the Emancipation Act as to Allotments of Arable Land.

§ 95. Coming now to the allotments of arable land, the Emancipation Act dealt with this part of the subject by provisions substantially reducible to the following heads: I.—It determined the quantity of land to which each serf was entitled, subject to a maximum and minimum varying for each Zone. II.—It fixed a maximum payment per head for a maximum allotment of land; this payment to be reduced according to a determinate scale, when the allotments fell short of the maximum. III.—It made it imperative on the serfs to hold the land for nine years—*i.e.*, up to

1870—at the rental so fixed. IV.—It empowered the lord to compel the serf to purchase with State aid his homestead and the statute land-allotment.[1] V.—It empowered the serf to demand the sale to him of his homestead and the statute land-allotment, but the lord could avoid compliance with this demand by making an absolutely free grant to the serf of a quarter of the maximum allotment, including the homestead: and this grant operated as a settlement of all claims and a determination of all compulsory relations between the parties. This quarter of the maximum became known as the "Beggar's allotment." The Act fixed a maximum and minimum allotment per male soul for the two first Zones. The maximum varied for the different regions from 2¾ to 7 djessatines, and the minimum was one-third of the maximum. Where the peasant was already in possession of more than the maximum, the excess was taken from him, unless the proprietor was willing to cede it. Where he held less, the deficiency was to be made good. Exceptions to the general rule might be allowed in industrial localities where the peasants had not been in possession of much land; and in any case the lord was entitled to retain one-third of the whole culturable area of his estate. In the Steppe Zone there was an uniform allotment per male soul, and the lord was entitled to retain half the culturable area. For the Little Russian Provinces of Poltawa, Chernigof and Kharkof, there was a maximum and minimum, the latter being half the former; and the lord was entitled to retain one-third of the culturable area. In the Provinces of Kief, Volhynia and Podolia the communal lands, which had been declared inalienable in 1847-1848, were left as they were for the perpetual use and enjoyment of the 'temporarily attached' peasantry of each village, as those serfs were termed who had not redeemed their allotments; and a scale of payments was

The Beggar's Allotment.

The Lord entitled to retain a certain proportion of the Culturable Land of his Estate.

[1] The effect of this was that it was not the serf, but the lord, who had the option of determining whether the serf should hold under a perpetual tenancy or purchase the freehold with State aid.

fixed by way of rent. In the Provinces of Wilna, Grodno and Kowno and four districts of Witebsk, the peasantry were declared entitled to the perpetual usufruct of the fields and homesteads previously occupied by them. The allotment per male soul could not be diminished by more than one-sixth. The lord was, however, entitled to retain one-third of the culturable land. It will thus appear that in those provinces, in which the serfs had previously had the occupation and usufruct of the land, the allotments approached very nearly in size to their previous holdings; and where such occupation and usufruct had not become customary, the extent of the allotments was fixed by the Act. The allotments were composed of culturable land only. In the first Zone, only certain woods, in which the peasantry had been specially granted the right of cutting timber, were included. Certain streams used for watering cattle were also included, together with the right of way to them. Within the first Zone each male serf was allowed to claim, in addition to the actual site of his hut, 120 square fathoms (of 7 feet) for sowing hemp, and 200 square fathoms of common, if the limits of the homestead had not been previously defined. In the second Zone 1,200 square fathoms, and in the fourth Zone 1,600 square fathoms, were allowed in addition to the site of the hut. In the third Zone 1,800 square fathoms were allowed in addition to the hut, and 320 square fathoms of common. With the exceptions above stated, the lord was not bound to give the serfs timber for building; and they could claim the right of receiving fuel under certain conditions of payment, only in those localities in which they had previously enjoyed the right of cutting fuel.

The Lord had practically the power, but it was not always his interest, to compel the Serfs to purchase.

§ 96. It will have appeared from what has been said that, although nominally the peasant had the option of either leasing or purchasing his homestead and a land-allotment, the lord had practically the power of deciding whether he should purchase or not. In the most fertile districts it was the lord's interest to keep the land and prevent the peasant from obtaining his full allotment.

It was accordingly in these districts that nine-tenths of the cases occurred, in which the Beggar's allotment was given to the serfs. In the less fertile districts, on the other hand, it was the lord's interest to compel the serfs to purchase allotments with State aid—*first*, because, if he kept the land himself, the cultivation of poor land with paid labour was not likely to be remunerative; and *secondly*, because, if the serfs were not attached to the soil before 1870 by making them purchase and so become liable for the State advances, they would probably then move off to the richer soil of the Volga basin, and his estate would be depopulated. The Emancipation Act, it will be remembered, made it compulsory on the serfs to hold the land only for nine years—*i.e.*, up to 1870. After that period, if (1) the serf had not applied of his own will to purchase, or (2) the lord had not required him to purchase, the relations between the parties were at an end. The State aid or redemption advance, by which the serf was enabled to purchase his allotment, was determined by multiplying the rental by 16⅔; and of this capitalized rental four-fifths were advanced by Government, when the whole of the allotment specified in the deed of settlement was purchased; and three-fourths upon the purchase of any part less than the whole. The redemption advance, if it did not exceed 1,000 roubles, was paid in five per cent. State Bank Bills: and when it exceeded this amount, partly in Bank Bills and partly in Redemption Certificates, which latter were gradually exchanged for five per cent. Bank Bills. When so advancing the purchase-money, the Government deducted any debt due by the lord to the State Bank; and the interests of private creditors also were provided for. When the purchase was effected by mutual agreement, the peasants might undertake to make payments to the lord over and above the amount of the Government redemption advance; but Government did not guarantee these extra payments. When the purchase took place in consequence of the serfs having demanded to purchase their homesteads and

Rules under which State Aid was afforded by Government for the purchase of Allotments.

Conditions of Purchase.

the lord insisting on their purchasing the land-allotments also, the serfs were bound to make an additional payment of one-fourth of the redemption advance, when the whole of the allotments were purchased; or one-third in cases of purchase of any portion less than the whole. When the purchase by the serfs was solely in consequence of the lord's demand, he could not insist on any additional payment, unless the serfs desired to purchase a portion only of their allotments, in which case he was entitled to an additional payment equal to one-fifteenth of the redemption advance.

§ 97. The redemption advance is repayable by the peasant in 49 years, his payments during this period being equal to six per cent. on the total amount advanced. The peasants may elect to repay the advance in instalments of not less than ten roubles, and in this case a corresponding deduction is made from their yearly payments. When the land has been purchased by the Commune the re-partition of the annual payments among the peasants or families of the village is left to the Commune. The amounts annually payable are collected by the Starosta, or head of the Commune, or by the Tax-gatherer, where there is one, together with the Government taxes. Those peasants who have redeemed their allotments are free from all relations of dependence towards the lord, and are substantially proprietors of the soil with certain limitations, *viz.*:—(1) until 1870 the land could not be alienated at all; (2) since 1870, and until the repayment of the redemption advance, the land can be alienated only on condition that the money received be paid towards the extinction of the redemption debt; and it may not be mortgaged, nor leased so as to prevent Government levying a distress in case of default in making the payments. Land purchased by a Commune becomes the property of such Commune, which has the right of partitioning it amongst the members; but no such partition can be effected without a resolution, carried by at least two-thirds of such members. By a similar resolution the land may be broken up into family parcels and the community

Repayment by the Peasants of the Redemption Advance.

Position of Peasants, who have redeemed their Allotments.

of landholding dissolved. It has been already observed that, notwithstanding the Emancipation Act, the enfranchised serf has not much greater freedom of locomotion than before; and indeed there are many provisions of the Act itself which prevent him from being a free agent in this respect. His liability to the poll-tax still remains, and this tax is collected by the Commune, who therefore will not allow him to go away without a passport. If he have purchased his allotment, he is liable for the annual redemption payments; and this liability also ties him to the purchased soil. Then a peasant cannot leave his Commune and relinquish his allotment without the consent of the Communal Administration; and in order to obtain this, he must (1) give up his right to a share of the Communal land; (2) give up his share to the proprietor, if the Commune will not receive it; (3) satisfy his liability (if any) in respect of the annual recruitment; (4) make good all arrears of imperial, local and rural taxes due by his family, and pay all taxes up to the 1st January of the following year; (5) satisfy all private claims, and perform all contracts that have been exhibited to the Cantonal Administration; (6) be not under judgment or pursuit; (7) make provision for any members of his family remaining in the Commune and unable to work from youth, old age or other cause; (8) make good any arrears of rent due on his allotment; (9) present the resolution of another Commune admitting him as a member, or a certificate that he has purchased the freehold of land equal to at least two statute allotments and situated not more than ten miles from the Commune, to which he desires to attach himself. All these conditions, difficult of compliance in any particular case, debar the great majority of serfs from leaving their village and removing to another locality.

Peasants still attached to the Soil by numerous indirect provisions.

§ 98. The amount of the quit-rent, 'obrok,' as regulated by the Emancipation Act, varied in different localities. In Zone I it was 8, 9, 10 or 12 roubles per allotment for a male peasant. When the actual allotment was smaller than the statute allotment, provision was made for

Rules as to the amount of Quit-rent, and its Increase or Reduction.

a reduction. The quit-rent might be raised or reduced by the Provincial Courts under certain circumstances, but could not in any case be raised above the rate paid previously to the Emancipation. It might be raised by one rouble per male under any of the following circumstances, —(1) if the peasantry held valuable meadows; (2) if the village were not more than 5 versts (3½ miles) from a town having 20,000 inhabitants or from a wharf on a river; (3) if the village had itself a wharf on a river; (4) if the peasantry had fisheries or any peculiar advantages or conveniences, the rent might be raised by more than one rouble per male under any of the following circumstances:—(*a*) if the village were not more than 25 versts (18⅔ miles) distant from any of the Capitals, and were a place of summer resort for the inhabitants of such Capitals; (*b*) if the villagers pursued any manufacturing industry or were specially engaged in trade; (*c*) if a market or fair were held in the village. Similarly the quit-rent might be reduced on the demand of the peasants in any of the following cases:—(1) where the land was poor, as compared with land in the neighbourhood; (2) where the fields were inconveniently distant from the village; (3) where the peasants were deprived of fuel; (4) where the statute allotments had been reduced. In Zone II the quit-rent was regulated by a sliding scale, and varied from 1 rouble 40 kopecks, to 2 roubles 80 kopecks per djessatine, according to locality. It might be raised by 10 per cent. under any of the circumstances which allowed an increase of 1 rouble in Zone I: and it could be reduced by 10 per cent. on any of the grounds on which a reduction might be made in the same Zone. In Zone III the rent was fixed in money or in service on a certain scale per djessatine; and it might be raised or reduced by not more than 15 per cent. on grounds similar to those above stated. In these three Zones the rents were liable to re-assessment after twenty years. The periods, at which the rent was to be payable, might be fixed by agreement with the lord, who had, however, the right

to demand half a year's rent in advance. In the first Zone money-rents might by agreement be converted into payments in kind or in labour, but no such contract could be made for a longer term than three years.

§ 99. The service due by the peasants in lieu of rent was defined by the Emancipation Act to be forty days' service per annum of a man, and thirty days' service of a female, for a maximum allotment in Zones I and II, or a statute allotment in Zone III. The service for smaller allotments is regulated by a sliding scale. New contracts for holding land upon service cannot be made for any period longer than three years. 'Working days' are vernal or hibernal; three-fifths fall in summer and two-fifths in winter. A day on which the peasant supplies two horses is equal to one and a half working days, and the labour of three horses is equal to two working days. The working days are distributed equally over each week of the half-year. When the land is held by the Commune, the lord cannot demand more than one-third of the number of days' service due in any week; and where it is held by peasants individually, he cannot demand more than one labourer from a family that owes three days' service in the week, or more than two labourers from a family that owes four to six days' service in a week. The lord previously intimates to the Starosta the number of days' service that he will require during the week; and communicates overnight the place where the labour is to be performed, the nature of the labour, and the kind of agricultural implements required. The Starosta arranges accordingly. The age of a male labourer must be between eighteen and fifty-five, and that of a female labourer between seventeen and fifty. Twelve hours in summer and nine hours in winter, not inclusive of rest, are required to make a working day. When the labour has to be rendered at a distance of more than four miles, a deduction of time is allowed for distance. The peasants have the right of electing to pay money-rent instead of service; but they must give the lord a year's notice beforehand, and

Provisions for the Regulation of Service in lieu of Rent.

Commutation of Rent-service into Money-rent.

must owe no arrears of service. When four-fifths of the members of a Commune hold their lands at a money-rent, the lord may insist upon the remaining one-fifth paying a money-rent instead of service. Before a peasant can purchase his allotment, rent in service must be converted into money-rent. The peasantry have not, to any very great extent, availed themselves of their right to convert rent-service into money-rent. The law has taken away the power of personal chastisement, and the number of working days is not excessive. Money is scarce, while the peasant has labour to pay without having to borrow. It would thus appear that a considerable number of the peasantry, who continue to be perpetual usufructuaries, still pay their rent in service; and it is very common to find peasants purchasing with labour the fuel which, while serfs, they received gratuitously. Meadows and pasture lands, which were not included in the allotments, are also leased at a rent to be paid in labour. Both parties thus take advantage of the provision, which allows labour contracts for a period not exceeding three years—the peasants to pay in the manner which as yet best suits their convenience—the lords to obtain for the cultivation of their own lands that labour which they might otherwise find difficulty in procuring.

Communal and Cantonal Self-government—Constitution of the New Commune.

§ 100. One of the most ambitious objects of the Emancipation Act was the introduction of Communal and Cantonal Self-Government. In order to effectuate this object, the Commune, the ancient Mír, was rehabilitated and reconstituted on a new basis, recognized and defined by express legislative enactment. The Communal System was thus converted into an administrative and judicial institution. The New Commune was made to include peasants established on the land of the same proprietor; and might consist of an entire village, or of a detached portion of a hamlet, or of groups of habitations or small farms in close proximity to each other and enjoying allotments in common or possessing other general economical advantages. The law enacted that each Village Community, whether the

tenure of its lands was communal or individual, should be responsible by a reciprocal bond for each of its members in respect to the regular payment of Government, Provincial, and Communal taxes. A meeting of the Commune consists of the Starosta, Head or Mayor, who is to occupy the first place and maintain due order; the Village Officers, such as tax-gatherers, inspectors of grain stores reserved against famine, of schools and hospitals; and of all male heads of families. It is competent to (1) elect the Communal officers and representatives at Cantonal Meetings; (2) expel "vicious or pernicious" persons; (3) permit members to quit the Commune and admit new members; (4) appoint guardians and trustees; (5) sanction the division of families; (6) regulate all matters relating to the Communal land, its partition, the number of tiaglos, &c.; (7) dispose of any allotment falling vacant; (8) make representations to Government concerning the common interest, the care of the poor, education and the like; (9) levy taxes for communal expenditure; (10) assess the imperial, local, and communal taxes amongst the members of the Commune, also the contributions in respect of carts, quartering of troops, and such like; (11) control the accounts of the Communal officers and fix their remuneration; (12) settle matters relating to recruitment; (13) distribute the quit-rent in money, or the rent-service; (14) adopt measures for the recovery of taxes and other dues, and the prevention of arrears;[2] (15) lend corn from the communal revenue

Powers and Duties of the Commune.

[2] The following are the measures which may be adopted:—The Commune may (1) seize the income of the defaulter's immovable property; (2) place him out at service; (3) appoint trustees or guardians over him; (4) sell his immovable property; (5) sell his movables; or (6) take away the land attached to his homestead. If the lord is still unable to obtain his dues, an Arbitrator of the Peace may, at his request, forbid the issue of new passports; remove the village authorities elected by the Commune and appoint others in their stead; make the peasants work out their arrears; levy a distress on their movables with the assistance of the territorial police; or seize a portion not exceeding one-third of their lands and sell it by auction. If the arrears amount to the entire yearly rent and have been caused by some public calamity, the Government may assist the defaulters.

and otherwise assist its members; (16) adjust all matters, which, under the Emancipation Act, require the consent and ratification of the Commune. One-half, at least, of the members of a Commune must be present, in order to enable it to transact business. All questions are settled by a majority of votes with the exception of the following, which require the assent of, at least, two-thirds of the peasants present:—(*a*) The expulsion of vicious or pernicious persons, and placing them at the disposal of Government; (*b*) the re-partition of communal lands; (*c*) the conversion of communal into individual tenure; (*d*) the conversion of communal lands into perpetual freehold allotments; (*e*) the raising of money by voluntary contribution for communal purposes, and the employment of the communal funds. The Starosta has judicial powers to inflict a fine of one rouble, imprisonment for two days and labour on works of public utility.

Composition of the Canton—Cantonal Administration—The Cantonal Meeting.

§ 101. The Canton is composed of Communes situated within the same district, and must include a population of at least 300 males and not more than 2,000 souls. This institution had previously existed for about a quarter of a century on the demesne lands of the Crown, but had no previous existence upon the estates of the Nobles. No village may belong to a Canton, which is situated more than 8 miles from the seat of Cantonal Government. The Cantonal Meeting is composed of the Communal and Cantonal officers, and of peasants chosen as delegates, in the proportion of one for every ten householders. In matters relating to recruitment, however, all peasants liable to be drafted have a right to attend. In order to constitute a legal Cantonal Meeting, the Cantonal Elder and two-thirds of those entitled to vote must be present. All questions are settled by a majority of votes. An appeal from the decision of a Cantonal Meeting lies to the local Arbitrator of the Peace, who transmits the appeal to the Sessions of Arbitration. Besides the *Cantonal Meeting*, the Cantonal Administration consists of the Cantonal Starshina or Elder, the Cantonal Council, and the Cantonal Tribunal. The

Cantonal Elder is responsible for the preservation of order and tranquillity in the Canton, and has police power and functions similar to those of a French Commissaire de Police. His other duties are to preside at Cantonal Meetings, and to exercise throughout the Canton powers similar to those of the Starosta. The *Cantonal Council* is composed of the heads of the Communes included in the Canton and of the Tax-gatherers. It expends the Cantonal funds; sells the personal property of peasants at the pursuit of the Crown, the lord or a private individual; keeps the minutes of business transacted at the Cantonal Meetings; and maintains a register of contracts and other legal instruments involving any sum not exceeding 300 roubles. The *Cantonal Tribunal* is composed of four to twelve judges, who are annually elected. Three judges at least must sit together. This Tribunal has jurisdiction in respect of petty offences and in civil causes between peasants of the same Canton. Its decision is final in matters involving a sum not exceeding 100 roubles. Its power of punishment extends to (*a*) six days' labour on works of public utility, (*b*) fine not exceeding 3 roubles, (*c*) imprisonment for not more than 7 days, (*d*) corporal punishment up to 20 stripes of a rod. The peasantry may also adjust disputes of a civil nature by arbitration, registering the award of the Arbitrators in the Records of the Cantonal Tribunal. To describe the complete system of self-government in Russia is not within the scope of the present work: but it may here be briefly stated that above the Cantonal Administration are the District Assembly and the District Court. The former consists of representatives elected (1) by the proprietors of the district, (2) by town communities, and (3) by village communities. These representatives do not enjoy any pay or official rank. The District Court consists of a President (appointed by the Assembly, and confirmed by the Governor of the Province) and two members, elected by the District Assembly for three years. The number may be increased to six. Above the District Assembly is the Provincial Assembly, composed of repre-

The Cantonal Elder.

The Cantonal Council.

The Cantonal Tribunal.

The District Assembly.

The District Court.

The Provincial Assembly.

The Provincial Court.

sentatives elected by the District Assemblies for three years. The Provincial Court consists of a President (elected by the Assembly, and confirmed by the Minister of the Interior) and six members chosen by the Provincial Assembly for three years. The District Assembly sits for ten days once a year not later than September. The Provincial Assembly sits once a year for twenty days not later than December. These Sessions may be prolonged, if necessary. The self-government conferred upon the Russian people is strictly limited to local matters, the management of local affairs and institutions, and the submission of information to Government. The Minister of the Interior and the Governors of Provinces have full power to arrest the execution of any resolution, which may to them appear contrary to law or to the general interest of the Empire.

Any opinion as to the general effect of the Emancipation Act would as yet be premature.

§ 102. Sufficient time has not yet elapsed since the passing of the Emancipation Act to enable a safe opinion to be formed from final results as to the effect of this great measure upon the Russian people. Periods of great change and radical reform are generally periods of disturbed feelings and overwrought ideas; and until all commotion and agitation have subsided, and the new machinery has been some time at work, those regular results cannot be expected, from an examination of which a just judgment can be formed as to the general effect of a new measure. But although it is too soon to form an opinion as to this general effect, some observation may well be made upon several matters, which assumed prominence upon putting the measure into operation, and upon certain consequences which immediately followed thereupon. Since the Act came into force, the culturable lands of Russia may be said to be held—one-third by the State, one-fifth by the landed proprietors numbering some 100,000, one-fifth by the peasantry numbering some 48 millions, of both sexes. The remaining four-fifteenths are held in part by Colonists and Cossacks, and others; are partly attached to mines, or towns; or are otherwise occupied in small portions. The landed proprietors hold an average of 1,925

acres each. The male ex-serfs on private estates hold an average of ten acres each. The ex-serfs of the Appanages have an average of 15½ acres, and the Crown peasants an average of 20 acres. The Colonists, who settled in Russia under an Ukase of 1793, have an average allotment of 17 acres; and the Cossacks, an average of 127 acres. Where the Communal System exists and the land has been redeemed, the peasants can scarcely be called proprietors, the Commune being the virtual proprietor. Those peasants who have redeemed, where the Commune does not exist, are proprietors, subject to the payment of the annual sum which in 49 years will discharge the redemption advance. Speaking generally, there can be no doubt that the position of the peasantry has been immensely improved by the Emancipation Act; and that an opportunity has been afforded them of making a new departure in material and moral progress. The peasant has at once received certain advantages, which are beyond dispute. He has become a freeman. He has been delivered from the degrading liability to undergo corporal punishment at the will of his lord. He has obtained the right to convert all service into a money-rent. He may acquire the ownership of his homestead. He has the right of enjoying the perpetual usufruct of a certain quantity of land, which to many Irish tenants or Indian raiyats would appear a considerable holding, and at a rent, which would not appear to them exorbitant; and of this land he may ultimately become the proprietor upon terms not very onerous, if compared with those of similar transactions in other countries. Finally, he has received a large measure of self-government, which ought to develop his self-reliance and independence of character.

Land how occupied since the Emancipation Act.

Undisputed Advantages conferred upon the Serf by the Act.

§ 103. Against these undoubted advantages may be weighed the following circumstances. His liberty is limited by circumstances and provisions, which attach him to the soil. The taxes which he is required to pay, and from the payment of which he cannot escape, constitute a heavy burden; and when to these is added the annual payment on account

Counterbalancing Disadvantages.

of the redemption advance, the total makes a sum which, in some parts of the country, cannot be discharged without difficulty, especially in the Northern Agricultural Zone, where the land-dues exceed the reasonable rent of the land. In the Southern Agricultural Zone, the land is generally worth more than the dues paid for it, and the peasant can generally escape the payment of the dues by giving up the land, if he desire to do so. The excess of the land-dues over a reasonable rent for the land is really a form of taxation. The Emancipation Act has, as a rule, given the pastures to the lords and taken them from the peasants, who, in consequence, find it more difficult than before to keep and breed cattle. The enfranchised peasants have lost many privileges and perquisites, which they enjoyed as serfs. They received firewood, for example, and occasionally logs for the repair of their huts. If a cow or a horse died or was stolen, their master made up the loss; and in times of distress, he helped them. It may be said that the change in these respects will tend to make the peasant more self-reliant, more industrious, more provident. Then the quantity of land which the peasant has obtained under the Act is in many parts of the country, where the soil is poor, insufficient to enable him to pay his taxes and dues, and maintain his family; and it is said that, as population increases, this insufficiency will become greater and more serious. The peasants seem to have already discovered the remedy for this by taking further land on lease from the proprietors. This is generally done by written agreement, usually for one year, but occasionally for three six, nine, or twelve years. The Metayer System, too, has been introduced and has become very common. And here it may be observed that the fact of the peasantry being attached to the soil gives them a certain advantage, when they seek to rent land in their neighbourhood, inasmuch as there is no competition from persons who might be attracted from a distance, if all were free to move about the country at their own pleasure. Lastly, the enfranchised serf has, in too many instances, converted his liberty into licence,

becoming more idle, indolent and drunken, since the fear of personal chastisement has been removed; this was to be expected in the case of those who were idle, indolent, and drunken before. Time, education, and the necessity of self-reliance under the new condition of things must be left to apply what remedy is possible to these defects. The Emancipation Act has brought about one result scarcely foreseen by the advocates of the Mír. The old joint peasant families are being rapidly broken up, and the majority of male peasants are now, or will ere long be, the heads of separate households. Fathers and sons have very generally dissolved a partnership, in which the father too frequently abused his authority to grossly improper purposes. Brothers have divided the common stock of cattle and implements, building separate huts for their families, and tilling separately their own shares of the land. "Now each is for himself" is the general remark, and even the women insist on spending their own earnings on themselves. This change will, no doubt, have a beneficial effect upon the domestic life of the peasant and will produce good moral results; but it has operated prejudicially to his material welfare in breaking up that association of co-labourers, which possessed certain substantial advantages. Some members of the joint family rendered the labour-service due to the lord, while others worked at the land held by the family, and one or perhaps two, leaving wife and children, had gone to some distant town or place in search of larger gains to fill the family purse. Now, this division of labour is not possible. When the single male head of the family works for the lord, there is no one but his wife to work at his own fields. His home duties effectually prevent him from going abroad to seek remunerative labour. Then a period of distress was more easily and safely tided over by the combined resources of a joint family than it can be by the slender means of a single couple. In order to meet and counteract these disadvantages of their new condition, considerable energy is required, and it does not seem to be wanting. Besides the

Breaking up of the Joint Family System.

abandonment of joint family life, there are many other indications that the peasantry reject the communistic principle. In most districts, for example, there has been no re-partition of the land since the Emancipation; and the individual rights, which are thus maturing, will be found difficult of disturbance hereafter.[3]

Immediate effects of the Emancipation Act upon the Lords.

§ 104. The lords were more immediately and seriously affected than the serfs by the first operation of the Emancipation Act. They lost the political and judicial power which they were previously entitled to exercise over the peasantry. Many of them had heavily encumbered their properties by borrowing money from the State Bank upon the security of their lands and serfs. As Government repaid itself these loans with interest from the serfs' redemption money, the Act produced for them results similar to those of the Incumbered Estates Act in Ireland. They were, indeed, relieved of their debts and liabilities; but their position, thus cleared, was seriously altered and reduced. Those who were not involved to any great extent, or who were wholly free from debt, were compelled, nevertheless, to set their house in order and prepare for a wholly new system of management. Deprived of the domestic service and agricultural labour rendered by the serfs, they had now

[3] The Russian peasants usually live in villages except in the South, where detached homesteads are common. Their dwellings are mere log-huts, usually without chimneys, containing one room, which is the common dormitory, and swarming with vermin. There is no furniture beyond a table and bench; and no bedding save a few pillows and the sheep skins. The standard of comfort, as indicated by their dwellings, dress and food, is low. While the joint family system existed, the property of the family and its management passed on the death of the Head to his successor. The members of the family were considered to have no personal rights of property. But since the new order of things has been introduced, a division of the property, both movable and immovable, takes place; and the males share equally. The sale, exchange, and division of immovable property are effected by deed registered in the local Civil Courts. The charges are (1) stamp-duty from 20 kopecks to 1,200 roubles in proportion to the value of the property, (2) a Government duty of four per cent., (3) a fee of three roubles for engrossing the deed, and a similar fee for the Court. After registering the deed, the Court returns it to the seller, who delivers it to the purchaser, who presents it to another Court, who puts him in possession.

to become employers of servants and workmen, and disbursers of wages. They had to provide for letting or cultivating at their own risk the lands which remained to them after the peasants had received their allotments. A new relation, that of landlord and tenant, had to be comprehended for practical purposes; and the merits of capitalist farming had to be studied. A certain income was derived from the quit-rents paid by the peasants who remained perpetual usufructuaries; and a certain amount of capital was placed at their disposal from the Bank Bills or Redemption Certificates made over to them in respect of those peasants who had redeemed their homesteads and allotments. While the management and disposal of these resources required consideration and business-like attention and application, they were relieved of responsibility for the imperial taxes payable by the peasantry, for the care of the poor, and for defending the peasants' actions at law. The exigencies of the new position closed, for many, a career of extravagance in the capitals of Europe; and made for all their future position dependent upon the care and circumspection and ability exercised in passing from the old to the new state of things.

§ 105. But the conditions of change were not alike for all. In the Southern Agricultural or Black Earth Zone, the soil was rich, more especially in the Northern portion, and with ordinary cultivation supplied more food than was necessary for the inhabitants. The agricultural population was sufficient for the cultivation. The quantity of land in the possession of the serfs might be regarded as a fair remuneration for the labour, which they gave the lord before the Emancipation; and thus the value of the serf labour which he lost was about equal to the cost of free labour. The quit-rent which the lord received under the Act was in some districts not the full value of the land, but the difference was not very great, while in other districts it was a fair value, as things then were. In this Zone, therefore, the lords really lost nothing upon the land made over to the peasants, while from that which they retained

Conditions of Change not equal in their operation in all parts of the Country.

they were able to derive an increased revenue by letting it for money-rents or on the *metayer* principle to the peasants, who under the new state of things were ready to take it upon terms very advantageous to the landlord.[1] In some places farms were started upon the English model, and the proprietors introduced agricultural machinery; and when these reforms were carried out with judgment and under proper supervision, the results were satisfactory. In the Northern Agricultural Zone things were very different. A poor soil afforded a bad return to the labour expended upon it. It did not pay the lords to replace with free paid labour the serf labour which they lost by the Emancipation Act. All attempts at farming resulted in loss. The quit-rent which lords were entitled to receive under the Act was more than the value of the land, and was collected with the greatest difficulty, was too often not collected in full. The peasants had little labour to spare from the cultivation of soil, that required much work to make it yield a fair return; and when willing to lease the lord's land, they could not give much rent for poor soil, would indeed seek to give less than it was worth, so as to compensate themselves for having to pay more upon their allotments. In fact the effect of the Emancipation Act was to introduce the law of Political Economy, under which inferior soils will not be cultivated until those that are better have come to yield a rent, while the adscription of the peasants to the soil made it impossible for this law to have free operation. The general conclusion appears to be that, while the lords in the Southern Agricultural Zone and other places possessing similar advantages of soil, climate and population, have not yet been prejudicially affected by the Emancipation Act, and some of them have had their position considerably improved, those in the Northern and some of the Central provinces

[1] "The Russian peasant," says Mr. Mackenzie Wallace, speaking with reference to the Southern Zone, "likes the risk and chances of farming on his own account, and is ready to pay a high rent for land rather than work as a labourer."—II, p. 329.

and other places where the land is equally unfertile, have in many instances been irretrievably ruined, and have been obliged to desert their estates and seek a living in the public service or by mercantile pursuits.

§ 106. As regards the State and the community at large, one immediate effect of the Act was to relieve the imperial finances, which were in a state of great exhaustion after the Crimean War. The Government, having paid the lords in paper, receives and will receive until the end of the 49 years the whole of the redemption payments made annually by the peasants. Where the Mír exists, no proletariate is possible. In other countries a proletariate has been formed by the ex-propriation of the peasantry; and it has usually been supposed, that its formation could be prevented by any system which would secure the land to the peasantry and prevent them from being uprooted from the soil. This the Russian system does very effectually. For the present, therefore, and until population exceeds the limits of the land, the creation of a proletariate may be taken to have been impeded, if not prevented—that is, if Russia continues to be a purely agricultural country. But she aspires to be industrial and commercial; and if this aspiration is to be satisfied, a large portion of her population must be detached from the land and set free to follow the pursuits of commerce and manufactures. The Mír, which is a purely agricultural institution, may prevent the creation of an agricultural proletariate; but, when artisans and factory hands have been multiplied, it cannot hinder the gradual formation of a town proletariate.

Effect of the Emancipation Act as regards the State and the Community.

CHAPTER XI.

The Tenure of Land, and the Relation of Landlord and Tenant in Asiatic Turkey (Anatolia, Koordistan, Irak, and Syria), European Turkey (Constantinople, Adrianople, Vilayet of the Danube, Monastir, Salonica, Epirus, and Roumania), and Egypt.

§ 107. The title to land in Asiatic Turkey—comprising Anatolia, Koordistan, Irak, and Syria—was originally based on conquest. All conquered land, according to Ottoman law, belonged to the Sultan, who held it as a trust from God, which he was bound to administer in accordance with natural justice, recognizing all rights established by law or custom. Conquered land was 'Ushriyah' or 'Kharjiyah,'[5] according as it belonged at the time of conquest to Mahomedan or Christian proprietors. Soon after the Ottoman conquest, the land is found to have been classified under five heads, *viz.*:—I, Meeré (Mirié or Miriyé); II, Mulk (Memlouké); III, Wakf (Mevkoufé); IV, Metrookah (Metrouké); V, Mubah (Mevat).—I, '*Meeré*,' State or Crown property, included all land retained by Government, and the profits of which went direct into the Imperial Treasury. II, '*Mulk*,' personal or freehold property, was obtained (*a*) by imperial grant, (*b*) by purchase from Government, or (*c*) by purchase from individuals who had obtained it in either of the two first-mentioned ways. After conquest a portion of the lands was appropriated by the Government, a portion was dedicated to the purposes of religion, and a portion was divided amongst the con-

Ottoman Title to Land by Conquest.

Classification of Land soon after Conquest.

I, Meeré or Crown Property.

II, Mulk or Individual Property.

[5] 'Ushriyah,' paying 'ushr' or tithe, which was paid by true believers only. 'Kharjiyah,' paying khiraj or tribute, which was paid by infidels.

querors according to their rank and military services. The rest was left in the possession of the former owners, subject to tax or tribute, or came under IV or V. The portion divided amongst the conquerors was termed 'Sipahílik'; and the grants or fiefs which they received were some for life, some hereditary; some unburdened with payments or services, and some burdened with military service, with money payments, with tithes or other charges. These fiefs could be conferred by the Sultan alone in person, and were of three kinds according to the quantity of land granted:—(1) 'Timar,' not exceeding 500 acres, (2) 'Za'amet,' between 500 and 3,000 acres, and (3) 'Sandjak' or 'Beylik,' more than 3,000 and occasionally as much as 20,000 acres or more.[6] These fiefs were indivisible and, when hereditary, descended to the eldest male. According to the usual tendency, they all became hereditary in course of time. During the reign of Sultan Suleyman (1520—1526) the total number of Timars was 50,160; of Za'amets 3,192; and of Sandjaks or Beyliks, some 500. Land purchased or obtained from Government otherwise than by grant as a fief could be sold or transferred at the will of the owner, and was subject to the ordinary law of inheritance, by which the children or other heirs took equally without preference of sex. III, 'Wakf' or land granted

Fiefs or Grants of Conquered Land to the Conquerors.

[6] The following account of these fiefs is given by Lieutenant-Colonel Baker in his *Turkey in Europe*:—"As the conquering army entered the country, it had to establish order, and this was done on the feudal system, by creating what were called Timars, Za'amets, and Beyliks—military grants of land, carrying with them the obligation of providing a military force for the service of the State in case of need. A Timar was granted to a distinguished soldier, and contained from three to five hundred acres of land, and the owner or Spahi (Cavalier) was bound to supply a mounted cavalry soldier for every 3,000 aspres of its revenue. A Za'amet comprised upwards of 500 acres, and Beyliks were still larger grants. These fiefs were hereditary in the male line. A certain number of these grants was grouped into a district, and over the district was placed an officer with the title of Sandjak Bey—Sandjak meaning a standard or flag—which generally carried a command of 5,000 horse. Each Sandjak Bey was given a horse's tail as a distinctive mark of command. Here, then, was a feudal tenure, and a rough and ready form of Government, applicable at a moment's notice, and backed by sufficient force to maintain order."—Page 157.

III. Wakf or Endowed Property.

by the State for the maintenance of mosques, schools, hospitals, and the like. Such grants could be modified and revoked by the State at pleasure, whereas endowments by private individuals were irrevocable and inalienable.

IV, Metroo-kah or Conceded Land.

IV, 'Metrookah' or conceded land included all land, whether pasture or forest, conceded by Government in accordance with immemorial usage to the common use of one or more villages in the vicinity. Such land could not be bought or sold, enclosed or cultivated, or become the subject of contract, public or private, without the unanimous consent of the village or villages, for the use of which it had been assigned. No personal occupation, however long, could create any prescriptive right adverse to the communal title. This class of lands is still an extensive one in Asiatic Turkey. Originally, they were held tax-free, but of late years an attempt, as yet not very successful, has been made to subject them to taxation.

V, Mubah or Open Land.

V, 'Mubah' or open land includes all land, whether forest, pasture, mountain or swamp, to which no proprietary claim has yet been made, either by Government, by a Commune, or by a private individual, and which is consequently open to the first occupant, free of all conditions. This covers a very considerable area of Eastern Turkey.

Aboo Haneefah's opinion opposed to fixed Money-rents.

§ 108. Aboo Haneefah, the great expounder and author of Mahomedan law, was of opinion that 'ijarat,' or the exchange of a definite value against that which is indefinite at the time of the agreement, could not legally be applied to contracts concerning land and produce, whereas in respect of such contracts 'Mezaráat' or 'Shirket,' *i.e.*, 'partnership of crops,' or 'association' was lawful. This principle, laid down by an authority officially recognized by the Ottoman Government, influenced in a remarkable degree the relations between landowners and cultivators in Asiatic Turkey, and operated to prevent the adoption and existence of money-rents. Those relations came, in consequence, to be governed by different arrangements, which may be reduced to three heads,—*viz.*: (1) 'Muraba'lik' or produce-partnership, (2) 'Tesarref' or use, and

Relations between Landowners and Cultivators how regulated in consequence.

(3) 'Resm' or duty. The first of these was most general. The engagement between the landowner and the *Muraba* was for a single year only. The landlord usually supplied cattle, implements, and seed. The produce was divided into two equal shares. From the *Muraba's* share, the landlord was entitled to deduct the equivalent of what he had thus advanced; and in the same way the *Muraba*, if he supplied any of these things, was entitled to deduct their equivalent from the landlord's share. Tithes, Government dues, and losses were borne equally by the two parties. For the purpose of buildings or improvements the landlord supplied materials, tools, and, in the case of non-agricultural work, workmen. The *Muraba* gave his labour and superintendence. Neither party, under these circumstances, could deduct anything from the other's share of the produce. But if the landlord or the *Muraba* contributed anything of his own, beyond what has just been stated, he was entitled to be reimbursed. As soon as the produce was divided, the relation terminated of itself; and it was wholly at the option of the parties to renew it or not, as they pleased. The *Muraba* could thus never acquire any right, personal or hereditary, in the land or appurtenances beyond his half share of the produce. If a landlord desired to evict a *Muraba* during the year, he was bound to make over to him the equivalent of his probable share of the produce. '*Tesarref*,' or use, was of two kinds. The first kind consisted of a lease for life or an hereditary lease at a fixed *rate* of rent, which could not be raised without Government sanction. Buildings and improvements were made at the tenant's cost and risk. The tenant's interest might be divided. In default of payment of the rent, he might be destrained upon, and his interest might be sold; but he could not be evicted. This form was originally most frequent on *Meeri* or Government land; and was also to be found occasionally upon *Wakf* or endowed property. The second kind of Tesarref consisted of a lease for a term, usually five years, though sometimes less. During the term the lease could not be

Muraba'lik or Produce-partnership.

'Tesarref' or Use.

revoked; and, upon the expiry of the term, its renewal depended upon the landlord's pleasure, who could then increase the rate of rent. Buildings and improvements were made by the tenant, who might claim compensation after a fair allowance for the benefit which he had received while in possession. This kind of Tesarref was most usual on *Wakf* or endowed property. *Resm* or duty was universal in the Beyliks, and frequent in the Za'amets. It consisted of the dues or services rendered by the peasantry for the use of the land; and these were, variously, military service, tithes in kind, a share of the produce sometimes as much as half but never more, fees on certain periodical occasions, but apparently never a fixed money-rent. Although the land was considered to belong to the lord, the peasant's house and garden were regarded as his private property, and they passed to his heirs. The lord could not expel the peasant, but the peasant was free to remove to another estate, if he wished. The proprietors of the large fiefs had personal retainers in considerable numbers, who were commonly taken from the peasantry, and whom they remunerated with food, clothes, and lodging.

Resm or Duty.

§ 109. The following is said to have been the state of things in Asiatic Turkey at the close of the last, and during the first quarter of the present century.[7] About two-fifths of the geographical area was 'Mubah,' open or unreclaimed. About three-fifths were reclaimed, and of this a little less than one-half was 'Metrookah,' conceded and held in common. Of the cultivated land about one-twentieth was Meeré or State property, which was farmed by Government in large areas to wealthy Greeks or Armenians, who sublet to cultivating tenants on the 'Tesarref' system, and occasionally, though less usually, in Muraba'lik. About one-fourth of the cultivated area was Wakf, administered by Mahomedan trustees, and let to tenants in a similar manner. About one-half of the same area was Sipahílik, or held in fiefs, all of which had

Occupation of the Land at the beginning of the present century in Anatolia, Koordistan, Irak, and Syria.

[7] The above is the account given by Mr. W. Gifford Palgrave, in a very excellent paper in the second volume of the *Blue Book*.

now become hereditary. The proprietors of the Beyliks had now become titled lords and were called, in Anatolia and Koordistan, 'Dere-Begs' or lords of the valley, in Syria and Irak,[8] 'Amírs' or Governors. The tenants on these fiefs all paid Resm or vassal service in various forms. The owners of the Za'amets and Timars were in the position of private landed proprietors, and their tenants held generally on the Muraba'lik system, rarely upon Tesarref or Resm. The remainder of the cultivated area, *i.e.* one-fifth, was Mulk or private property, cultivated by the owners, or let in Muraba'lik. But Muraba'lik, which had formerly been an annual arrangement only, had now become by usage a life-tenancy. It would appear that under this state of things, both lords and peasants, proprietors and tenants enjoyed considerable prosperity, and that the relations between them were amicable. Population increased, agriculture flourished, considerable land improvements (the traces of which still remain) were made in many parts of the country; and the area under tillage was increased. But during the last half century all this has been changed for the worse, and for this retrogression many causes have been assigned.

Prosperous Condition of the People.

§ 110. The first and main cause is said to have been the resumption of the Fiefs, during the reigns of Sultan Mahmood II. (1808—1839) and his successor Sultan 'Abd-el-Mejeed; and the consequent dismemberment of the large properties. All Beyliks, Za'amets, and Timars, together with all semi-feudal rights, privileges, dues, and services, were abolished. Those proprietors who offered no resistance, were allowed to remain in possession for their lives, while those (the great majority) who resisted were banished or put to death, and their lands confiscated and sold in parcels to the first bidders. Thus large estates, entails, nobility and gentry were swept away by one radical measure; and the operation of a law of inheritance, which divides property equally between all the heirs, has

Causes of Retrogression – Abolition of the Fiefs.

[8] These were Arab provinces, while Anatolia and Koordistan were Turkish and Turkish-speaking.

since prevented the re-creation of large properties. A second cause of declension is the excessive taxation on land and its produce, rural taxation[9] in Eastern Turkey amounting to 26 per cent. of the proceeds of the land. A third cause is official spoliation practised in a variety of forms under a corrupt bureaucracy. Forced labour is constantly required from the peasantry. When rendered, it interferes with agricultural operations; and occasionally it is demanded as a pretext for exaction. The immediate result of the abolition of Fiefs was the introduction of Muraba'lik or produce-partnership upon the lands formerly included in them. Under the pre-existing state of things, the peasants cultivated the lands upon a semi-feudal system, rendering their labour and a not very accurately defined share of the produce in return for the use of the land in which they had a kind of permissive occupancy-right, seldom interfered with. The abolition of the Fiefs did not convert the cultivators into proprietors; and, unlike the course pursued in Germany and Russia, the abolition of serf services was not accompanied by any measure, which at the same time placed a certain amount of capital at the disposal of the former lords for the payment of hired labour, and encouraged the peasantry to an effort of industry in order that they might become proprietors. The old paternal lords were swept away, to be replaced by speculative purchasers, and the position of the peasantry was in no way improved or strengthened. Some

Excessive Taxation.

Official Spoliation.

Result of the Abolition of the Fiefs on the Fief Lands.

[9] The Revd. E. I. Davis, in his *Life in Asiatic Turkey*, published in 1879, gives the following list of taxes:—(1) the Dîme or tithe now levied at 12½ per cent.; (2) the 'Vergui' or property-tax, arbitrary, usually arranged between the Government officials and the leading members of the village council; (3) Sheep-tax of 2½ piastres or 6*d.* for every sheep or goat; (4) the 'Timût-taa,' an income-tax of three per cent. on annual profits, payable by the poorest, and assessed by the town council; (5) 'Imlak,' a property-tax on houses; (6) a Tobacco Duty; and (7) the 'Bedeliych' for exemption from military service, established after the Crimean War, payable only by Christians, and being in amount from 5*s.* to 10*s.* per annum—pp. 482-3. A forfeit of ten per cent. *ad valorem* is also exacted from any proprietor who allows his land to lie fallow more than three years.

few of those who purchased portions of the Fief lands had capital, which they used to employ hired labour. But the great majority of the new purchasers, and the owners of Fiefs, who were left in possession for their lives without labour to cultivate their lands, had recourse to the Muraba'lik system, which was known and therefore of easy recourse, while capitalist farming, even if there were capital, was unknown and untried. The result was the very general adoption of Muraba'lik tenancy. Wakf property did not escape the general breaking up of the old landmarks; and large portions of it were gradually alienated and subdivided, and subjected to the same system of tenancy. The general consequence is that at the present time three-fourths of the cultivated area is split up into an almost infinite number of small farms, worked either by the pauperized proprietors themselves, or by associated peasants, whose number is treble that of the proprietors.[1] The size of the small properties varies from five to fifty acres. The quantity of land held by each *Muraba* varies from two to twenty acres. Six acres may be taken as the average. Those who hold on Tesarref generally have a larger quantity. Any tenant, whether a *Muraba* or holding on Tesarref, may associate with himself any one whom he wishes, either as a partner or as a subtenant, but he continues to bear the whole responsibility and is alone recog-

Present unsatisfactory Condition of the Agricultural Population.

[1] "The backbone of the old system," writes Mr. Palgrave—"I mean the large entail estate proprietors, men able to meet a demand, to support a failure, to lift their lesser co-landlords over a difficulty—being gone, the entire mass is fast collapsing into a chaos of feeble landowning or produce-sharing beggars, too slender, the most, to bear the yearly burden of expenditure and taxation, and utterly crushed by a single bad harvest. No one has strength to carry out, or even to undertake, any real improvements on his wretched little plot of ground; no one feels that ground firm enough under his feet to attempt any superstructure of capital on it; no one cares to better what, if bettered, is only so, for the increase of Government dues, and the ultimate ruin of legal and hereditary partition." He condemns the system of Muraba'lik as "injurious, encouraging supine negligence in the proprietor, and short-sighted slovenliness in the tenant whose whole interest in the land he tills terminates with the year, while the proprietor has but a half interest in it at any time."

nized by the landlord, who seldom interferes in any arrangement which he makes.

§ 111. The Province of Bigha in Asia Minor contains a population of 92,200. Nine-tenths of the land is held by small proprietors, who themselves with the assistance of their families and the occasional help of hired labourers cultivate their fields. The remaining one-ninth belongs to large proprietors, who carry on the work of cultivation by produce-partnership, such as that which has been described. There is also a practice under which small plots of land are let for two years. Small proprietors generally hold as much land as can be worked by one pair of oxen, that is, twenty acres where the soil is heavy, and twenty-five to thirty, where it is light or medium. About the same quantity of land is cultivated by the produce-partner, or tenant-partner, as he is variously called. The small plots of land on the two years' system are generally taken by small proprietors, who have not sufficient land for the work of a pair of oxen. A crop of wheat is grown the first year and a crop of barley the second year, after which the land is so exhausted that it has to lie fallow for two years. In this province population is sparse, and land is therefore plentiful. The owner of a pair of oxen accordingly finds it more advantageous to change about, obtaining crops by superficial cultivation from land, which has become fertile by lying fallow, than to remain in one place and make the soil constantly productive by manuring and by skilful and industrious agriculture. The rent of these small plots is usually a quantity of grain equal to the seed sown. The tenant-partners receive half of the produce, which remains after deducting the Government dime or 12½ per cent., and returning the seed advanced by the proprietor. In some places, however, this share is reduced to one-third. The proprietor generally supplies the oxen, so that the tenant gives merely his own labour. Some of the large proprietors let their lands in large farms, for terms of three to seven years, to persons who sublet the arable land to the cultivators on the tenant-partner system. Where there is pasture land it is com-

Occupation of Land in the Province of Bigha.

monly let by the year to the nomadic shepherds of Roumelia and Bulgaria. In all parts of Asiatic Turkey the small proprietors and the cultivating tenants belong to the same social class. They usually live in villages, adjacent to the lands which they cultivate. Their dwellings are rude and unfurnished ; their food is coarse ; their clothing simple. They have no luxuries ; and those of them are reckoned well off, who have the necessities of life. Altogether, as regards their standard of comfort and their mental and physical condition, they cannot have a high place assigned to them in the list of civilized nations.

§ 112. In the Province of Constantinople the greater portion of the land is held by small proprietors, who cultivate their own fields and live in villages adjacent thereto. They commonly hold as much land as can be cultivated by one or two pairs of oxen, the average being from 20 to 30 acres. These small properties are much intersected. The few persons who have large properties usually reside in Constantinople, entrusting the cultivation of their lands to resident agents, or letting them to tenants. Tenancy is usually created by a written agreement, which is registered. The quantity of land, included in a single lease, is as much as one, or two, or three pairs of oxen can cultivate. In the great majority of cases the tenant works one pair only, and takes as much land as their labour will enable him to till. The term of the lease is one, three, or seven years. The rent is a fixed amount in money, which is settled by agreement between the parties, regard being had to the nature of the soil, the extent of land, the quantity and quality of the stock, and the duration of the lease. When the parties have settled the term and the amount of rent, and an inventory has been made of the live stock, implements and seed on the land, a convention is drawn up and signed by both parties, which settles the mode of payment and other matters. Then the proprietor or his agent draws up a statement of the conditions agreed upon, which is exhibited to the proper authorities, whereupon a deed of lease is delivered

Province of Constantinople—Land held chiefly by Small Proprietors.

Conditions of Tenancy, where it exists.

to the tenant. The rent is payable yearly, half-yearly, and quarterly. The landlord's claim for rent has priority over all other creditors, except the Government. The tenant has no right to sell his interest without the landlord's consent. During the term of the lease his rent cannot be raised, nor can he be evicted unless for non-payment of rent, or breach of covenant, neglect to take proper care of the stock, or pursuing a mode of cultivation injurious to the land. Upon the expiry of the lease, the tenant has no right by law or custom to continue his occupation; and the landlord may raise the rent, if he can find any one willing to pay him an increase. Buildings and improvements are usually made by the landlord. If the tenant make any improvements during his tenancy, the landlord, upon resuming possession, has a legal right to appropriate them, and the tenant cannot enforce any claim to compensation. The relations between the landlords and their tenants are friendly. As regards the mode of cultivation which is exceedingly primitive, the standard of living, independence and general circumstances and character, the tenant class may be assimilated to the small proprietors, although it is generally considered a degree inferior. Both petty proprietors and tenants appear to enjoy a larger share of comfort than the same class in Asiatic Turkey. Upon the larger properties, a good deal of hired labour is employed, which is supplied by Bulgarians, Croats and Montenegrins, who immigrate in considerable numbers, and having worked for some years, return with their earnings to their own countries.

§ 113. The population of the Sandjak[2] of Adrianople is estimated at about 450,000 persons, whose chief pursuit

[2] In 1864 and following years the whole Turkish Empire was divided into 27 Vilayets, or great administrative centres, comprising 123 Sandjaks or Livas —a Sandjak Bey had the title of Mir-i-liva. The Livas were subdivided into Kazas or centres for judicial administration, so termed from 'Kazi,' a judge. Some of these consist of a town and its suburbs, others of groups of villages (Nahïèhs). Each village has a headman, *Codja-bashi*, elected annually from amongst the villagers, who is responsible for carrying out the orders of the superior Courts and Authorities.

is agriculture. South of the Balkan range, from the Black Sea to the frontier of Macedonia, the land is chiefly divided into small holdings, which belong to and are cultivated by a peasant population, essentially agricultural in their habits and proclivities. Almost every peasant is a proprietor, owning from five to forty acres. The large estates are cultivated by the proprietors themselves by means of hired labour. A principal local landowner gives the relative size of the properties thus:—in 1,000 properties, there are 3 comprising more than 500 acres; 30 containing from 100 to 500 acres; 300 containing from 5 to 100 acres; 400 of 10 to 50 acres; and 267 having less than 10 acres. The land is classified as (1) Memlouké, (2) Miriyé, and (3) Mevkaufé;[3] and the conditions of peasant proprietorship vary according as the land held by the peasant falls under one or other of these classes. *Memlouké* land is freehold, held unconditionally and in absolute ownership by proprietors, who can sell, transfer, mortgage or otherwise dispose of it, as they wish. The *Miriyé* or public land is held of the Government, and is stated[4] to include the land formerly owned as fiefs, as well as all waste lands belonging to the State, but inclosed or reclaimed by private individuals. This kind of property cannot be sold, transferred or mortgaged without a licence from the authorities, and cannot be converted into Vacouf (bakouf, wakf) without a firman from the Sultan. Every village in this province has commons, more or less extensive, upon which the villagers have a right to graze their cattle under the care of the village shepherd. The arable lands are said to be of greater extent than the pasture lands. The mode of tillage is simple and primitive, but careful and not slovenly. The corn produced is of excellent quality. The peasant is assisted in the work of cultivation by all the members of his family, and the

Sandjak of Adrianople—Land occupied chiefly by Small Proprietors.

[3] See *ante*, p. 208.

[4] By Mr. J. E. Blunt, in his Report on Adrianople, *Blue Book*, II, 305. Mr. Palgrave includes the fiefs *before resumption* in the Mulk or Memlouké class.

Habits and Condition of the Peasantry.

well-being of the small proprietor is commonly estimated by the number of his sons and daughters. The services of all being valuable, a daughter is not given in marriage until her suitor pays her parents the sum claimed by them as an equivalent for her labour upon the farm. The peasant proprietors are, as a class, economical, sober, healthy, and strong. They are distinguished for habits of order, tranquillity, and frugality. Their condition is, on the whole, prosperous and satisfactory; and suffering from want or privation is rarely seen amongst them. The day-labourers receive 7*d.* a day in winter, and 8*d.* or 9*d.* in summer, together with board; and in harvest these rates sometimes rise to 11*d.* and 1*s.* Women can earn 4*d.* to 7*d.*; and lads 6*d.* The farm-labourers receive from £9 to £14 a year with board and lodging.

Rate of Labouring Wages.

§ 114. The Vilayet of the Danube in European Turkey contains an area of some 35,000 square miles. The land is chiefly occupied by small proprietors. There are some tenants of large holdings under proprietors, and a few sub-tenants under these. The small proprietors hold from 25 to 50 acres, usually what will employ one yoke of oxen, allowing for a certain portion being left fallow each year. The properties are much intersected: and, as there are no fences, the villagers usually, by mutual agreement, cultivate the fields on one side of the village, leaving the fields on another side to lie fallow, or to be common pasturage. The peasant proprietors appear to be reasonably comfortable, and to enjoy a fair share of prosperity. They are thrifty and saving, and show industry and aptitude for agricultural pursuits. Tenancy exists only in the case of a few estates belonging to Pashas and Beys. These estates, which are of considerable size, are usually let to one tenant, generally for a money-rent and for a term of three to five years. The tenant pays the Government tithe, and engages to return the property with the same quantity of cattle and in the same state as he received it. He has to give sureties for the performance of this engagement. The tenant then arranges with the neighbouring

The Vilayet of the Danube—Peasant Proprietors prevail.

Tenancies of Large Estates.

villagers to cultivate the land, paying them a money-rent, or a rent in kind, or a share of the produce. Such a tenant cannot be ejected as long as he pays his rent punctually and performs the conditions of the contract; but if the proprietor die during the currency of the lease, his heirs may set aside the contract. The tenant may sell his interest without the landlord's consent; but he does not thereby discharge himself from liability to the proprietor, his lessor. Rent is wholly a matter of agreement, and is not high, as there is little competition. It is commonly payable six months in advance, the first six months' rent being paid upon taking possession. Sometimes, however, the first payment is not made until after harvest; and occasionally much more than six months' rent is paid in advance, the annual rent being diminished in proportion. There is nothing to prevent the landlord from raising the rent upon the expiry of the lease as high as he can find a tenant willing to pay. The landlord supplies a house, wooden sheds for grain and wooden stablings. Improvements are not usual. The Turkish law of fixtures is similar to that of England, and anything once annexed to the soil, however temporary in character and easily severable, becomes the absolute property of the landlord. The estates belonging to the religious or charitable foundations in this Vilayet are usually cultivated under an arrangement with the neighbouring peasantry, who receive a portion of the produce in kind. A crier is sent round the neighbouring villages to announce the terms offered by the mosque; and once these terms are accepted, more favourable offers from peasants of distant villages will not be received. Small outlying plots, or plots which a proprietor from want of oxen or other cause finds it inconvenient to cultivate himself, are commonly let to a neighbour under a verbal arrangement made in presence of the Village Elders, by which a quantity of grain equal that required for seed is paid as rent, the cultivating neighbour taking his chance of profit, or loss by the failure of the crop. Land is abundant in this province, as the popula-

tion is sparse; and any peasant may readily acquire for himself a parcel of any size by bringing the waste under cultivation, for which he pays to Government dues almost nominal. But great discouragement is created by the exactions of the Government Tax Collectors and by the bad system of collecting the Government tithe.

§ 115. The Sandjak of Monastir, a sub-government of the Vilayet of Salonica, and forming part of Roumelia, contains a population of about 882,000 persons, whose occupation is chiefly agriculture. The land is held by large and small proprietors, but in what proportions there appear to be no statistics to show. The large proprietors seldom cultivate on their own account; they let their lands on the metayer or produce-partnership system to tenants. The small proprietors hold from five to forty acres and usually cultivate their own fields. Although their houses are rude and destitute of furniture, and their food and clothing are coarse, they are far from being poverty-stricken or without the substantial necessities of life. Some of them are even said to have saved and hoarded money. Altogether they may be said to be above want, but less prosperous and well-to-do than the similar class in the districts of Constantinople and Adrianople. The tenants under the landlords have no land of their own. They cultivate in partnership with the landlord, each as much land as he can manage, usually some six or seven acres. These tenants are of two kinds—'ortakdji' and 'kesemdji.' The 'ortakdji' (partner) is an agricultural labourer, who owns one or more pairs of bullocks and the necessary implements of agriculture. The landlord provides the *ortakdji* with a cottage for himself and his family, with stabling for his live stock, and store-room for his fodder, and for these he receives rent. He also furnishes corn for seed. The *ortakdji* undertakes all the labour and cost of cultivating. He reaps, threshes, and winnows the grain. After the Government tithe or dime has been levied, the produce is divided equally between the landlord and the *ortakdji*. The latter usually carries the landlord's

Sandjak of Monastir in Roumelia.

Peasant Proprietors.

Tenants—Ortakdji.

share from the threshing floor to the grain-store. Lenient landlords allow the *ortakdji* to keep the whole of the straw, which is chopped up during the process of threshing, for the purpose of feeding his cattle. But hard landlords insist on having half of this also. The *ortakdji* is generally allowed half an acre of land to cultivate for his own exclusive use; and in return for this, he renders various services, such as carting firewood from the mountains to the landlord's town residence, or helping to reap the crops cultivated by the landlord on his own account, receiving no wages but merely the usual allowance of bread given to reapers. The 'kesemdji' (fixed-portion-taker) is also an agricultural labourer, who enters into a similar arrangement with the landlord, but differing from the *ortakdji's* arrangement in this, that instead of taking half the actual produce, the *kesemdji* receives a fixed portion of the crop, whatever be the yield. When the *kesemdji* leaves, he is bound to return to the landlord a quantity of grain equal to the amount of seed originally received. This obligation is called 'demirbash.' The *ortakdji* is not subject to it. Landlords of experience prefer *ortakdjis* to *kesemdjis*, and the porportion of the former to the latter is said to be three to one. Both of them remain on the farms as long as they continue to renew their agreements from year to year. Any of them, who desires to quit, gives merely a few days' notice of his intention; and vacating his cottage at the close of February or beginning of March, returns in harvest time, reaps and threshes the produce, and takes his share away. The new *ortakdji* or *kesemdji* makes his arrangement with the landlord about the same time that the outgoing cultivator leaves, and begins in March to plough the fallow land and prepare it for sowing in the autumn. When the *ortakdji* comes without the means of supporting himself, the landlord makes him an advance of corn to be repaid from the first crop. There being more land than there are persons to cultivate it, the landlord is only too glad to get a sufficient number of *ortakdjis* to do his

Kesemdji.

cultivation: and it is by no means uncommon for a new landlord to pay an *ortakdji's* debts to his former landlord, and thus obtain a certain power and influence over him.

Imlâks or State Farms.

§ 116. The only farms in this province, which are let for a fixed term and at a money-rent, are those belonging to the State or to the Imperial Family. The lease of these State farms, which are termed 'imlâks,' is put up to auction and given to the highest bidder. The lessee employs *ortakdjis* and makes his profit by selling the share of the produce which he receives from them. There is also in this province a separate class of agricultural labourers hired by the year, who are termed 'ter-oglans' (literally sweat boys). Their wages vary with the locality. In one place the *ter-oglan* receives for the whole year 68½ to 77½ bushels of Indian corn and rye in equal proportions, and about 16*s.* in money; in another, 73 bushels of wheat, and nothing else; and in a third place, 45½ bushels of rye, barley, and millet mixed, 33½ lbs. of salt, 140 lbs. of leeks or cabbages, half a raw hide to make himself sandals, and from 9*s.* to 13*s.* 6*d.* in money. He feeds and clothes himself, and his employer provides him with lodging. The position of the *ter-oglans* is inferior to that of the *ortakdjis* and *kesemdjis*, who again are inferior to the small proprietors in comfort and independence. There are many instances in which *ortakdjis*, *kesemdjis*, and especially *ter-oglans* have by borrowing corn or money from their employers incurred a debt, which, with accumulated interest, has become hereditary and has reduced them to a position of dependence differing little from serfdom.[5] The labouring class, as a body, *ortakdjis*, *kesemdjis* and *ter-oglans*, have no desire to become owners of land. They prefer working on the estate of some proprietor to whom they may look for protection against the rapacity of the dîme-farmer, and the Collectors of the Government taxes.

Ter-oglans or Hired Labourers.

Condition of the Labouring Class.

[5] Mr. C. J. Calvert, from whose Report in the *Blue Book* the above is chiefly taken, puts the case of an *ortakdji* and two grown-up sons, and calculates that their half share of the produce, after deducting the dîme, would

§ 117. The district of Salonica contains a population of over 700,000 persons, employed almost altogether in agriculture. The land belongs to large and small proprietors in the proportion of three to two. The small proprietors have an average of some ten acres each, which they cultivate themselves, living in villages adjacent to their lands. Their standard of living is low; but their circumstances are fairly good, and they manage to save money, which the tax-gatherer too often extracts from them. The larger proprietors let their lands on the metayer or produce-partner system already described, furnishing the land, the seed and the labourer's dwelling. The tithe and the seed required for the next sowing are first deducted from the produce, and what then remains is divided equally between the proprietor and the labourer. The relations between the parties are sufficiently friendly, but the labouring cultivator is often in his employer's debt, and thus in a position of great dependence. The cultivation of the larger properties on the metayer principle is said to be inferior to that of the smaller proprietors who till their own lands. Improvements are never thought of, and repairs to farm buildings are made only when absolutely necessary.

District of Salonica—Small Proprietors.

Proprietor and Cultivator divide the Produce.

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be 350 to 400 bushels of corn of all kinds, worth on an average £30 to £40. From this the following taxes and charges have to be paid:—

	£.	s.	d
Half of the Verghi or Property tax on two ploughs, @ 15*s.* (the landlord pays the other half)	0	15	0
The 'Jane' or Military tax on three adult males, @ 6*s.* ...	0	18	0
The 'Djeleb' or Sheep tax on 20 sheep, @ 6*d.* ...	0	10	0
The 'Djanavar' or Swine tax on one sow and 13 pigs, @ 6*d.*	0	7	0
Total of Taxes £	2	10	0
One bushel of Wheat for the Bishop	0	2	0
Village Priest and Church Offerings	0	5	0
The 'Bekj' or Rural guard, 4 bushels of corn ...	0	8	0
Total of Charges £	0	15	0

§ 118. Epirus contains a population of some 357,000 persons, whose occupation is chiefly agricultural and pastoral. This province became part of the Ottoman empire in 1431 by voluntary submission, and as the title to its territory was not derived from conquest, it was at first treated as *kharjiyah*, or tributary, liable to pay *khiraj*, the land remaining the property of the former owners. In course of time, however, these owners embraced Mahomedanism in order to preserve their possessions, or were ousted by persons professing that religion; and the land was brought under the Mahomedan law which was in force in other parts of the Turkish dominions. Towards the close of the last century Ali Pasha Tepeleula, while seeking to raise himself to power, ousted all the landed proprietors, seized their estates and destroyed their title-deeds. After his death in 1822, his property, including the lands which he had usurped, was confiscated by Government. A few of the original proprietors, whom he had ousted, were reinstated; but, as the general result, a large portion of territory became Crown property. In 1846, Fiefs were abolished, the holders being compensated, and the land included in them also became Crown property. It has thus happened that in this province there is a large extent of Crown land. Population is sparse, not being more than a fourth of what the soil could support. There is, in consequence, much uncultivated land. The cultivated holdings are termed 'bastinas,' literally heritages — a word used to denote the quantity of land cultivated by a yoke of oxen, which varies from 7 to 30 acres according to the nature of the soil. An estate is said to consist of a certain number of *bastinas*, 5 to 150, no account being taken of the uncultivated area. These estates are not worked by the owners, but are cultivated by villagers, who pay the owner a third of the grain and a fourth of the vine produce after discharging the Government share. This payment is termed 'imeron' from the Greek word 'ghëomeron.' Estates may be and not unfrequently are let in farm, but not for more than five years. The lessee

Epirus— Ottoman Title not by Conquest.

Land how Occupied and Cultivated.

or farmer, who is called 'subastri' from 'Sahibbastri,' acquires no other right over the land than that of receiving the *imeron*—he is in fact a purchaser of the *imeron* for a certain number of years. He cannot interfere with the cultivators or their mode of cultivation ; and if dissatisfied with either, he can obtain redress only by applying to his lessor.[6] He may assign his interest, the transfer being registered in the proper office. The Government estates or *imlâk* are also let in farm by public auction, that is, the *imeron* payable by the cultivators is farmed. Under a regulation made in 1864 the term of the farming lease is five years. The farming lessee has to pay the annual amount, for which he makes himself liable, in equal instalments at the end of every four months, and he must give security for doing this punctually. If the peasantry on the estate desire to bid for the farm of the *imeron*, a preference is given to them, even at some loss to the public treasury. If their bid is accepted, they must find security for the performance of their engagement, and must also become surety for each other. A warrant, 'Zapt,' is given to the successful bidder other than the peasants themselves, and this constitutes his authority to demand and receive the *imeron*. If the farmer transfers his interest, the transfer is noted on the face of the Zapt by the District Council who have the management of the Crown land, and is duly registered. Crown lands are sometimes sold, but only with the permission of the Government, the title-deed being sent from Constantinople.

Government and other Estates let in Farm.

§ 119. Mulk land exists as a distinct class of property in Epirus also. Estates held as *mulk* belong either to individual owners, in which case they are called 'Chiftlik' from 'Chift,' the Persian term for a yoke of oxen ; or

Mulk Land in the Province of Epirus.

[6] The farmer, *publicanus*, *ejarahdar*, under whatever name and wherever he is found, had no right to interfere with the cultivating occupants of the soil beyond taking from them the revenue, rents, or dues, which were payable to the Government, or the proprietors. In Bengal and Behar unfortunately he has, from the introduction of English law, come to be regarded as an English lessee, and has, in consequence, been allowed to evict raiyats and raise their rents, and otherwise interfere with their occupation and condition.

to the villagers collectively, in which case they are called 'Eleotherokhoria,' free estates. In order to obtain estates of this kind, the villagers as a body have to take upon themselves all the responsibilities and go through all the forms required by law in order to obtain a 'berat' conveying the lands to them as a corporate body. This 'berat,' or letter-warrant, is obtained through the Provincial Governor from the proper office at Constantinople. The villagers do not hold the land in common. Each member of the village body has a distinct and separate share, over which he has an independent, alienable, and heritable right, and in proportion to the value of his share he contributes or becomes responsible for a portion of the purchase-money, and continues liable to contribute to all the dues to which the estate is liable. The extent of this liability, as regards each individual, is settled by the villagers amongst themselves. The Government recognizes the estate only, which it regards as the unit of landed property, for the purpose of taxation and other State dues. The internal subdivision of the estate is, however, recognized for purposes of provincial jurisdiction; and, as this does not clash with the object of the Imperial regulation, it is respected by the law and is valid for all practical purposes.[7] When the village has acquired an estate, the villagers, therefore, take out a 'tapú,' or provincial title-deed, each for his own holding. For this it is necessary to pay five per cent. on the value of the holding. This 'tapú' is to the holding

Villagers' Holdings in a Mulk Estate.

[7] The Bengal law of revenue-paying estates contains similar principles. The estate, as a unit, is liable to Government for the revenue; and Government will recognize no division by the owners amongst themselves. But save as regards the liability to Government, the Civil Courts recognize any division by the owners amongst themselves. This strict rule has, however, been in many ways relaxed by the Legislature. The owners may have their shares constituted separate estates; or where this is not done, they may, by registering their separate interests, protect them from liability for the default of other sharers, until it has been found that the value of the shares of the defaulters will not satisfy the default. There are also many rent-paying tenures, the liability of which for the rent cannot be split up, though the law will recognize any division as between the tenants, and otherwise than as regards the landlord.

what the 'berat' is to the estate. The term 'Muanzil' is used of Crown lands which, by virtue of a Firman issued in 1845, are let upon payment of a fine at a reduced rent. The tenant's interest is assignable and heritable in the direct line of descent. Upon the death of an owner without lawful issue, the tenure reverts to the Government. There is no settled proportion between the fine and the selling value of the lands, the terms upon which each lease is granted being the subject of special agreement. In order to obtain a *Muanzil* tenure, a written application, offering terms, is made to the local authority, which transmits a copy of it to the Porte. If the terms are accepted, the Provincial Governor is authorized to receive the fine, grant a receipt, and transfer the land. A duplicate of the receipt is forwarded to the Defter-khoné, or land-office, at Constantinople, whence a 'berat,' or letter-warrant, is transmitted through the Provincial Governor to the grantee of the tenure. The yearly rent is payable in money; and the tenure-holder has the right at any time, upon payment of twelve years' rent, to have the *Muanzil* tenure converted in *mulk*, or absolute ownership. This tenure, which is of recent invention, is regarded as advantageous; and there have been a considerable number of applications for its creation.

Muanzil Tenures.

§ 120. The small proprietors in Epirus are usually owners of single farms from 7 to 30 acres in extent. Occasionally two or three of such farms belong to a single owner. These small proprietors are of two classes. The first consists of men who have succeeded in trade or business and who buy farms as an investment over the heads of the cultivators, whom they seldom disturb. These owners never live upon their properties. The other class consists of cultivators who have become owners of the land tilled by them, and these live either on their properties or in the village of the estate, within the local area of which these properties are included. The villager who has acquired a farm has either saved the purchase-money, or having borrowed it must work hard to repay it. In either

Small Proprietors in Epirus.

case a certain degree of industry and thrift is necessary; and those peasants, who have surmounted the difficulty of becoming owners, are superior to the other working cultivators in character, comfort and general circumstances.

Tenancy in Epirus—How created, &c.

Tenancy in Epirus is created by permission or invitation to a peasant to settle on an estate on the usual condition of paying the *imeron*. There is no regular agreement, parol or written; and as to the duration of the tenancy, there is no express provision of law. The holding is permissive; the peasant, a mere tenant-at-will. Theoretically the landlord can evict him by a simple order to quit; and he has no legal mode of resisting such eviction. But, on the other hand, traditional custom, strengthened by the interest of the landlord in a country in which there is much more land than there are cultivators, inspires the belief, almost creates the assurance, that the peasant, who has settled on an estate, will not be disturbed in the possession of his holding, so that practically he considers himself in the enjoyment of fixity of tenure. The peasant acting on the permission or invitation given to him, goes on the land, selects an eligible plot, 'khorafi,' in some unoccupied part of the estate, incloses and fences it, builds a house, which may be either on the plot or in the estate village. He thus creates a 'bastina,' or farm, at his own expense. In addition to the plot originally selected, he may afterwards take up other strips and outlying patches of unoccupied land, which may be more or less detached. These once occupied with the sanction of the proprietor, and fenced and inclosed, constitute an integral part of the holding. Owing to the sparseness of the population, there is a difficulty in multiplying 'bastinas,' whilst it is obviously the interest of the proprietor to extend cultivation by settling tenants upon his estate, as land while unoccupied is of no value. Any attempt to increase the *imeron*, which is fixed by custom, would prevent new tenants from settling, and would probably drive away the old ones. It is not, therefore, the landlord's interest to make any attempt to raise rents; and while the proportion between the land and

the population continues to be what it is, he would find any such attempt very unlikely to succeed. Many of the tenants are in debt to the local usurer; and as the unpaid balance is ever being swollen with compound monthly interest, they have no chance of becoming free, and are too often spiritless, demoralized, without thrift and without industry, forming a remarkable contrast to the small proprietors.

§ 121. Roumania presents many features similar to Russia. Before the Rural Law of 1864, the peasant was bound to give a certain number of days' labour for the cultivation of the proprietor's land, while he received a house, garden, and a certain quantity of land to cultivate for his own use. The peasants were divided into three classes—(1) those without oxen, (2) those with one pair of oxen, and (3) those with two pair of oxen—the quantity of land which the proprietor was bound to furnish, and the dues and services which the peasant was bound to render, being regulated accordingly. When the peasants on any estate had by reason of their increased number obtained allotments to the extent of two-thirds of the acreage of the estate, exclusive of forest, the proprietor could refuse to give more. In some places the peasants had the right to take from the forests wood for fences, fuel and buildings. The land held by the proprietor was commonly cultivated in métayage, the proprietor supplying the seed, the peasant the labour. The produce was divided in shares varying in different localities, but commonly the peasant received two-thirds and the proprietor one-third. The peasant could not remove from the estate without the permission of the proprietor. On the other hand, the proprietor could not eject the peasant unless through the intervention of the authorities, and for some grave cause, such as exciting disturbance in the village. By the Rural Law of 1864, the proprietor was obliged to give to each peasant his house and garden and the quantity of land to which he was entitled according to the class in which he happened to be placed at the time of the passing of the

Landholding in Roumania.

Rural Law of 1864.

law. This grant was made upon the following terms: (1) All property was valued without distinction of soil or locality at 5 ducats per pogon, equivalent to £1 17*s.* 4*d.* per English statute acre. (2) For the value of the land made over to the peasants, each proprietor received Government bonds, bearing interest at ten per cent. for sixteen years, redeemable by annual drawings within that period. (3) During these sixteen years the peasant was bound to pay to the State by annual instalments a sum calculated to cover the capitalized value of his land less twenty per cent.; this deduction was expected to be realized from the State lands, which were also brought into the arrangement. (4) During these sixteen years the peasant might not alienate without the permission of the Government. (5) The proprietor was relieved of all obligation to maintain peasants disabled by sickness, old age or other cause. Considerable unfairness has been caused to individuals in carrying out these provisions, the uniform valuation producing very unequal results in different places; and the proportion of two-thirds for all estates alike having a very different operation in populous districts from what it had in those parts of the country where the population was scattered. In populous parts the full two-thirds were at once taken by the peasantry, while in those estates in which the population was sparse not more than a half and even less had to be allotted to those entitled under the new law. Confusion and loss were caused by the want of proper maps and the non-execution of accurate measurements. Then the peasants conceived the idea that the whole land of the country would be given to them; and, being disappointed in this expectation, abstained almost entirely from agricultural labour. The result was a severe famine, after which the Wallachian proprietors gradually restored the metayer system; while the Moldavian proprietors entered into contracts with the peasants for the cultivation of their lands at cheap money rates, the proprietors further supplying seed for the peasants' land. These contracts were made for five years; and when they expired, and the

Effects of the Change.

peasants did not renew them, the Moldavian proprietors began to find great difficulty in procuring labour. In the result the transition affected Moldavia more severely than Wallachia, and small proprietors more injuriously than large ones. The latter having estates in several districts were frequently compensated in one place for the loss suffered in another ; and, being able to introduce machinery, were to a large extent rendered independent of manual labour.

§ 122. The greatest obstacle to the prosperity of the agricultural class in all the provinces of the Turkish Empire is the levy of the 'Ashr,' or Government tithe or dîme on the gross produce. Political economists have shown that this is an unfair impost, unequal in its incidence, and increasing in proportion to the profits in an inverse ratio to the goodness of the soil and the facility of cultivation. In Turkey the inherent injustice of the tax itself is aggravated by the method of its collection. It is not collected by the Government directly through its own officials, who might be supposed to incur some responsibility for misconduct or extortion. The right to collect it is let to speculators called *Multezim*, or farmers. In the spring of each year, the dîme of the ensuing harvest is put up to auction and sold to the highest bidder. A whole Sandjak may be put up in one lot, or it may be divided into parcels at the discretion of the Governor. The successful bidder immediately proceeds to sublet in smaller lots to under-farmers ; and this process is repeated, until there are sometimes five or six middlemen between the Government and the under-farmer who actually levies the impost from the cultivators. Each of these persons makes a profit, and the amount which the State receives represents in consequence very much less than what comes out of the pockets of the tax-payers—this constituting one of the worst defects of bad taxation. In order to enable the contractors to levy the tithe, Government has necessarily to invest them with very ample powers. Armed with these powers the Tithe-Farmer becomes master of all agricultural

Injustice of the Ashr or Tithe aggravated by the Method of Collection.

operations in his district. He is a partner in the crop, and he makes himself the managing partner. He fixes the time for reaping, carrying, threshing and selling the corn; and nothing can be done without his leave. Even if not disposed to unfair exaction, he cannot be ubiquitous, and cannot afford to pay agents to superintend the division of every cultivator's crop. While he is collecting in one place, the peasants in another place have to wait. A still greater delay may be caused by the discovery of some cultivator in the act of cheating, and the necessity of securing him and taking him before the proper authorities. The crops of those who are waiting the Tithe-Farmer's arrival meanwhile become over-ripe, and the grain falls from the ear. Innumerable pigeons and other birds commit serious depredation. Finally a storm of rain may come on, and the crop is spoiled to the serious injury, it may be almost ruin, of the cultivator. The system is most injurious to the small farmers and peasant proprietors, who can least afford to bear the loss which may be caused them. It is no great matter of surprise, if they come to think fraud and deceit justifiable in order to prevent the injury to which they are unjustly exposed; and thus the system leads to the demoralization of the peasantry. In the case of large proprietors, there is less hardship and loss. An agent of the Tithe-Farmer comes and lives upon the estate during harvest in quarters provided by the proprietor, and here there is no great difficulty in the collection. In the Vilayet of Salonica the Tithe-Farmer or his agent meets the farmer on the field where the grain is lying in stooks. Each selects a sheaf here and there from different parts of the field. These are taken to the threshing-floor and threshed in the presence of both parties; the quantity of grain produced is divided by the number of sheaves; and the result is the average produce of each sheaf. There are ten sheaves in each stook. The number of stooks in the field is counted, and the Tithe-Farmer at once knows the amount of grain which he is entitled to receive. In order to prevent the evils which

arise from the system to the great body of the peasantry, various reforms have been suggested and some have been tried. Collection by Government officials direct failed because of willingness to receive bribes on one side and readiness to offer them on the other side. The direct system was also tried in another form by commuting the annual amount of the tithe of a Sandjak for a fixed sum, based on the average of the five preceding years and payable directly by the producers into the local treasury. But this also failed, for it was found that in very good years the Government received only the revenue of an average year, while in bad years it was altogether a loser, as the peasant too generally has no accumulated store to fall back upon; or if he has, conceals it and pretends helpless poverty. It has been suggested that, if the tax were settled for ten years' certain upon an average of a number of years past, the cultivator would be encouraged to improve, knowing that for a certain time he would be liable to no increase; but experience has shown in other countries, *e. g.*, in India, that as the ten years' period would draw to a close and a new adjustment become imminent, improvements would be abandoned and lands thrown out of cultivation. The impost is in fact radically bad in principle, and no reform will ever make it harmless of results that ought not to follow from mere taxation.

Remedies proposed or tried.

§ 123. Succession to Mulk or Memloukè land in Turkey is regulated by the General Civil Law. Succession to Miriyè and Mevkoufè land depends upon special laws and regulations promulgated by Imperial Firmans. In all cases the land, upon the death of the owner, is, as a general rule, divided equally between the children of both sexes. Failing children, it is divided in equal portions between the heirs of both sexes of the second degree, and so on up to the forty-first degree of succession in the case of Memloukè lands, and the seventh degree in that of Miriyè and Mevkoufè lands. In all cases the heirs in any one degree exclude those in any lower degree. In the absence of heirs, Memloukè and Miriyè lands revert to the State;

Succession and Inheritance in Turkey.

Mevkoufè lands to the Administration of Pious Foundations.[8] It was only in 1867 that land was made heritable by collaterals, and in return for this concession the dîme or tithe was temporarily increased for five years, that is to say, to 15 per cent. for the first of the five years, and to 12½ per cent. for the remaining four. The sale, transfer, exchange or division of land is effected by registry in the Government office of the district. A registry-fee of five per cent. on the value of the property must be paid; and for this a receipt is given, which must be kept by the purchaser for production at any future sale or transfer. If this receipt be lost, double the usual fee, or ten per cent. will have to be paid upon the next transaction. When land is purchased from the Government, the registry-fee of five per cent. is charged upon its first entry in the Register. No deed of conveyance is used or is necessary. The Registers have never been arranged or indexed for reference; and no extract copy of the entries is procurable. Where a *berat* or *tapú* has been granted by the Government, this document must be produced at the time of the transfer, sale or other transaction, which will then be noted on the face of it. This gives a good provincial title; but if the transferree desire to have a title good for imperial purposes, he must have the *berat* or *tapú* transmitted to the Defter-khoné in Constantinople, where, on payment of certain fees, it will be cancelled and a new one issued in lieu thereof in the name of the transferree.

Sale, Transfer, &c., of Land by Registration.

§ 124. The area of Egypt Proper contains 5,100,000 acres of arable land, which may be classified under four heads: I, 'Eterieh,' or State property: II, Abadieh or

[8] Mevkoufè or Vakoof property is in charge of, and managed by, the Ulemah, and is of three kinds—(1) Vakoof proper, dedicated to the maintenance of mosques and the services of religion; (2) Public Vakoof, the proceeds of which are applied to the foundation and support of public schools, hospitals, baths, poor-houses, fountains and the like; and (3) Customary Vakoof, property placed under the ægis of religion by first selling it to the Ulemah at a nominal price and then holding it from them at a nominal rent. This transaction places the estate out of the reach of the secular law and of all civil process. If the owner die without heirs, the property becomes real Vakoof.

'Ushurieh:' III, Onessieh: and IV, Waste, not yet brought under cultivation. I, The State property, or Eterieh, comprises by far the largest area, *viz.*, 3,800,000 acres. It is occupied by tenants, who pay an annual tax, averaging 30*s.* per acre for lands in the Delta, and 8*s.* per acre for lands in Upper Egypt. Towards the close of the Government of Mohammed Ali Pasha, the Fellaheen in the occupation of 'Eterieh' lands were allowed the privilege of bequeathing them to their heirs, and this privilege was confirmed by succeeding Governments. They had, however, no interest in the land, such as entitled them to compensation for portions taken up for the construction of railways, or canals, or for other similar purposes. Recently, however, the Government has introduced a plan by which the tenant, upon payment of six years' taxation, acquires a certain limited ownership in his fields, which thereupon cease to be State property. II, The 'Abadieh' or 'Ushurieh' lands comprise 1,100,000 acres. They were originally granted by Mohammed Ali Pasha to his followers, being then waste, on the condition that they should be brought into cultivation. These lands are *mulk*, or freehold, and by the terms of the original grants were to be exempt from all taxation. Subsequently, however, Said Pasha obtained the sanction of the Porte to levy tithes on them; and these tithes were commuted into a tax varying from 2*s.* to 4*s.* per acre, according to the fertility of the soil, which was subsequently increased to 13*s.* per acre in Lower Egypt and 10*s.* in Upper Egypt. III, 'Onessieh' consists of lands bestowed by Mohammed Ali Pasha on a few families whom he had deprived of certain privileges. These lands are not very valuable, and will, after a certain time, revert to the State. IV, The Waste lands are now being brought under cultivation, being allowed to be held free from taxation for periods varying from three to fifteen years. The imposition of the tithe on the 'Abadieh' lands, contrary to the stipulations contained in the original title-deeds, was regarded by some persons as a breach of faith which diminished confidence

Egypt—Classification and Occupation of the Land.

in the Egyptian Government and tended to affect the value of land ; and one of the great advantages proposed by the scheme of granting a quasi ownership, upon payment of six years' taxation, was the removal of a sense of insecurity as regards rights in land.

CHAPTER XII.

The Tenure of Land, and the Relation of Landlord and Tenant in Ireland—From Early Times to the last quarter of the Eighteenth Century.

§ 125. There can be no reasonable doubt that in Ireland, as in other countries, the earliest form of property in land was that of joint ownership by a community, each member of which was entitled only to the usufruct of the plots allotted to him at the annual or periodical partition. Dr. Sullivan indeed maintains that all the essential features of the Germanic land system are to be discovered in an earlier stage of development amongst the Celtic race. But as to the actual condition of things in Ireland before the tenth century we have no very accurate information. The Brehon Laws, which have been recently published,[9] show that, at the close of the tenth and beginning of the eleventh century, the Irish people were in a state of transition from common property to several and private ownership. "All the Brehon writers," says Sir H. Maine, "seem to me to have a bias towards private or several, as distinguished from collective, property." In theory the whole of the land of the Sept or Tribe,[1] whether

Common Property in Ireland in ancient times.

[9] By the *Commissioners for publishing the Ancient Laws and Institutes of Ireland.* The Senchus Mor is supposed to have been compiled at the close of the tenth or beginning of the eleventh century; and the Book of Aicill some time during the tenth century.

[1] See Sir H. Maine's *Early History of Institutions*, pp. 90, 91, 105, and 155. The term 'Fine' or Family is applied to all subdivisions of Irish Society—the tribe in its largest extent; the Sept, tribe, or sub-tribe, all the members of which were descended from one common *deceased* ancestor; and the Joint Family consisting of descendants from a *living* ancestor. The Sept is the legal unit. Sir H. Maine thinks that the 'Fine' (translated by 'Tribe') treated of in the Corus Besena, one of the Irish Law Tracts, is the Sept. This Tribe or Sept is a corporate, self-sustaining unit. Its continuity depends on the land occupied by it; but it is not merely a land-owning body, it has live chattels and dead chattels distinguished from those of individual tribes-

waste or cultivated, belonged to the Sept. A large portion had, however, been assigned to the families of Chiefs. Other portions had been permanently appropriated by minor bodies of tribesmen, amongst whom there was a tendency to further subdivision and appropriation. Where there had been no distinct appropriation, the annual partition had been allowed by consent to fall into desuetude, each sharer remaining possessor of the parcels which he had received at the last allotment. The principle of individual ownership had not, however, been sufficiently developed to authorize such possessors to sell their shares. "Every tribesman," said the law, "is able to keep his tribe-land; he is not to sell it or alienate or conceal it, or give it to pay for crimes or contracts." Then there had been a transfer of lands to the church; and all these results together had largely operated towards breaking up the common ownership. At the same time much of the tribe-land was still waste and formed common pasture, and as regarded this waste there was as yet no several or individual proprietorship. The Chiefs had large private estates, the severance of which from the common land had become complete; they held also land attached to *their office* or Chieftaincy: and they further had an authority, which ever tended to increase, over the unappropriated waste; and upon this they settled their servile dependents, and the fugitives from other tribes who sought their protection.[2] Every Chief was more or less rich in

men. Nor is it a purely cultivating body, it may follow a professional calling.—*Early History of Institutions*, p. 107.

[2] 'Fuidhirs'—strangers or fugitives from other tribes, who had broken the original tribal bond and had been expelled—a very considerable class in a disordered country, amongst a race prone to dissension and turbulance. The Fuidhir had no connection with the tribe except through the Chief, upon whom alone he was dependent. Sir H. Maine considers that the position of the servile dependents, Sencleithes and Bothachs, was probably similar to that of the Cotarii and Bordarii of Domesday Book. The Senchus Mor speaks of *three rents*—a rack-rent or extreme rent from a person of a strange tribe, the Fuidhir, no doubt—a fair rent from one of the tribe—and the stipulated rent, paid alike by him of the tribe and him of a strange tribe.

cattle, the visible form of the wealth of that period. Many of the petty wars which disturbed the country were mere plundering raids, and a considerable booty in cattle was the meed of success. This wealth he utilized, according to a national custom, to acquire vassals and maintain and extend his authority, by lending or committing it to the care of those, who from poverty had no cattle of their own, or as tribesmen were bound to receive the charge from their king. The conditions and effect of this loan or charge varied as the recipient was a *Saer* or *Daer* tenant, a freeman or a *villanus.* The Saer stock tenant kept the cattle for seven years, and then became entitled to them as owner. During this period the chief received the young, the manure and the milk. But there was another and a further result of the transaction. The recipient of the stock, though he continued to be a freeman and lost none of his tribal rights, was bound to render to the Chief homage and manual labour—the latter including reaping the Chief's harvest and assisting to build his castle or fort. In lieu of this manual labour, he might be required to follow the Chief to the wars. *Daer* stock tenancy was created by committing a large quantity of stock to the tenant. This stock consisted of two portions—one portion regulated by the 'honor price' of the tenant, the fine payable for injuring him; the other portion fixed with reference to the return to be made to the Chief. For three heifers lent or committed to the tenant the Chief was entitled to a calf, refections[3] for three persons in summer, and three days' labour; for twelve heifers or six cows, to a heifer and

Saer and Daer Stock Tenancy.

[3] In the exercise of the right of Refection, the Irish chief was entitled to come with a certain number of followers and feast at the Daer stock tenant's house for a certain number of days. From this rights were doubtless derived, the 'coin and livery' (coigne, horse-meat, man's meat; livery, anciently provisions), denounced by Spenser, and the 'cosherings' abhorred by the English. The right would appear to have been always subject to abuse. The necessities of the Daer stock tenant made it as difficult for him to escape from the relations once entered into, as it is for an Indian raiyat to get free from his Mahajan. Irish tribesmen occasionally entered into this relation with persons other than the chiefs of their own tribe.

refections, and labour in proportion. The Daer stock tenant parted with some portion of his liberty, and his services were onerous. After rendering refections and services for seven years, the tenant became entitled to the stock, if the Chief died. If the tenant died, his heirs continued to some extent liable. Sir Henry Maine thinks that the rent payable in the produce of the stock and in refections unquestionably developed in time into a rent payable in respect of the tenant's land ; and he observes that it is a curious and unexpected fact that the rent of the class, which embraced a very large part of the ancient Irish tenantry, did not, in its earliest form, correspond in any way to the value of the tenant's land, but solely to the value of the Chief's property deposited with the tenant. A possible explanation may be that, while land was plenty, the value of the stock necessary to its cultivation was a more important factor in production than the value of the land, and that the influence obtained by the more important over the less important element in the original arrangement continued even when their relative values were altered.

§ 126. There are two customs, Tanistry and Gavelkind, which exercised an important influence upon landholding in Ireland before the seventeenth century. By the first of these customs the succession to the Chieftaincy was regulated. Upon the death of a Chief, he was succeeded by the next of blood, who was eldest and worthiest. This successor had generally been selected in the Chief's lifetime, and was designated *Tanaist.* The selection of the Tanaist and his ultimate promotion to the Chieftaincy were made by the whole Tribe or Sept. The prosperity and indeed the very existence of the Sept depended upon its Head being an able leader in war and a capable administrator in peace, and thus necessity dictated the appointment of the fittest.[4] Where the claimant was

The Custom of Tanistry.

[4] There are numerous traces of the same custom in India. The right of succession to the Raj belongs in many principalities not to the son of the last Rajah, but to the eldest male member of the same family. In the Tipperah

strong enough to enforce his claim, the formality of an election was occasionally dispensed with; and a powerful Chief during his lifetime could do much to influence the selection of the Tanaist from amongst rival competitors. As the custom of Tanistry regulated the succession to the Chieftaincy, so the custom of Gavelkind regulated the succession to land which was not an appanage of any seigniory. By this custom, when a member of a Sept died, his land did not descend to his sons, but returned to the common ownership, and went to increase the allotment of each of the households which composed the Sept. Sometimes a redistribution of all the lands was thereupon made between all the members of the Sept; but, as the principle of individual property asserted itself and became recognized, this course was found at first inconvenient and then impossible, and the share of the deceased member only was partitioned.[5] At the beginning of the seventeenth century the Anglo-Irish Judges decided that Tanistry and Gavelkind were illegal, and they declared the English common law to be in force in Ireland. The result was that primogeniture was introduced; and from that time forward

Custom of Gavelkind.

Raj, for example, the successor elect is chosen during the Rajah's lifetime and is called *Jooberaj*. He is in fact the Irish Tanaist. The estates of the Raj are separate from the private estates of the members of the family; and the Rajah for the time being, like the Irish Chief, has different powers in respect of those estates, which are an appanage of his office, and those which are his private property. A similar custom prevailed in the Highlands of Scotland, and Sir H. Maine, in his *Early History of Institutions*, refers to the struggle between this custom and primogeniture as exemplified by the dispute as to Baliol's right to succeed to the throne of Scotland.

[5] This custom in its original form was the necessary concomitant of common property and periodical partition. When periodical redistribution fell into desuetude, the share of the deceased member was probably divided amongst the other members of the Sept to the exclusion of the deceased's children, who went no doubt to swell the class of *Fuidhirs*. In this may have consisted the barbarity which the English saw in the custom. This Gavelkind is to be distinguished from the English Gavelkind (*ante*, *p.* 27, *note*), though it is not difficult to see the connection between a custom under which all the male members of the Sept shared the land of a deceased member, and the later custom under which all the male offspring of the late owner inherited equally. The custom is the same, only that the conception of the family group has been narrowed, and individual property has taken the place of common property.

land in Ireland descended to the eldest son, as heir-at-law, this new rule of succession governing not only lands, which had been subject to Gavelkind, but also those lands which were attached to the office of Chief and belonged to the person who held this office only so long as he held it.

§ 127. There were no feudal tenures in Ireland before the arrival of Strongbow and the English in 1170 A.D. Strongbow, having made this expedition notwithstanding the prohibition of Henry II., and being apprehensive of the consequences of his disobedience, in the following year made the King an offer of all the lands he had won in Ireland. This offer was accepted, and its acceptance gave the King of England for the first time authority over the land of Ireland. Henry came over in October 1171, and remained in the island till April 1172. During his stay he held a *curia regis* at Lismore, at which he made arrangements for the administration of the country according to the Norman system of Government. He did not, however, style himself King or Lord of the country, but was content with being accepted as a sort of Paramount Power. Three years after his return a treaty was concluded at Windsor between him and Roderic O'Connor, King of Connaught and Chief King of Ireland, by which Roderic, having done homage to Henry and became his liegeman, agreed to pay annually to the King of England one merchantable hide for every ten cows in Ireland, except those parts which were in possession of King Henry and his barons, namely, Dublin, Meath, Leinster and Waterford as far as Dungarvan. The people of Ireland were to enjoy their lands and liberties so long as they continued faithful to the King of England and paid this tribute. Thus, the King of England became in 1175 A.D. the superior feudal Sovereign of Ireland. Notwithstanding this treaty, Henry partitioned the whole island between ten of his barons, and made them grants thereof in feudal form. As Sir John Davies says in his *Discoverie*, "all Ireland was by Henry II. cantonized among ten of the English nation; and though they did not gain possession of one-third of the kingdom, yet in title

Strongbow.

Treaty of Windsor.

King of England becomes Feudal Lord of Ireland.

they were owners and lords of all, as nothing was left to be granted to the natives." The object and meaning of these grants were that the grantees should establish themselves as feudal lords, and reduce the Irish to the condition of feudal tenants, just as the Norman followers of William had done in England after the Conquest. But the grantees of Henry were not as powerful as the barons of the Conqueror; and the Irish were more stubborn than the Saxons. Thus a protracted and ineffectual struggle began, which entailed centuries of bloodshed and misery upon the country. In further violation of the treaty of Windsor, Henry II. in 1177 A.D. conferred the title of King of Ireland on his son John, who was then a child. In 1185 A.D. John was sent to Ireland to take possession of his kingdom, but his visit was not very successful. After becoming King of England, John again visited Ireland in 1210 A.D., stayed about two months and received the homage of a number of Irish princes, and of the Anglo-Norman barons, who had succeeded in obtaining and keeping a footing in the country. During the whole of the thirteenth century, Ireland afforded a continuous scene of bloody struggle. The English settlers, or *Undertakers* as they were called, endeavoured by force to obtain the mastery over the Irish inhabitants. They built castles and made freeholds, but no tenures or services were reserved to the Crown. Where they succeeded in asserting their authority over the land, they were regarded by the members of the Irish Septs as usurpers, and were treated with undisguised hostility, which they repaid with merciless tyranny. They quartered their soldiers and followers on the Irish who clung to their lands, and gave no remuneration for their maintenance. The price of food was enormous, and poverty increased. The administration of justice being in their own hands, even justice was converted into a means of oppression. The Irish chiefs, who managed to maintain their independence, were at ceaseless feud amongst themselves, and the English settlers followed their example in this and other respects.

Disturbed State of Society in the 13th century.

§ 128. Such being the state of things at the beginning of the fourteenth century, Edward Bruce landed in Ireland in May 1315 A.D., and the Irish chieftains eagerly sought to transfer the kingdom from the English to him. They addressed a remarkable document in defence of their conduct to the Pope, no doubt because Henry II. had originally obtained a papal bull authorizing him to take possession of Ireland. In this they spoke of the sad remains of a kingdom, which had groaned so long beneath the tyranny of English kings, of their ministers and barons; they gave details of the hard and unjust laws imposed upon them by the English—that no Irishman could take the law against an Englishman, but every Englishman might take the law against an Irishman—that an Englishman might kill an Irishman, yet could not be prosecuted for it before an English tribunal.[6] Bruce's expedition failed and with it the hope of deliverance from that quarter. The unsuccessful effort to shake off the yoke was punished with fresh severities, and the struggle went on with increased bitterness. No mere Irishman could be mayor, bailiff or officer in any town within the English dominions; and no Irishman could take lands by conveyance from an Englishman. In 1360 A.D. Lionel, the third son of Edward III., came over as Viceroy. One of his first acts was to forbid any Irish by birth to come near his army. In 1367 A.D. he held a Parliament at Kilkenny at which was passed the famous *Statute of Kilkenny*, which enacted that no alliance by marriage, gossipred (being sponsor), fostering of children, concubinage, or by amour be henceforth made between the English and Irish; and if any shall do to the contrary, he shall have judgment of life and member as a traitor to our Lord

The Irish seek help from Edward Bruce.

Statute of Kilkenny.

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[6] "The mere Irish," says Sir J. Davies, "were not only accounted aliens, but enemies and altogether out of the protection of the law; so as it was no capital offence to kill them." And he gives an instance of one Robert Walsh, who was indicted at Waterford of the manslaughter of one MacGilmore, and admitted the slaying, but said it was no felony, because MacGilmore was a mere Irishman.

the King.[7] It further ordained that any man of English race taking an Irish name, or using the Irish language, apparel or customs, should forfeit all his lands; that it was treason to adopt or submit to the Brehon law; that the English should not permit the Irish to pasture their lands, nor admit them to any ecclesiastical benefices or religious houses, nor entertain their minstrels or rhymers; and that no soldiers should be imposed or cessed upon English subjects under pain of felony. Some regulations were made to prevent the great lords from laying oppressive burdens upon gentlemen and freeholders; and the English were forbidden to make war upon the natives without the permission of Government, but this prohibition was more honoured in the breach than in the observance. In October

[7] Nearly two centuries before, Strongbow had married Eva, the daughter of Dermot MacMurrough; and his followers had largely followed his example by taking Irish wives. They thus became closely connected with the Irish, and their descendants had a large admixture of Irish blood. The first English settlers, instead of introducing English habits, manners and laws into Ireland, adopted those of the Irish, and were themselves absorbed into the Irish people, for, as Mr. Froude observes, "the Irish Celts possess on their own soil a power greater than any other known family of mankind of assimilating those, who venture among them, to their own image."—*The English in Ireland*, I, p. 21. The Anglo-Irish, who were born and bred in the country, grew up with the free notions of Irish chiefs, and could but ill brook the restrictions of the feudal tenure under which they held their lands. They resented, still more than the English in England, aids and subsidies, reliefs and fines. Edward III., in order to carry on his wars in France and Scotland, had to levy large subsidies. In 1347 "the Prelates, Earls, Barons and Commons of the land in Ireland" complained to the King that, bad as were the Irish enemies, the extortions and oppressions done by the King's officers were worse. The result was, that these Anglo-Irish became more obnoxious to the English Government than the native Irish themselves; and every opportunity for forfeiture of their estates was sought out against them. In this spirit and to prevent the new English settlers from being fascinated to Irish ideas, the Statute of Kilkenny was passed. One provision of the Statute forbad the use of the contemptuous expressions 'Irish Dogg' and 'English Hobbe' or churl—the former being applied by the new-comers to the Irish-born English, who repaid the compliment with the latter epithet. In 1417 the Irish were excluded from offices or benefices in the Church, and bishops were prohibited from bringing Irish servants with them when they came to attend Council or Parliament. A few years later the Anglo-Irish had to complain of the exclusion of Irish law students from the Inns of Court in London.

1394, Richard II. came over to Ireland and staid for nine months.[8] He took a considerable force with him, and the Irish Chieftains, being for the time overawed, made a show of submission. The most important matter in connection with his visit was the prohibition of absenteeism. Lords and gentlemen, who had gone to live in England, caring nothing for their estates except to receive their revenues, were ordered back under pain of confiscation. Richard seems to have taken a certain liking for the Irish, for he paid them a second visit in 1399 A.D. In the reigns of Henry V. and Henry VI. the breach continued to widen between the English and the English Government on the one hand, and the native Irish and Irish of English descent on the other. At a Parliament held at Trim in 1446 A.D. by the Viceroy Sir John Talbot, afterwards Earl of Shrewsbury, a law was passed, declaring that every man who did not shave his upper lip, should be treated as an 'Irish enemy.'

Visits of Richard II.

§ 129. Notwithstanding these measures, the Irish held their ground, and the English power declined; and when Henry VII. came to the throne in 1485 A.D. he found that he possessed merely nominal power in the country. In 1488 he sent over Sir Richard Edgecumbe to exact fresh oaths of allegiance from the Anglo-Irish lords. These oaths were not, however, kept very scrupulously, for in 1492 many of these lords supported the Warbeck plot. Sir Edward Poyning was in consequence sent over with a force of one thousand men; and at a Parliament held at Drogheda in 1494, the Statute was passed, which has since been known as *Poyning's Law.* It enacted that no Parliament should thenceforward be held in Ireland, until the Chief Governor and Council had first certified to the King, under the great seal, as well the causes and considerations, as the acts they designed to

Poyning's Law.

[8] He wrote from Dublin that the people might be divided in three classes, *viz.*:—(1) the wild Irish or enemies; (2) the Irish rebels; and (3) the English subjects—adding that the rebels had been made such by wrongs, and by want of close attention to their grievances.

pass, and till the same should be approved by the King and Council. At the same time English law was constitutionally established in Ireland. It was directed that the "many damnable customs and uses" practised by the Anglo-Irish lords and gentlemen under the names of "coigne, livery and pay" should be reformed; that the inhabitants on the frontiers of the four shires should build and maintain a double ditch six feet high on the side which "meared next into the Irishmen," so that they should be kept out;[9] and that all subjects should provide themselves with cuirasses, helmets, English bows and sheaves of arrows.[1] The state of Ireland at the beginning of the sixteenth century is described in a report prepared in 1515 by command of Henry VIII. According to this State Paper the only counties really subject to English authority were Dublin, Wexford, Kildare, Meath and Louth; and the residents on the borders of these counties had to pay blackmail for protection to the Irish Chieftains. The King's writs were not executed beyond the limits of these five counties, and the Brehon law was in full force in all the rest of Ireland. There were some sixty different States or regions, some "as big as a shire; some more, some less," subject to petty rulers, who exercised the right of making war upon the English and upon one another.[2] Henry

English Law established in Ireland.

[9] The English were to 'pale' in, or enclose that portion of the country occupied by them. Hence the term *Pale* was applied to this portion.

[1] All this was done with the expressed object of reducing the Irish people to "whole and perfect obedience." There can be little doubt that the destinies of Ireland would have been other and better, if its conquest had been as complete in the first instance as that of England by William and the Normans. A large body of conquerors and a strong Government would have secured that perfect obedience, which would have brought about a complete fusion and a new departure. As it happened, the conquest was but partial, a perpetual struggle ensued, a running sore of feud was kept up. The new element, infused in driblets and at intervals, was absorbed in the disordered system, and went rather to exacerbate the ulcer, than to invigorate the constitution to cast it off.

[2] The Scotch had about this time begun to immigrate in considerable numbers into Ulster, and they occupied large tracts in that province. Their earliest settlements were in Down and Antrim, which counties were partly colonized by the Western Highlanders from the fourteenth century.

VIII. made a vigorous effort to introduce the Reformation into Ireland. The resistance of the clergy was, however, so obstinate, and the King had so little real power in the country, that the attempt proved wholly unsuccessful. The Irish then, as since, took the side of the Papacy against the English Government. Convinced that some radical reform was necessary to put an end to anarchy and bring about some degree of social order, Henry declared it necessary that the Irish should "conform their order of living to the observance of some reasonable law, and not live at will as they had been used." He accordingly tried to persuade the chiefs to exchange their Brehon customs for feudal tenure, and to acknowledge that they held their lordships under the Crown, by making a formal surrender and receiving them again with English titles and with legitimate jurisdiction derived from the King. At the same time he proceeded to suppress the Irish abbeys; and by making over part of the estates of the Church to the leading Chiefs, he induced them to surrender their lands and take a fresh grant of them, subject to the incidents of English tenure. Provisions were also made against absenteeism. The rights of the English colonists to their estates were made conditional upon residence; and the lands of all absentees were to be confiscated.

Surrender and Re-grant upon Feudal Tenures.

§ 130. Elizabeth came to the throne of England in 1558. Shane O'Neill was master of Ulster, and likely to prove a formidable opponent to the English Government. He soon fell a victim to treachery, and in 1569 a Parliament irregularly convened confiscated his lands to the Crown and gave the earldom of Ulster to the Queen. She gave the district of Ards in Down to her Secretary, Sir Thomas Smith, who was, however, slain by a "wild Irishman," whom he endeavoured to dispossess from some lands held by him and his forefathers. The Earl of Essex received a grant of other portions of Ulster on condition that he could expel the rebels who were in possession. He came over in 1573, but died three years after without having been very successful in the work of eviction. In

Reign of Elizabeth.

1577 an attempt was made to convert into a regular tax the subsidies, which had previously been granted from time to time for the support of the Government and the army. The English Lords of the Pale resisted, the Earl of Desmond taking the lead. This resistance was quelled by sending to Dublin Castle those who signed a remonstrance, and committing to the Tower the deputies sent to carry it to London. About the same time some claims were brought forward under Old Norman Charters to estates in Cork; and a certain class of persons in England, who afterwards came to be known as *Undertakers*, proposed to Elizabeth to advance the expenses of military occupation on condition of being afterwards repaid by grants of confiscated land. The Irish got it into their heads that England had made up her mind to extirpate them and occupy their lands with English colonists. The result of all these disturbing influences was Desmond's Rebellion, which was so effectually suppressed that the lowing of a cow or the sound of a plough-boy's whistle was not to be heard from Valentia to the Rock of Cashel. Half a million acres of the finest land in Ireland were confiscated in 1585. The most tempting offers were made to induce Englishmen to come over and settle. Lands were to be had at two-pence an acre, and no rent to be paid till after three years. Grants were made on the condition that Englishmen were to be settled, and that no Irish should be admitted as tenants. But it was found impossible to carry out these conditions strictly in practice. Englishmen were not obtainable in sufficient numbers to occupy the whole of the lands, and, as a necessary consequence, a large proportion of the Irish tenantry were suffered to remain. The dispossessed landlords 'coshered' amongst them, and had all their sympathies, while both waited the opportunity of revenge. At the commencement of the seventeenth century O'Neill, afterwards Earl of Tyrone, and O'Donnell, afterwards Earl of Tyrconnel, successfully resisted the English authority in Ulster. They were defeated and forced to come to terms, but being discovered

The Undertakers.

while preparing for a fresh outbreak, they fled abroad and their estates were confiscated. This placed at the disposal of the English Government, for plantation purposes, six counties, *viz.*, Tyrone, Donegal, Fermanagh, Derry, Cavan and Armagh, containing some two million acres. A scheme of plantation was drawn up in 1609. A million and a half acres of bog, forest and mountain were restored to the Irish. Half a million acres, including the most fertile land, were parcelled out into lots of two to four thousand acres, and given to English and Scotch planters on condition that they would settle Protestant tenants, either English or Scotch.[3] An exception was allowed in respect of the former Catholic owners, if they took the oath of supremacy and paid double rent. The grants were eagerly taken up. Many intending emigrants to America came to Ulster instead. The colonists consisted of labourers, weavers, mechanics, farmers and merchants. They went to work with vigor and laboured with industry, and a period of remarkable progress and prosperity followed, which was brought to a terrible close by the Massacre of 1641. In 1580 the population of Ireland was roughly calculated at half a million. In 1641 it had increased to a million and a half, having thus trebled in sixty years.

Plantation of Ulster.

§ 131. Charles I. came to the throne in 1625; and in 1633 sent over Wentworth, afterwards Earl of Strafford, as Viceroy. The future Earl saw the prosperous results which had followed from the Scotch and English settlements in Ulster, Leinster and Munster; and the policy of extending these settlements to Connaught at once suggested itself to him. The Irish landlords had no title-deeds. They had not in that remote province surrendered their lands to the Crown and received fresh grants on conditions of English law. Abbey lands were in the possession of

Connaught Commission of Defective Titles.

[3] The Dublin University, which had been founded by Elizabeth, obtained three thousand acres. Sixty thousand acres in Dublin and Waterford, and three hundred and eighty-five thousand acres in Leitrim, King's County, Queen's County, Westmeath and Longford had been similarly parcelled out on previous occasions.

those who had no title to them. A Commission of *Defective Titles* was issued. The lands were surveyed. Those in possession were called upon to prove their titles. Jurors were fined and imprisoned as contumacious, if they did not find for the Government. Four-fifths of the lands of Connaught were, as the result, decided to belong to the Crown. Wentworth contemplated a Connaught plantation. Irishmen were driven to a frenzy of despair by the threatened spoliation.[4] The consequence was a fresh insurrection inaugurated by the Massacre of 1641.[5] In the following year the Confederation of Kilkenny assembled and sat from May 1642 to January 1643. During this period they acted as a provisional Government; and before breaking up they drew up and forwarded to King Charles a representation of their grievances, at the same time professing their loyalty to the Crown. Charles was disposed to make terms with the confederates. The Irish were successful in the hostilities which immediately followed. A cessation of arms for a year was agreed upon in 1643, and again in 1644. An Act of oblivion was subsequently passed, and a treaty

Massacre of 1641.

[4] A parliament assembled in 1634, which asked for certain graces, one of which was that sixty years' undisturbed possession should bar the claims of the Crown. The members were assured that these graces would be granted, if sufficient supplies were voted. Six subsidies of £50,000 each were voted, while Wentworth had expected only £30,000; but the graces were refused after the subsidies had been voted. The Connaught Commission following upon this breach of faith, and the perversion of the forms of justice in order to achieve the objects of that Commission, very naturally excited deep distrust and a profound sense of injury.

[5] The outbreak took place simultaneously in several places on the 23rd October. The English settlers were driven from their houses, stripped—men women and children—of their very clothes. At the lowest estimate, 37,000 persons are said to have been murdered—and Mr. Froude estimates that before the insurrection was suppressed, out of an entire population of a million and a half, more than half a million had, by sword, famine and pestilence, been miserably destroyed. Catholic writers extenuate the atrocities of the outbreak and exaggerate the cruelties of the subsequent transplantation to Connaught. Protestant writers, on the other hand, maintain that the transplantation was a just punishment for the massacre, and a necessary mode of dealing with a class of persons, who had proved themselves irreconcilable. The case on either side is well stated in Prendergast's *Cromwellian Settlement of Ireland*, and Froude's *The English in Ireland*.

signed, but the execution of Charles rendered it nugatory. The English Parliament had not, however, forgotten or forgiven the Massacre of 1641; and on the 15th August 1649, Cromwell landed at Dublin to inflict an effectual, if tardy, retribution. The fate of Drogheda and Wexford struck such terror into the Irish, that Cromwell was able to return to England and leave his Generals to finish the campaign. Limerick was taken in 1651. Galway surrendered in the following year; and so terrible was the devastation of the country, that the English were in danger of starving. In May 1652, the Irish Army in Leinster surrendered on terms signed at Kilkenny. During the following four months the other armies surrendered on similar terms. One of these stipulations was that those, who desired to transport themselves with their men to serve any foreign State in amity with Parliament, should be allowed to do so; and it is said that under this concession more than thirty-four thousand men left Ireland never to return.

Cromwell and Retribution.

§ 132. Ireland, thus devastated and depopulated, was now in a fit condition for a fresh scheme of plantation. In 1642 the English Parliament had confiscated between two and three million acres of land belonging to those who had shared in the outbreak of the previous year. Every Catholic landholder in Ireland by taking part in this outbreak, or in the events which immediately followed, had rendered his estates liable to confiscation. The English landholders, who had taken the royalist side, had incurred a similar liability. On the 26th September 1653, the English Parliament passed a sweeping measure of confiscation, declaring that the confiscated estates were to be given to the Adventurers[6] and the English Army; that Connaught

Cromwellian Settlement of Ireland.

[6] After the outbreak of 1641, the English Parliament offered the two and a half million confiscated acres of Irish land to Englishmen, who were willing to advance money for raising and paying an army to subdue the Irish rebels. The subscribers, or Adventurers, as they were named, were to receive lands at four shillings an acre in Ulster, six shillings in Connaught, eight shillings in Munster, and twelve shillings in Leinster. Debenture bonds

was assigned for the habitation of the Irish nation; and that they must transplant thither with their wives and chil-

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were issued, payable in land as soon as the country was re-conquered. Bonds for about a million acres were taken up. An army was prepared at Bristol in the summer of 1642, with the money thus procured; but the Parliament directed Lord Wharton, who commanded it, to march against King Charles, who defeated these forces in October 1642 at the battle of Edge Hill. Disgusted at this misapplication of the money, the Adventurers held back from subscribing further, although the measure of land was enlarged to the Irish standard and doubled for any one of them, who would advance a further sum equal to a fourth of his original subscription. On the termination of the war in 1653, large arrears of pay were due to Cromwell's army, and it was arranged to liquidate these arrears by grants of land, after satisfying the claims of the Adventurers. The provisions of the Act of 1653 were briefly as follow:—The Government reserved for itself the four Counties of Dublin, Kildare, Carlow and Cork, and also all the towns, church lands and tithes; provision was then made for the Adventurers, to whom £360,000 was due—£110,000 being satisfied with the moiety of three counties in Munster, *viz.* Waterford, Limerick and Tipperary; £205,000, with the moiety of four counties in Leinster, *viz.* Meath, Westmeath, King's County and Queen's County; and £45,000, with the moiety of three counties in Ulster, *viz.* Antrim, Down and Armagh. The other moiety of these ten counties was given to the soldiers with the intention that the Adventurers, who were chiefly merchants and tradesmen, might have the benefit of military protection. The officers and soldiers were also provided for in the other parts of Ireland except Connaught. The arrears of pay due to the army, which were thus satisfied, amounted to a little over a million and a half. A million and three quarters of debts for money or provisions supplied to the army of the Commonwealth were satisfied in a similar manner. Connaught was appropriated for the Irish alone; and all English Protestants, who had lands in that province and desired to leave it, were allowed to have in exchange lands of equal value in some of the English provinces. From the lands reserved for Government grants were made to the members and friends of the republican party or those who had interest with them. The order to transplant to Connaught affected not only the Irish Celtic families, but also the descendants of the original English settlers, who had become *Hibernis ipsis Hiberniores*, and were implicated, though not in the Massacre of 1641, yet in the war against Cromwell and the Parliament. Amongst those who had to give up their lands and transplant to Connaught was William Spenser, grandson of Edmund Spenser, "who," as Cromwell wrote to the Irish Commissioners, "by his writings touching the reduction of the Irish to civility brought on him the odium of that nation." Cromwell's attempt to save the estate granted by Queen Elizabeth was unavailing, and the fate of the grandson was regarded as a judgment for the sins of the grandfather who had "dealt with transplantation as if the Irish were beasts of the field, that might be driven from one province to another for the convenience of the English."

dren before the 1st May 1654, under the penalty of death to any one found east of the Shannon after that date. The general plan of this measure, which is known as "The Cromwellian Settlement of Ireland," was to remove the Irish families of the upper and middle classes into Connaught, which was to be converted into an exclusively Irish province—the Wales of Ireland—and to make Ulster, Munster and Leinster the exclusive property of Protestant English and Scots. Experience had shown that when Irish and English were intermixed, the former were the leaven that leavened the whole lump, and the English seduced by Irish fascination became more Irish than the Irish themselves. It was therefore deemed advisable to isolate this dangerous race, to remove them beyond the Shannon, to interpose its broad stream and a chain of forts between them and the English, who, however successful against them in war, were unable to resist their captivating influence in peace. The Irish peasantry were, however, allowed to remain, *first*, because they were useful to the English as earth-tillers and herdsmen; *secondly*, because it was hoped that, deprived of their priests and gentry, and living amongst the English, they would become Protestants; and *thirdly*, because the English gentry, without their aid, would have had to work for themselves and their families; or, if they did not, would die; and if they did, would in time turn into common peasants.[7] Thus the colonists had no intention of becoming working peasant proprietors; they meant to be proprietors of the land, while others did the work of cultivation, and the natural result was that they became landlords, and the Irish peasants their tenants.

§ 133. The settlement of Ireland, thus effected under the Act of 1653, was the work of the Commonwealth; and when the Commonwealth came to an end, and Charles II. was restored, the transplanted landholders had strong

[7] *Threnodia Hiberno-Catholica*, by F. Maurice Morison, a Franciscan father, Lecturer in Theology, Innsbruck, A.D. 1659. The book was written against "the Arch Tyrant Cromwell;" but the facts above stated are substantially correct.—See Froude, Vol. I, 133.

hopes that he would restore them also. The war which began with the Massacre of 1641, and was terminated by Cromwell's army in 1652, was in its inception a revolt of the Irish against the English Government, but was afterwards partly converted into a Royalist struggle against the Parliament. Rebellion against English authority might reasonably be punished with confiscation, but the restored Monarch could not maintain the justice of forfeiture in the case of those, who had committed no other offence than that of taking his and his father's side against the Parliament. Many of the persons, who argued thus, had been the companions of the King's exile. All who hoped for the recovery of their estates were anxious to place themselves in this category, and to make it appear that they had rebelled against not English supremacy but Parliamentary usurpation. Unfortunately, however, the King's father had ratified the Act, under which the Adventurers had advanced their money upon the security of the confiscated Irish lands. A Commission was appointed to deal with the difficult problem thus brought forward for solution. Finally it was resolved that all confiscations based upon participation in the original outbreak should stand good, but that the lands of those who could show that they had taken no part in it should be restored, the Soldiers and Adventurers in possession being compensated by an assignment of lands elsewhere. A million acres had been left undisposed of under the Act of 1653, and to these were to be added the grants of the regicides and adherents of the Commonwealth, which had become forfeited. A Court of Claims was appointed to apply these principles to individual cases; and the result of its labours was that the Adventurers and Soldiers lost one-third of their grants; and the Irish Catholics, who before 1641 had owned two-thirds of the good land of Ireland and all the waste, were left in possession of somewhat less than one-third.[8] Titles to

Effect of the Restoration on the Cromwellian Settlement.

Court of Claims.

[8] The Court of Claims showed a disposition to construe the Irish Act of Settlement, 14 & 15 Car. II., cap. 2, under which they proceeded, very favourably to the Catholic petitioners; and in consequence more Adventurers and Soldiers

land now enjoyed a brief dozen years' respite from disturbance. At the end of this period the War of the Revolution broke out. King James landed at Kinsale in March 1689. The Irish party headed by Tyrconnel embraced the side of the Catholic King. The Acts of Settlement were repealed by the Irish Parliament; outlawries were reversed; and decrees for restoration made as fast the Courts could make them. All who held lands under the Acts of Settlement were dispossessed. The old proprietors recovered their estates with all the improvements made by the Adventurers and Soldiers, who were some time or other to receive compensation. The Catholics were restored to all that they had lost by the outbreak of 1641; and in order to give them back also the six counties of the Ulster Settlement, and the lands forfeited in the reign of Elizabeth, two thousand six hundred landholders were declared to have forfeited their estates for treason in adhering to the Prince of Orange. Then followed the Battle of the Boyne (1st July 1690), the Battle of Aughrim, the Siege and Treaty of Limerick (October 1691); and all this was again reversed. Commissioners were appointed to reinstate the expelled Protestants, but great confusion had meanwhile been introduced by the change of owners, and the Commissioners were accused of favouring the Catholics and putting difficulties in the way of the rightful proprietors. It took several years and some warm contests in the Irish Parliament, before Irish titles were quieted after this disturbance. Another ordinary consequence of the War of the Revolution was that the domains of King James, the estates of Tyrconnel and the lands of a

Consequence of the War of the Revolution.

were dispossessed than could be compensated with the vacant land available for this purpose. Those who were thus left without compensation had an equitable claim for contribution upon the others, who had not been disturbed by successful claims. The matter was compromised by all agreeing to accept two-thirds of their legitimate claims, those who had not been dispossessed giving up one-third of the land in their possession on condition of getting a secure title to the remainder. This arrangement was embodied in the 17 & 18 Car. II., cap. 3. For further information as to the Court of Claims and its labours, see Froude's *English in Ireland*, Vol. I, Chapter III.

considerable number of their adherents, were forfeited. A large portion of these forfeitures was granted away to courtiers, favourites, and persons who had helped to advance the cause of William. A Resumption Act was afterwards passed to declare these grants null and void. They were accordingly resumed and made over to thirteen trustees, for sale to the highest bidders for the benefit of the nation. Queen Anne is said to have meditated the restoration of the estates so forfeited; but she did not live to effectuate her intention.

§ 134. Many causes have jointly operated to bring about results, which have impressed some very extraordinary and characteristic features upon landholding in Ireland. One of these causes has been the great insecurity of title caused by continual outlawries, forfeitures, confiscations, pardons and reversals. Amid the struggles for the English Crown, the contests of rival religions, the dissensions of political parties, the chances of rebellion and the expectation of foreign assistance, the outlawed Chief, the dispossessed proprietor looked forward, with the sanguine hopefulness of the Celtic race, to the day when he would have his own again. As late as 1774, Arthur Young wrote as follows:—"The lineal descendants of the old families are now to be found all over the kingdom, working as cottiers on the lands which were once their own. In such great revolutions of property the ruined proprietors have usually been extirpated or banished. In Ireland the case was otherwise, and it is a fact that in most parts of the kingdom the descendants of the old landowners regularly transmit by testamentary deed the memorial of their right to those estates which once belonged to their families." These descendants of dispossessed landholders were of the same race and creed as the peasantry amongst whom they found what, they hoped, was but a temporary shelter; and these peasants gave *them* their sympathies, while forced to pay rents to the Saxon invaders. It does not require much imagination to comprehend what a source of unrest, what an

Peculiar features of Irish Landholding—Insecurity of Title.

element of disquietude existed in this state of things. Another contributing cause was the fact that the new landlords were 'foreigners'—aliens in blood and in creed;[9] and this disturbing element was very greatly intensified by religious persecution brought about by the spirit of the age and by political events, which are matters of history. The old Irish Chiefs oppressed their tenants,[1] but this oppression came to them from the Heads of their own Clans, who were using, although abusing, an acknowledged right, and who at least protected them from all others. It was moreover oppression in a form and of a kind to which they were accustomed; and it is astonishing how much wrong, if done under known forms of procedure and by men of admitted authority, will be endured without murmuring by those, who will feel and resent as tyrannical much lighter burdens of an unusual kind, laid

New Landlords were Foreigners, and of another Religion.

[9] Mr. Longfield well observes in his Essay, published in the Cobden Club Series, that "religion did not, and could not, lend its aid to the authority of the law. The great mass of the agricultural population was Roman Catholic; and the Roman Catholic priest, their minister and instructor, was in some respects under the ban of the law. He could scarcely be an effectual teacher of the doctrine that it is a moral duty to obey the law of the land, when he himself was obliged to violate it almost daily in the discharge of his most sacred functions. Of all laws those which are framed for the protection of property are the most likely to be disregarded by the poor man. The man who never possessed any property can scarcely feel the duty of respecting it. He must be taught that duty either by arguments, which do not bring conviction to all men, or by some authority which he respects. But the Roman Catholic priest had no property of his own, and he generally belonged to a family which did not possess much property. He had therefore no sympathy with the landlords, who in general did not belong to his flock. Religion, which ought to be the great bond of union between men of every race and every class, was in Ireland an additional source of disunion." See also Morris's *Land Question of Ireland*, pp. 231, 295.

[1] Edmund Spenser and Sir John Davis emphatically declared that the "Chiefs do most shamefully rack-rent their tenants," and spoke with vehement indignation of the exactions from which the tribesmen suffered, the *coshering* and the *coigne and livery*. "The lord," says Sir John Davis, "is an absolute tyrant, and the tenant a very slave and villain, and in one respect more miserable than bond-slaves. For commonly the bond-slave is fed by his lord, but here the lord is fed by his bond-slave."—See Sir H. Maine's *Early History of Institutions*, pp. 127, 179.

on them by hands to which they are unaccustomed. The Irish peasantry submitted to the exactions of *coigne* and *livery* and *coshering;* but they felt it a terrible hardship to have to pay, at stated periods fixed money-rents of less equivalent value. They had never been accustomed to make such payments, and the forethought necessary to provide for them in time was a quality, which had to be developed, if not created.[2]

§ 135. A further very effectual cause was absenteeism. When the Normans conquered England, they settled down in the country amongst the Saxons ; and, in course of time, the fusion of the two races became complete, and both merged in a single nationality. The nobles, who received lands, set up their manor in the midst of the people ; and for good or evil proceeded to dwell amongst them and exercise authority over them. The people came to look up to them as their natural superiors and as rightfully in authority over them. No doubt this authority was often abused, and the abuse had the effect of making it felt and feared ; but it was oftener used for the benefit and improvement of those subject to it. But in Ireland all this never happened generally so as to affect the progress of the whole nation. There were no doubt some families, who settled in the country, dwelt upon their estates, and fulfilled more or less carefully the duties of large landed proprietors ; but these were exceptions to the general rule, the evil results of which their better conduct operated by contrast to exhibit in a stronger light. Even of these many were driven out and forced to emigrate by a condition of things to which they did not contribute, but for which they suffered. Absenteeism, as we have seen, prevailed from the beginning, and was the object of repeated prohibitory, but ineffectual legislation. The laws made

Absenteeism.

[2] So the Bengal zemindars at first deliberately preferred the old Mahomedan system with all its abuses and oppressions to the then newly-introduced English Revenue laws, under which the estates of defaulters were inexorably sold, if the Government revenue were not paid into the local treasury by sunset of the last day allowed for payment ; and they actually petitioned Government for a return to the old system.

against it were not effectually enforced, because the chief offenders were persons of power and influence in the Government or about the Court. The chief effect given to them was against political opponents, or those who had taken the opposite side but not openly enough to incur forfeiture. Large grants were made to Court favourites or political partisans—men who had estates of their own in England, and who never contemplated or were supposed to contemplate residence in Ireland. As little did London merchants, who invested their money in Irish land as a speculation, think of going to live in a country, which to them was as barbarous as the Indies, or other foreign parts in which they adventured their capital for the sake of gain. Then the gentlemen, who were landholders in Ireland without English estates or other pursuits, and to whom the increase of rents gave an income large enough to afford the luxuries as well as the necessities of life, naturally sought those places where these luxuries were to be found and enjoyed; and in Bath and London, and occasionally in Paris, the Irish landholder found more civilized society than that of the rowdy, fox-hunting, hard-drinking squireens, to whose company he would be left in Ireland. The more he saw of the amenities of social life, the less congenial became Ireland and Irish habits; and his children grew up in the same ideas. Non-residence necessarily occasioned want of acquaintance and want of sympathy with the people. The gentlemen absentee, however humane, thought nothing of the miseries which he did not see. The enjoyment of pleasure disinclines the mind to reflection upon pain; and he shrank from the narrative of suffering, which brought to his conscience the self-reproach of duty neglected. Then society and pleasure and residence abroad were expensive; and the more these landed proprietors lived away from their estates the larger was the income which it was necessary that they should draw from these estates in order to bear this expense. So the Agent raised the rents, showing his capacity to his employer by increased remittances,

and feeling little for the hardship or even misery which he was paid for inflicting.[3] The necessities of Court favourites were as pressing as those of non-resident country gentlemen ; and they knew even less of those, whose labours supplied the means of satisfying their numerous wants—knew less, and therefore felt less, and were more exacting. Then speculating grantees or purchasers had become landholders merely with the object of making money, and men of this class did not much concern themselves with the hardships of the peasantry, so long as this object was attained. Three-fourths of the land at one time, and always more than half, belonged to the absentees ; and thus rent in Ireland was substantially a heavy tax levied upon a subject people, and transmitted to increase the wealth of the paramount nation.[4] That it practically was

[3] The Report of 1729 on the causes of the Protestant emigration from Ulster states that the Agents of the absentee landlords "habitually let the lands by auction to the highest bidder ; they turned Protestant tenants out of their holdings without compensation for improvements, and let the farms to Catholics on short leases, and at rack-rents."

[4] "In 1729," says Mr. Froude, "the total exports of Ireland were £1,053,782—the total imports £819,761 = balance £234,021. Out of which balance Ireland paid in rents to absentees £600,000. The absentee rents rather increased than diminished with the progress of the century. Heavy pensions were paid by the Irish Establishment to persons residing in England. There were no gold or silver mines in Ireland. The money that went out must have come in from some quarter or other ; and the profits of the smuggling trade give the only conceivable explanation."—Vol. I, p. 447, *note*. If this explanation be sound, it would have been impossible for Ireland to have paid these absentee rents without carrying on an illicit trade and breaking the laws. In 1773 an attempt was made to tax absentee proprietors, but it failed. In 1769 a work was published giving the names of absentees and the amount of their properties, thus challenging correction and refutation. This work showed that property to the amount of £73,375 belonged to persons who *never* visited Ireland ; and property to the amount of £117,800 was owned by persons who visited it *occasionally*, but really lived away. Incomes to the amount of £72,000 were received by officials and bishops, who resided in England, performing their duties by deputy. And pensions to the amount of £371,900 per annum were paid to persons who lived out of Ireland, and many of whom had no connection with the country. Absenteeism has found defenders, and they have at times been successful in their defence. While the Mercantile System was accepted, and gold and silver were supposed to constitute wealth, everything that contributed to the exportation of money made

this, it is impossible to deny ; and the descendants of the old owners, very many of whom remained in possession as the tenants of the absentees, ever kept this idea before their own minds and the minds of the peasantry, with whom they had all the local influence, which should have belonged to the *de facto* landlords who were ignoring the most sacred duties of property.

§ 136. In England the surplus population, which could not obtain a livelihood from agriculture, found employment in manufactures, and by their labour increased the wealth of the country. To Ireland this path of industry and prosperity was deliberately closed. The colonists who came over in the time of James I. started a woollen manufacture with success. The English weavers took alarm. The Irish, it was said, have wool in great quantities, and if they should manufacture it themselves, the English will not only lose the profit they have made by indraping the Irish wool and his Majesty suffer in his customs, but the Irish will at last beat them out of the trade itself by underselling them. To gratify the English, Strafford put restraints upon the Irish manufacture, which practically stopped it. Cromwell with broader views removed these restraints, and Ireland enjoyed a brief space of extraordinary prosperity. Again the English manufacturers took alarm. They petitioned their own Parliament. The Lords represented that the growing

Suppression of Irish Manufactures.

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of these metals was supposed to impoverish a country. On this ground it was argued that the transmission of rents to absentee landlords injured and impoverished Ireland. When the Mercantile System was exploded, this argument was no longer tenable ; and some people fallaciously supposed that, because this one argument had lost its force, the negative of that which it was intended to prove must be true. There are, however, many other very cogent arguments against absenteeism. When the landlord resides and spends his rents in the neighbourhood, his superior intelligence creates and encourages improvement ; local trade receives a direct stimulus ; local labour finds employment ; there is a local demand for the local supply ; and the economical machinery for the creation of wealth is set going. When the absentee resides abroad, his rents go to him in the shape of cattle, corn, butter, &c., and the price of these commodities handed over to him goes to pay the labour, to encourage the manufactures, to remunerate the industry, not of Ireland, but of England or some foreign country.

manufacture of cloth in Ireland, by reason of the cheapness of the necessaries of life and the goodness of the materials, invited Englishmen with their families and servants to settle there. The King's loyal subjects in England apprehended that the further growth of it would prejudice the manufactures in England. The trade of England would decline, the value of land decrease, and the number of the people diminish. They besought his Majesty to intimate to his Irish subjects that the growth of the woollen manufactures there had been, and would be always, looked upon with jealousy in England, and if not timely remedied, might occasion very strict laws totally to prohibit and suppress the same. The Commons added that the wealth and power of England depended upon her preserving a monopoly of the woollen manufactures ; *that* they looked with jealousy on the increase of it elsewhere, and must use their utmost endeavours to prevent it from extending ; that the Irish were dependent on, and protected by, England in the enjoyment of all that they had, and the English Parliament would be obliged to interfere, unless the King found means to make Ireland understand its position, while insisting on the abolition of the Irish woollen manufacture. The English Parliament expressed their willingness to leave the Irish linen trade unmolested. Forced to be content with this boon, and afraid of abolition, if they proved recusant, the Irish Parliament imposed a duty of four shillings in the pound on all broad cloths, and two shillings in the pound on all kerseys, flannels and friezes, exported from Ireland. This duty was sufficiently high to prevent exportation ; but the English Parliament went further and passed an Act, which prohibited the exportation from Ireland of either wool or woollen manufactures to any country but England.[5] The expressed

[5] In describing this occurrence, Mr. Froude justly remarks that true political wisdom "would have welcomed the development of Irish industry as a better guarantee against future trouble than a hundred Acts of Parliament. No spirit could have more effectually killed the genius of Popery and Jacob-

Irish Linen Trade injured.

intention of leaving the Irish linen trade unmolested was not long acted upon. Duties were imposed upon the coarser kinds of Irish linen fabrics, more especially sail cloths, with which the Irish manufacturers had gradually come to supply the whole British navy. The consequence of the imposition of disabling duties was that the linen trade was injured, and the best artisans being thrown out of work emigrated to America. In 1778 these restrictions were removed, and Ireland was allowed the free export of all her manufactures except woollens, but the trade had gone elsewhere, and the reparation was too late. In 1663 the English grew jealous of the successful cattle trade, which Ireland had established with Liverpool, Bristol and Milford. They were satisfied that it injured them by lowering the value of English farm produce. Accordingly the Parliament of Charles II. passed Acts to prohibit the importation into England from Ireland of cows, bullocks, sheep, pigs, salt beef, bacon, butter and cheese. These Acts were not repealed until England stood in need of the commodities thus excluded. Ireland had established an independent trade with New England. This trade and the Irish shipping interest were together destroyed by the Navigation Act of 1663, which made it necessary that all Irish produce sent to the colonies and all colonial produce sent to Ireland should be landed in England and re-shipped in English bottoms. Reasonable men must agree with Mr. Froude that the policy, which England pursued, ruined the trade of Ireland and destroyed her manufactures.

Merchant Navigation destroyed.

§ 137. The loss to Ireland of her manufactures and of the additional employment and means of livelihood, which they would have afforded to her increased population, was not compensated by more encouragement or greater facilities given to agriculture. The Act of the English Parliament prohibited the export of wool to any other country

itism, or could more surely have provided that Ireland should never again be a burden on the English Exchequer than the growth of trade and manufacture there."

than England, but the coasts of Ireland were difficult to watch or guard, and a large illicit trade in wool was carried on with the Continent. Direct trade was still allowed with France, Spain and Portugal; and Irish salt beef and butter found a ready market in their ports. Thus the rearing of cattle and sheep became the most profitable use to which the land could be appropriated by those, who had bought it as an investment with a view to making money. The absentees, whose necessities required larger incomes, finding that higher rents were obtainable for grazing lands than for tillage, followed their example. Large tracts were converted into pasturage; and in order to do this landlords and their agents evicted the smaller tenants. The leases granted to the larger tenants, who were allowed to remain, contained covenants against breaking or ploughing the soil. The Irish Parliament passed a vote that these covenants were impolitic, and ought to have no binding operation, but all efforts to give effect to this vote by legislation for a long time proved abortive.[6] The employment of labour almost ceased with the discontinuance of tillage, and the unfortunate peasantry were driven to the cultivation of their potato gardens in order to save themselves from starvation. There was no Poor law in Ireland at that time, and the occasional failure of the potato crop created a calamity only equalled by an Indian famine. But an Indian famine is the work of Providence alone, and the native of India attributes his suffering to kismut, whereas the famine caused by the failure of the potato crop was the act of man, the direct consequence of the land being given up to sheep and cattle instead of corn-growing; and

Large Tract converted into Pasturage—Eviction of the Small Tenants.

[6] Dean Swift's pen supported Parliament, and after many failures a Tillage Bill was passed in 1729, which provided that five out of every hundred acres fit for cultivation should be under the plough. One effect of converting so much land into pasture was that Ireland did not grow sufficient corn for her own consumption, and had to import from England, France and Holland. The English did not wish corn to be grown in Ireland, lest their trade should be injured by Irish exportation. Moreover, having a legal monopoly of all wool exported by Ireland, the English wished as much land as possible to be devoted to sheep-grazing and the production of wool.

the Irish peasant laid at the door of the graziers and landlords evils which he was keen-witted enough to see could be prevented. When the conversion of tillage into pasture, which had worked such misery in the other provinces, began to be extended to Connaught, the peasantry took the remedy into their own hands, and the Houghers[7] struck an effectual blow at a system, which threatened the very existence of the people. Closely connected with, and in a great measure resulting from, the extension of the grazing system was the appropriation of common lands, to the exclusion of the peasantry. In many instances their small parcels of land had been let to tenants at rents above their real value on the understanding that they would have the use of the commons. The conversion of these commons into grazing lands to the exclusion of the tenants was therefore a gross breach of faith. This oppression gave rise to another form of agrarian crime during the latter half of the eighteenth century. Organized bands of men levelled by night the fences erected to enclose the commons. They were accordingly termed 'Levellers,' their original object being to restore the ancient commons to the people. But they gradually proceeded to redress grievances of other kinds by more lawless methods, and were called Whiteboys from the white shirts which they wore over their clothes either to prevent identification or for more easy recognition by each other, or perhaps with both objects.

The Houghers.

Enclosure of Commons.

Levellers.

Whiteboys.

§ 138. In Ireland, as in England, the conversion of large tracts of land into pasture had the direct effect of raising the rent, which could be demanded and obtained for that portion which was left under cultivation. In a work published in Dublin in 1738, it is stated that the value of land had increased fourfold between 1652 and

Raising of Rents.

[7] This species of agrarian crime first made its appearance in the winter of 1711. Notices signed by 'Evan' were first given, and the shepherds were warned to keep indoors. Remaining inside, they heard the cries of the hamstrung cattle and the shouts of the Houghers. If they ventured out, their houses were burned. Very few of the culprits were brought to punishment. The peasantry would not give evidence, and juries would not convict.

1673. During the latter portion of the seventeenth, and throughout the whole of the eighteenth, century the raising of rents went on continuously. Those grantees under the Cromwellian Settlement, who were inexperienced in the management of landed estates or who had no intention of residing, gave leases for long terms, in some instances for a hundred years or more, or for lives renewable for ever, to persons who were willing to take large blocks of several thousand acres. Many of these leases were taken by members of the dispossessed Irish families ; and many by land-jobbers. The former class had no intention or desire to engage in the work of agriculture ; they became lessees under those, whom they regarded as usurpers, only that they might retain their hold on the land and bide their opportunity ; and they sublet to others, subsisting on the difference between the rent which they paid and the rents which they received. The latter class became lessees merely for the sake of the profit which they could make by letting again in smaller portions. The process was carried further down, and in some parts of Ireland there were no less than six lettings before reaching the wretched cultivator, whose labour had to maintain all these useless, unproductive, middlemen.[8] Double ownership in any form is bad. Prussian legislation was emphatically directed against it. But a system under which there are half a dozen owners descending in educated intelligence and social position to the lowest level is mischievous and oppressive in the highest degree. Experience has shown that no class of landlords is so hard and unfeeling as petty landlords—no men so merciless in oppression as persons of the same social position with the tenants, over whose heads they have raised themselves by superior cunning, penurious thrift, or rapacity in inferior office. Middlemen were the most energetic and effective exactors of rack-rents, and they were utterly careless as

Middlemen.

[8] I shall hereafter show that the Patní and Ejarah systems have been similar causes, producing similar effects in Bengal ; and that the resulting mischiefs are evils, against which legislation ought to be directed.

to the improvement or deterioration of the estates. Middlemen were the creators of cottierism, and the authors of a large portion of that oppression which the miserable peasantry laid at the doors of the landlords, who permitted the existence of the system. The rents which under the pressure of such a system could be squeezed out of the tillers of the soil became a kind of standard to regulate rents generally ; and even where there were no middlemen, landlords seeing what could be exacted, took every opportunity of enhancing, so as to approach this standard as near as possible.[9]

§ 139. A remarkable instance of this occurred in the Province of Ulster. Lord Donegal demanded a hundred thousand pounds in fines for the renewal of a number of leases which determined at the same time. The Protestant tenants, being unable to pay this large amount, offered the interest of it in addition to the old rent. The offer was refused, and some speculators paid the fines and took the lands over the heads of the tenants with a view to making money by subletting. Another large proprietor followed the example. Some six or seven thousand families were

Ulster Evictions in 1772.

[9] In 1772 the Northern Protestants sent a remonstrance to Government in which was the following passage :—"When the tenant's lease was ended, they" (the landlords) "published in the newspapers that such a parcel of land was to be let and that proposals in writing would be received for it. They invited every covetous, envious and malicious person to offer for his neighbour's possessions and improvements. The tenant, knowing he must be the highest bidder or turn out, he knew not whither, would offer more than the value. If he complained to the landlord that it was too dear, the landlord answered that he knew it was so, but as it was in a trading country, the tenant must make up the deficiency by his industry. Those who possessed the greatest estates were now so rich that they could not find delicacies in their country to bestow their wealth on but carried it abroad, to lavish there the entire day's sweat of thousands of their poor people. They drained the country and neglected their own duties. Nature assigned the landlord to be a father and counsellor of his people, that he might keep peace and order among them, and protect them, and encourage industry. Though the order of things had made it necessary that the lower should serve under the higher, yet the Charter of dominion had not said that the lower should suffer by the higher." A few years previously the peasantry had combined under the name of Hearts of Oak to frighten the landlords by houghing cattle and burning farmhouses ; but this particular combination did not proceed to greater atrocities.

in consequence turned out of the holdings which their labour and that of their fathers had reclaimed and made valuable. Those who could, emigrated to America, and in the war, which terminated with the independence of that country, there were no more bitter and uncompromising opponents of England than these men, who carried to the Western Continent no unreasonable sense of injury. Those who were too poor to emigrate remained to increase the discontent, which has so often burst forth in terrible crime. As Peep-o'-Day Boys they invaded the homes of the Catholic intruders, who had taken their lands; and the Catholics combined as defenders for their own protection. Thus domestic feud retarded the prosperity of the province. The movement commenced by Lord Donegal rapidly extended. The tenantry without protection from the law combined for their own protection, calling themselves Hearts of Steel. In a petition addressed to Lord Townshend, the Viceroy, they represented that they were groaning under oppression, and having no other possible way of redress, were forced to join themselves together to resist; that in consequence of their lands being overlet, they were reduced to poverty and distress, and by rising meant no more than to have their lands, that they might live thereon and procure necessaries of life for themselves and their starving families; that some of them refusing to pay the extravagant rent demanded by their landlords had been turned out, and their lands given to Papists, who would promise any rent; that it was no wanton folly that prompted them to be Hearts of Steel, but the weight of oppression; and if the cause were removed, the effects would cease and their landlords live in affection with their tenants. Lord Townshend was satisfied that the disturbances in Ulster arose from gross iniquity, and that they could be cured only by the lenity of the proprietors; but none the less a body of soldiery was sent, and, but for the moderation of the General, oppression would have been followed by bloodshed.[1] Lord

The Hearts of Steel.

[1] Half a century later illegal association had become more blood-thirsty than the Hearts of Steel. An attempt was made in Longford to evict some

Buckinghamshire, who was Viceroy next but one after Lord Townshend, expressed his opinion that *the great leading mischief* in Ireland was the rise of rents. In 1785 the rent of the potato gardens in the South and West had been raised to five and six pounds an acre. As the price of produce rose, the landlords and the middlemen raised the rents, and aided by the competition of poverty appropriated to themselves alone the improvement which should have been shared by the cultivating children of the soil.[2]

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old Catholic tenants and replace them by Protestants. Of nine Protestant tenants introduced by Lord Lorton on his property, three had their cattle destroyed, two were attacked and nearly killed, and four were murdered.

[2] Mr. O'Connor Morris, "The Times'" Special Commissioner, gives rents in Tipperary as 9*s.* to 30*s.* the English acre at the time of Arthur Young's visit; 18*s.* to 36*s.* at the time of the Devon Commission; and 21*s.* to 39*s.* in 1869. "But," says he, "in the days of Arthur Young, the prices of farm produce about Tipperary were not one-half of what they are at this time (1869); the average amount of produce raised was not probably more than two-thirds; and at the period of the Devon Commission, the rate of prices, and the sum of the produce, were, perhaps, 20 per cent. less than they are at present. It follows that the real pressure of rent is considerably less in 1869 than it was in 1779 or in 1844."—*The Land Question in Ireland*, pp. 21, 39. In Meath, rent in Arthur Young's time varied from 6*s.* to 40*s.* per Irish acre. At the time of the Devon Commission it was 15*s.* to £3 10*s.* In 1869 it varied from 16*s.* to £4. In Cork rent varied from 50*s.* to 6*s.* the Irish acre in Arthur Young's time; and it now ranges from 75*s.* to 12*s.* Mr. Longfield, the former learned Judge of the Landed Estates Court in Ireland, says:—"Taking round numbers, we may say that in the course of two centuries the population has increased five-fold, the *rental* has increased *fifteen-fold*, and the general wealth of the country has increased fifty-fold." —*Cobden Essays.*

CHAPTER XIII.

The Tenure of Land, and the Relation of Landlord and Tenant in Ireland—From the last quarter of the Eighteenth Century to the last quarter of the Nineteenth Century.

§ 140. In consequence of the destruction of Irish trade and manufactures, the whole population were thrown on the land for subsistence ; and, as time progressed, the most important questions touching the condition and progress of the people were certain to be those connected with the land-laws. To make these laws most conducive to the welfare of the masses would, under the circumstances, have required careful and instructed statesmanship, and very cautious legislation. But the Legislature did not concern itself with the matter until the mischief was done ; and England was too self-satisfied with her own system to suppose for a moment that anything other or different could be necessary or good for Ireland. Competition in England was the competition of capital, and it had a well-defined limit, namely, the ordinary profits of capital. The landlord pent his own money in improving the land and building farm-houses, and a large part of what he received as rent represented the interest of the money which he had laid out on the farm before letting it to the tenant. In Ireland, on the other hand, competition was the competition of poverty, and poverty unfortunately had no limits. The landlord spent nothing on the land and the rent was a payment made—too often to an absentee and an alien in race and creed—for permission to cultivate the soil which the peasantry believed to belong to themselves ;[3]

Causes of Discontent amongst the Peasantry of Ireland.

[3] Those who may affect to smile at the absurdity of this idea are asked to consider the following. In Russia and in India the same idea has always existed in the minds of the peasantry. It is now tolerably well established that the land in all countries was owned in common, before individual ownership came into existence. Where the Feudal System was established, common ownership was

and the productive power of which was largely due to their labour. When men, whose minds are sharpened by hunger, begin to think, it is scarcely possible that they will not regard this position as wrong and unfair. Men willing to labour, that they may eat, cannot see the justice of a system, which forbids them either to labour or eat, unless at the will of a small class, who can keep them off the land unless special conditions are complied with. If that will be not arbitrarily exercised, if those conditions are not essentially unreasonable or unjust, the subject majority may continue to submit to the condition of things to which they were born, however much they may grumble at their lot. But the system will bear no further strain, and any arbitrary use of their power by the small minority, any palpable course of injustice, must lead to condemnation and hatred of the system and those who benefit by it. If the raising of rents in Ireland had merely kept pace with the natural progress of the country, with the increasing price of farm produce, there might have been friction and dissatisfaction, for population increased rapidly; and, there being no manufactures, the whole pressure of this increasing population was thrown on the land. But that strong sense of injury would have been wanting which was excited when landlords, who had spent nothing on the improvement of the land, claimed to raise the rents on those, whose labour and money had improved it, and on account of the added value of the very improvements thus made—and,

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quickly superseded by individual ownership. The feudal lord was a separate owner of a particular kind, and the titles of those who held from him depended on his title. When his estate was forfeited for treason or other cause, the estates or interests of those who held under him were naturally destroyed. But the feudal system never was effectually introduced into Ireland; and the Irish Chief never was a feudal lord, so that the members of the Sept derived title to the land from him. We have seen (*ante*, p. 240) that he had his own land as an individual, and certain other land belonged to the office of Chief. With the rest of the land of the Sept he had no concern; and this land could not, therefore, be forfeited as regarded its occupiers for the treason of the Chief. English forfeitures were thus a wrong and an injustice, which found no explanation or palliation in the ideas, or customs, or laws of the people.

when this unreasonable claim was not complied with, sought to evict the improvers without compensation.[4] There were many just landlords, who did not and would not perpetrate this injustice;[5] but the mere fact that it

[4] "The Irish landlord," wrote the late Mr. Senior, "partly politically and partly to obtain additional rent, by means of the potato encouraged or (what was enough without actual encouragement) permitted subdivision and the increase of population. The inhabitants of Ireland, from 4,088,226 in 1792, rose to 8,175,124 in 1841. The landlords were unable or unwilling to spend money on their estates. They allowed the tenants themselves to make the provision, by building and by reclaiming land from its original state of bog or heather or stony field, necessary to lodge and feed this increased population. It is thus that many estates have been created, and almost all have been enlarged by generation after generation of tenants without assistance. It was the tenants who made the barony of Ferney, originally £3,000 a year, worth £50,000 a year." Many landlords thought it to be for their advantage to have as many occupiers as possible on their lands, because the more occupiers, the more tillage and the greater security for the rent of the landlord, who was empowered by a special Act of Parliament to distrain growing crops. As to improvements made by tenants, see for a large amount of practical information, *The Land Question in Ireland*, pp. 7, 22, 61, 83, 98, 104, 115, 152, 177, 289, and 312; the debates on the Irish Land Bill in the 'Times,' of April 8th, 1881, p. 7, col. 3, and April 14th, 1881, p. 10, col. 2; and the Report of the Bessborough Commission. "It is not denied by any one," says the Report of the Bessborough Commission (January 1881), "that in Ireland it has been the general rule for tenants to do more, at all events, than the mere agricultural operations necessary to insure them such a profit as could be realized within the time which constituted the legal term of their tenancies; and this, of itself, is enough to establish in their favour a presumption that they were morally entitled to a larger interest in their holdings than was ever recognized by law. As a fact, the removal of masses of rock and stone, which in some parts of Ireland incumber the soil, the drainage of the land and the erection of buildings, including their own dwellings, have generally been effected by tenants' labour, unassisted, or only in some instances assisted, by advances from the landlord."—§ 10.

[5] "Was it not the fact in Ireland," said Lord Westbury, "that in nineteen cases out of twenty a landlord expected the tenant would do something for the improvement of the land, and stood by while it was done; and then was it not consistent with justice for the law to assume a tacit understanding on his part that the tenant was to enjoy the results of these improvements? Such doctrines as these had been the A B C of equity in this country for a considerable time; and if parties proceeding against their tenants in Ireland could be compelled to proceed in a Court of Equity, they would be met by the legal apothegm that 'He who seeks equity must do equity,' and they would not be allowed to dispossess the tenant unless they had given him satisfaction for the expenditure he had incurred."

was in their power to do it, the knowledge that they might be succeeded by others, who would have no scruples in seeking their own advantage; and the fact that many landlords had raised rents by the full improved value to which they had contributed nothing, and had evicted tenants who refused to pay the increased rents, created universal discontent.

Tithes.

§ 141. Another source of hardship and discontent was the law relating to Tithes. Those Catholics, who had sacrificed social position and worldly prosperity for the sake of their religion, deeply felt the injustice of having to bear the burden of maintaining the rectors and vicars of the Established Church. This injustice was aggravated by the fact, that many of the clergymen who received those tithes never resided in their parishes, and in many instances the clergyman's flock consisted of some half a dozen families. Further, the grass lands which belonged to rich capitalists were exempt from the payment of tithe, which was levied with unrelaxing strictness upon the tillage of the less wealthy and upon the potato gardens of the poor. Fitzgibbon, afterwards Earl of Clare, declared in the House in 1786 that he had known as many as a hundred and twenty processes for tithes to be going on at once in the County of Limerick against poor tenants. The suppression of tithes was one of the objects to which the operation of the Ribbon organization was directed. Then the levy of the County Cesses and the disposal of them were a further grievance. "Neither the laws," wrote Lord Townshend, when Viceroy, to the Home Secretary, "nor provincial justice are administered here as in England. Neither the Quarter Sessions nor the Grand Juries give the counties the same speedy relief, nor maintain the like respect, as with us. The chief object of the Grand Juries is so to dispose of the County Cesses as best suits their party views and private convenience. The sums raised by these gentlemen throughout the kingdom amount to not less than £130,000 per annum, which is levied upon the tenantry, the lower classes of which are in a state of

Misapplication of the County Cesses.

poverty not to be described.[6] It may easily be imagined what the poor people feel when these charges are added to rents already stretched to the uttermost." The Hearts of Steel in their petition already referred to, said that they were solely aggrieved with the County Cesses, which, though heavy in themselves, were rendered more so by being applied to private purposes.

State of Ireland just before the American War.

§ 142. The condition of Ireland before the American War was then this—no trade except smuggling—no manufactures to speak of—no employment for the restless activity of the people save land-jobbing, rack-renting, or organized resistance to oppression[7]—for those who shrank from these occupations, enforced idleness—the whole population thrown on the land, while absentee landlords and

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[6] In another letter to Lord Weymouth, he wrote :—"In short the distress of this people is very great. I hope to be excused for representing to His Majesty the miserable situation of the lower ranks of his subjects in this kingdom. What from the rapaciousness of their unfeeling landlords and the restrictions on their trade, they are among the most wretched people on earth." —Froude's *The English in Ireland*, II, pp. 115 and 96, *note*.

[7] It has often been said that the spirit of organized resistance to law and authority is a special characteristic of the Celt. But this is a fallacious way of accounting for lawlessness in Ireland. Under good laws and judicious authority the Celt becomes as orderly a member of society as men of any other race. When Englishmen settled in Ireland, and were subjected to the same treatment as the native Celts, they became in a very short time filled with as much indignation against oppression as the old inhabitants. Occasionally their resentment was greater, for they were not accustomed to bear oppression. Mr. O'Connor Morris draws attention to the fact that in no part of Ireland was there a more dangerous development of agrarianism than in the County Meath, which, having been in the heart of the Pale, is inhabited by an anglicized race, and is throughout penetrated by English elements. In the South of Ireland, Wexford excepted, agrarianism has prevailed in the counties abounding in English blood. Kerry, which is almost purely Celtic, has on the other hand been almost free from agrarian crime. Mr. Froude in many passages of his work '*The English in Ireland*' dwells upon the bad policy of the English Government in so treating the English settlers as to force them to make common cause with the Irish. An Englishman settled in Ireland lost the benefit of trade and manufactures, became subject to other laws and another legislature, ceased to be represented in the English Parliament and almost forfeited his nationality. No men have more vigorously declaimed upon the wrongs of Ireland than some of the descendants of the English settlers.—See Vols. I, pp. 286-9 ; II, p. 190 ; and III, p. 462.

middlemen were careless of all improvement—the wretched cultivators of the soil weighed down with burdens too grievous to be borne in the shape of exorbitant rents, and tithes and cesses—poverty and misery ever present, and famine no infrequent visitor upon the failure of the one precarious crop upon which existence depended. The picture is thus drawn in slightly different colours by Mr. Froude —"Industry deliberately ruined by the commercial jealousy of England; the country abandoned to anarchy by the scandalous negligence of English Statesmen; idle absentee magnates forgetting that duty had a meaning, and driving their tenants into rebellion and exile; resident gentry wasting their substance in extravagance, and feeding their riot by wringing the means of it out of the sweat of the poor; a Parliament led by patriots, whose love of country meant but the art to embarrass Government, and wrench from it the spoils of office; Government escaping from its difficulties by lavishing gold which, like metallic poison, destroyed the self-respect, and wrecked the character of those who stooped to take it; the working members of the community, and the worthiest part of it, flying from a soil where some fatal enchantment condemned to failure every effort made for its redemption—Such was the fair condition of the Protestant Colony planted in better days to show the Irish the fruits of a nobler belief than their own, and the industrial virtues of a nobler race! Who can wonder that English rule in Ireland has become a byeword? Who can wonder that the Celts failed to recognize a superiority which had no better result to show for itself."[8]

[8] *The English in Ireland*, II, p. 126. In the passage which follows the above Mr. Froude denies that the fault lies with the intractableness of the race; points out that the modern Irishman is of no race, so blended now is the blood of Celt and Dane, Saxon and Norman, Scot and Frenchman; and pays a high tribute to the qualities, which Irishmen have shown elsewhere than in their native land. In a later passage Mr. Froude writes thus: —"To check crime was but half the work. The other half was to prevent the wrongs which provoked it. The Irish gentry as a body were not fulfilling the purpose for which a gentry is designed. It was not that he might plunder his

§ 143. The immediate effect of the American War, which commenced in 1775, was that England resolved to relieve Ireland of some of her commercial disabilities. The Restriction Acts were repealed in 1779, the Ministers excusing themselves for their existence on the ground that they were a legacy of the previous century. Ireland, championed by Grattan, and supported by the Volunteers, still further improved the occasion. On the 16th April 1782, Grattan moved and carried a Declaration of Parliamentary Independence; and in the following month England conceded (1) an independent legislature; (2) the repeal of Poyning's Act—heads of Bills being no longer to be submitted to the Privy Council for amendment or approval before introduction into the House, but the Irish Parliament, like the English Parliament, drawing its Bills for the Crown to accept or reject; (3) a Biennial Mutiny Bill; and (4) the abolition of appeal to England from the Irish Courts of Law, the Irish House of Peers being made

Repeal of the Restriction Acts, 1779.

Declaration of Independence.

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tenants to feed his appetite for luxuries, that an individual man was allowed to call himself owner of the homesteads of a thousand families. Over half Ireland the relation between landlord and tenant was a money relation only, the landlord using the large discretionary powers, which the law allowed him, to extort the last penny which could be wrung from the miserable 'earth-tiller'—the peasant worse housed and fed than the master's cattle—the master spending the spoils of the peasant's labour in waste and dissipation. The difficulty was not new. It had been successfully encountered before, and might be successfully encountered again. The villeins under the feudal system held their lands at the lord's pleasure. According to the law, the lord could strip them of all they possessed, and make slaves of themselves and their children. 'But,' says Blackstone, 'the good-nature and benevolence of lords of manors having time out of mind permitted their villeins and their children to enjoy their possessions without interruption, the common law, of which custom is the life, gave them title to hold their lands in spite of their lord. They were still said to hold their estates at the will of the lord, but it was such a will as was agreeable to the custom of the manors.' The Irish peasants, if Great Britain chose to hold them as her subjects, were entitled to at least as much protection as the serfs of the Norman barons. The custom of the well-managed estates in Ireland might justly have been made the law for the whole. Courts might have been established, where an injured tenant could have applied for protection, and the people might have been led to see a friend rather than an enemy in the Government, which they had been taught to detest."—Vol. III, pp. 469—470.

the final Court of appeal in Irish cases. The political history of what followed is well told by Mr. Froude. Ireland, being at liberty to set her own house in order, was unable to do so. Her Parliament failed to use for the national weal that Independence, which had been so earnestly desired; which, lost, has been so bitterly mourned. The United Irishmen and the Rebellion of 1798 were followed by the Union, which closed the last page of the history of a hundred years. The dawn of a new century saw a fresh standard floating from Dublin Castle, and Ireland an integral portion of a Great Empire. While political independence was thus passing away, there had been great progress and increase of material prosperity as the immediate consequence of the removal of the restrictions on commerce. Lord Clare said in the House that no nation on the habitable globe had advanced in cultivation, commerce, and manufacture, with the same rapidity as Ireland from 1782 to 1800. The population increased enormously, faster almost than the means of subsistence—and the cultivation of the potato was immensely stimulated as the easiest mode of providing food to meet the ever-growing demand.[9] The land was rapidly subdivided, partly because no crop affords subsistence to a family upon so small a patch of land as the potato, and partly because landlords covered their estates with cottiers in order to obtain political influence by means of the forty-shilling freehold franchise.

The Union.

Brief Progress and Prosperity.

§ 144. The French War and the depreciation of the currency raised the price of agricultural produce; and in consequence a great rise took place in the value of land. Tenants who had previously obtained leases became rapidly rich. Those landlords who had not given leases

[9] It was at this time that all the great public buildings in Dublin were erected—the Custom-house, the Rotunda and the Law Courts. More than £200,000 were spent in 1783 in erecting forts, batteries and other works; and the labouring and manufacturing population thus found employment. Large grants were made for the encouragement of manufactures; and considerable sums were voted to relieve the poor of Dublin and Cork.

obtained the benefit of the higher prices in the shape of enhanced rents; while those landlords, who had granted leases, were poorer, because, their money income remaining the same, its purchasing power was diminished. The result was that, while tenants were eager to obtain leases, landlords were unwilling to grant them. The reaction came at the close of the war. In 1816 and the three following years, the value of land fell. Tenants who had obtained leases, while prices were high, were unable to pay their rents. Some ran away; some put their landlords to the delay and expense of eviction; and those who remained, remained at reduced rents. Landlords began to think a lease a one-sided agreement by which they were deprived of the benefit of a rise of prices, but had to bear all the loss when they fell.[1] Moreover, while prices were low, the rents reserved must be small; and landlords otherwise willing deferred the grant of leases in hopes of better times. Then during the agitation preceding the Catholic Emancipation Act, the tenantry in many districts of Ireland, notably in Waterford and Clare, voted according to their own wishes and against the desires and interests of their landlords. Political considerations, therefore, made it undesirable that tenants should have interests which made them independent of their landlords. Thus, in the ordinary course of things, there arose several reasons for withholding leases. A further ground for the non-existence of leases is stated in the Report of Lord Bessborough's Commission. The tenants became unwilling to accept them. The offer of security in their holdings for a term of years presented no attraction, for the tenants saw in it not a lengthening of the legal yearly tenancy, but a shortening of the continuous traditional tenancy.[2] This cause probably came into existence at a later period; and there

Rise in value of Land in early part of the present century.

Reaction in 1816.

Causes for withholding Leases.

[1] See Mr. Longfield's article in *The Cobden Club Essays*.

[2] We shall hereafter see that a similar feeling operated to prevent the Bengal Raiyats from accepting the leases, which the authors of the Permanent Settlement were so anxious that they should receive.

is evidence[3] that its operation was not general. The increase of population which had commenced towards the close of the last century continued into the present century. In less than thirty years the number of the people was doubled; and the competition for small holdings became greater accordingly.[4] In 1841 the population was 8,175,124; in 1845 it had reached nearly nine millions. Unfortunately the manufacturing industry of the country did not expand in the same proportion; and this increased population still depended for subsistence mainly on the land, and upon a single crop. In 1845, there was a partial failure of the potato harvest. In 1846, the failure was total, and then the famine of 1847 desolated the land. The famine was followed by a large emigration;[5] and the pressure of an excessively redundant population was thus removed from the soil. There was now a reaction against small holdings. The famine showed the terrible danger of a system under which the portion of land in the occupancy of a single family afforded a bare subsistence in fairly good years, leaving no margin for a reserve against those vicissitudes to which agriculture is subject. Landlords accordingly became desirous of uniting the small holdings into large farms;[6] and, in order to do this, evictions became

The Famine of 1847, and its Consequences.

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[3] See *The Land Question of Ireland*, pp. 43, 190, 206, 214, &c.

[4] It is said that the increase of population and growth of general wealth were greater from 1790 to 1830, than during the similar period from 1830 to 1870.

[5] There were in 1881 nearly three million less inhabitants in Ireland than there were forty years before. One effect of this decrease was that a higher standard of comfort was created—see the leading article in the 'Times' of the 22nd June 1881.

[6] There is little doubt that they went from one extreme to the other. Any system, which allows the land to be divided into holdings too small to maintain an average family in comfort, is bad. It may be so bad, where the family can supplement agriculture by manufactures or other industrial employment: but in a purely agricultural community it is altogether mischievous; it creates a low standard of comfort, and the population are always on the brink of famine. At the same time large farms and *la grande culture*, while admirably suited for a wealthy country, where manufactures abound and agriculture is only one form of investment for capital, are not the best system for a

necessary. In some parts of the country these were carried out on a large scale and under circumstances of hardship to tenants, who had done much to improve the land from which they were removed without compensation. A feeling of insecurity was thus created, which caused discontent and heart-burning ; and this feeling was further aggravated by the operation of other causes.

§ 145. The reaction which occurred after the French War had the effect of embarrassing many landlords, and their estates were brought under the Court of Chancery. The want of thrift and providence, so common in Ireland, and so often exhibited in the character of communities uneducated by commerce, involved many others in difficulties that were met and relieved for a time by mortgages, which in course of time swallowed up the full value of the property. The keen competition for land forced up rents, until sums were offered, which could be paid only in the best

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population which subsists by agriculture alone. Here the great *desideratum* is holdings of moderate size—sufficient to maintain an average family in comfort, and capable of being worked by the family with or without the help of one or two hired labourers. Sir Richard Griffith thought that the minimum size in Ireland should be 25 to 40 acres. 'The Times' of July 14th, 1881, took twenty-acre farms as the smallest, that can be cultivated with safety and success. Mr. Caird gives 168 acres as the average size of English farms (see Fornightly Review for January 1882, p. 6). In America the farmer and his family cultivate not less than 80 acres. In Ireland there were, in 1881, 360,000 holdings of a less annual value than £8 ; and 250,000 of a less value than £4. 'The Times' of July 12th, 1881, taking these *data*, argued that the smallness of the holdings is one cause of the periodical distress. Again agricultural statistics for 1880 showed in Ireland, 119,000 peasant occupiers with holdings under 5 acres each ; and 145,000 with holdings from 5 to 15 acres—these two classes together forming more than one-half of the agricultural population. Mr. Morris found small farms of reasonable size very successful in many parts of Ireland, where there was a lease, or other security of tenure—See *The Land Question*, pp. 20, (20 and 30 acres common in Tipperary,) 36, 43, 162 (Lord Bessborough's estate) and 286. In consequence of the evictions it became necessary to pass in 1848 "An Act for the protection and relief of the destitute Poor evicted from their dwellings in Ireland"—11 and 12 Vict., cap. 47. Many evictions were for arrears of the rent of the famine years ; and, as the non-payment of these rents was due to a visitation of Providence, the tenants could not acknowledge the justice of proceedings which, contrary to fact, assumed their ability to pay.

years, the landlord in worse or the worst years using the contract to squeeze all that could be got out of the unfortunate tenant, whom hunger—his own and that of his wife and children—instigated to resist by withholding all that he could. Uncertainty of demand and bad faith were thus introduced by the very contract that should have avoided them. The landlord had, however, a fine nominal rent-roll; and the generous disposition of his race made him nothing loth to live up to it. But a bad season or a fall in the price of agricultural produce made the payment of the high rents impossible, and his income was reduced, while retrenchment in his expenditure revolted his feelings and his pride. From these and other causes Irish landlords became deeply indebted, and their estates heavily incumbered. The incumbrances were so numerous and so complicated, that a sale was impracticable; while the owner, though he had no longer any beneficial interest, was in no way anxious to divest himself of the traditional importance attaching to a great landholder. The incumbrancers could act only through the Court of Chancery, where the number of the parties and the complexity of their interests rendered relief difficult, if not impossible, or, where possible, expensive in the highest degree. Large tracts were thus subjected to the worst management under landholders, who were unable to help or relieve themselves, much less their tenants; or under receivers who could have no possible interest in the amelioration of the property; and the land was withdrawn from the market and from all possible improvement by the investment of capital.

The Incumbered Estates' Act of 1848.

§ 146. The remedy devised for this state of things was "The Incumbered Estates' Act" of 1848.[7] The practical effect of this measure was to effect the sale of an estate, thus incumbered and locked up, upon the application of the owner or of any incumbrancer. The purchaser received

[7] 11 and 12 Vict., cap. 48. The same principle was applied to the West Indies in 1854 by the 17 and 18 Vict., cap. 117, which was amended in 1858 by the 21 and 22 Vict., cap. 96; in 1862 by the 25 and 26 Vict., cap. 45; and in 1864 by the 27 and 28 Vict., cap. 108.

an unincumbered parliamentary title upon paying the purchase-money to the Court, which apportioned it amongst the parties entitled. The Act came into force in October 1849, and there was an immediate rush of business. Owing to the recent famine and the impossibility of collecting rents, the value of landed property had greatly fallen; and this depreciation was increased by forcing a large amount of property into the market. There is therefore reason to believe that in the early years of the operation of the Act many estates were sacrificed; but after the first few years the measure worked well and undoubtedly produced good in several ways. In three and a half years from its first coming into force 1,700,000 acres, yielding an annual rent of £730,000, were transferred under its provisions. Up to September 1858 there were 8,300 conveyances, and the total purchase-money amounted to twenty-three millions. Of this total, three millions came from English[8] and other foreign purchasers, and twenty millions represented Irish capital invested in land. The mode of sale provided by this Act was found so satisfactory that in 1858 it was made permanent and was extended to all estates, whether incumbered or not, by The Irish Landed Estates' Act[9] of that year. One direct result of the sales under The Incumbered Estates' Act was to introduce a more strict and commercial spirit into all dealings with land, the purchasers being in many instances small capitalists who had made money in trade, land-jobbers, and speculators, who formed a class of petty, harsh landlords. These men had no regard for tenant-right, and the exaction of higher rents was necessary to give them that profit which they expected from their bargains. "Most of the purchasers," say Lord Bessborough's Commission, "were ignorant of the traditions of the soil; many of them were destitute of sympathy for the historic condition of things. Some purchased land merely as an investment for capital, and with the purpose—

Purchasers under the Incumbered Estates' Act.

[8] It was expected that a large amount of English capital would be attracted to Ireland by these sales; but this expectation was somewhat disappointed.

[9] 21 and 22 Vict., cap. 72.

a legitimate one so far as their knowledge extended—of making all the money they could out of the tenants, by treating with them on a purely commercial footing. A semi-authoritative encouragement was given to this view of their bargains by the note, which it was customary to insert in advertisements of sales under the Court. 'The rental is capable of considerable increase on the falling in of leases.' This hint has often been acted on, and rents greatly above the old level—in some cases probably above the full commercial value—have been demanded and enforced, with the natural result, in a few years' time, of utterly impoverishing the tenants."

§ 147. The large number of evictions resulting from the 'Famine Clearances' in order to the consolidation of small holdings, and from the action of speculative purchasers seeking to make the greatest possible profit from their bargains, created so much disturbance of traditional rights, and such a feeling of insecurity in the minds of the peasantry, that the sense of injustice became very general throughout the country, and a strong spirit of resistance was aroused. Too often in Ireland this spirit has shown itself in agrarian crime; but on this occasion its development was in a less objectionable direction. In 1850 an organization called "The Irish Tenant League" was established for the purpose of maintaining the interests of the peasantry and obtaining a legislative recognition of tenant-right. This right had its origin in Ulster, where the grantees under the settlements of Elizabeth, James I. and Cromwell obtained their lands upon condition of planting them with cultivators. Cultivating tenants could not be induced to come from England and Scotland and settle in wild and unreclaimed districts without the inducements of reasonable rents and security of tenure. Thus it came to be understood that these tenants should continue to hold their lands at fair rents, which were not to be raised on account of any value added to their holdings by improvements made by them or at their expense. Many of these tenants had reclaimed the waste and rendered it culturable. This right of occu-

The Irish Tenant League.

pancy at a fair rent, necessarily lower than a competitive commercial rent calculated upon the full value of the land, gradually became a valuable interest having a market-value. The Devon Commission described it in 1844 as "a claim generally exercised by the tenant to dispose of his holding for a valuable consideration." In the Report of Lord Bessborough's Commission, it is said to be usually stated for purposes of litigation in the following form :— " A usage, whereby the tenant in occupation is entitled to sell his interest—commonly known as his tenant-right, in his holding, subject to the rent at which it is held or such altered rent as shall not encroach upon the said interest or tenant-right—at the best rate, to any solvent tenant to whom the landlord shall not make reasonable objection ; or, if about to quit the said holding, or on resumption of the said holding by the landlord, or if the landlord has indicated his intention to resume the said holding, is entitled to the value of the said interest, or tenant-right, as if so sold to a solvent tenant." The Report proceeds to add :—" It would be a mistake to suppose that the general consent, or prevailing sentiment, was limited to the right of sale. Without a feeling that tenants were entitled to an actual interest or right of occupancy in their holdings larger than the legal tenancy, there could have been no prevailing sentiment in favour of their right to realize that interest. That it was a larger interest, and not the mere yearly tenancy, which the tenant sold, is obvious from the price that was paid for tenant-right, which often amounted to from twenty to thirty years' purchase of the rent and sometimes to a greater number of years' purchase.[1] More-

Definitions of Tenant-Right.

[1] In Fermanagh the price is seldom less than three years' rent, and it rises in respect of some holdings to five or six years' rent. In Londonderry it is much higher, being equal to from five to twenty years' rent, or £6 to £24 per Irish acre. In Antrim and Down, it is still higher, being equal to from seven to twenty-five years' rent, or as much as £40 the Irish acre. Tenant-right has always been stronger in the Plantation than in the Non-Plantation Counties. In Monaghan, Lower Cavan, part of Armagh and the Donegal Highlands, it has been more weakly sustained by usage.—*The Land Question*, pp. 245, 254, 265, 280. Mr. Longfield says that the price is often so high

over, if the prevailing sentiment had stopped short at the question of sale, and had not affected the legal right of the landlord to raise the rent at his discretion, it is not likely that there would have long remained anything for the tenant to sell."

§ 148. The incidents of the custom may be thus stated :—

Customary Incidents of Tenant-right.

I.—Free sale, subject, however, to the landlord's right (*a*) to reject a purchaser upon reasonable grounds, (*b*) to be paid all arrears of rent due from the seller, (*c*) to limit the price, that it may not encroach on the value of the landlord's interest.

II.—A right of continuous and undisturbed occupancy, so long as the rent is paid, subject, however, to the landlord's right of terminating this occupancy by paying the tenant the market-value of his tenant-right.

III.—The right to hold at a fair rent, lower than a competition or commercial rent.

No. III especially introduces the element of uncertainty. No principles for the calculation of this fair rent were ever so generally received as to become part of the custom. It was conceded that the landlord might raise the rent from time to time, as the general progress of the country and the condition of agricultural profits justified, but it was asserted that he had no right to raise it to such an extent as to destroy the tenant-right, or absorb the profit due to improvements made by the tenant. The value of the tenant-right on any particular holding thus depended largely upon what the tenant had done, or was admitted by the landlord to have done, for the land, so as to add to its value. The tenant might claim more for his improvements than the landlord was willing to concede. This was an element of dispute. Then the causes which justify

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that the interest of the purchase-money together with the rent is much more than the fair value of the land.—*Cobden Club Essays.* For other information as to Tenant-right and the Tenant League, see Sullivan's *New Ireland*, Vol. I, pp. 300, 328.

an increase of rent are gradual in their operation, while the increase itself is sudden, sharp and defined ; and the tenant loses advantages which he was enjoying for some years previously. This was a source of discontent. It will thus appear that the effect of the custom was to create two separate interests in the land, the boundary line between these interests not being defined, and each having a tendency to invade the other. Here was uncertainty, and uncertainty of right is apt to breed dissension.[2] But the great source of dissatisfaction was that the custom had no legal sanction, and the tenant's interest depended solely upon his landlord's pleasure. His position was dependent and precarious. He was after all merely a tenant-at-will, if his landlord chose to treat him as such. In order to the secure enjoyment of that for which he had paid his money, he was constrained to subordinate his feelings and his wishes to those of his landlord ; and if he voted according to his own views, the law could not protect him from being deprived of his property as a penalty for his independence. As men became better educated and better able to think for themselves, this condition became intolerable ; and the agricultural class in Ulster demanded for itself equal freedom with other classes in the community.

§ 149. But if uncertainty of right and insecurity of tenure bred dissatisfaction in the North, where tenant-right with all its imperfections was generally admitted and acted upon, how much more potent must have been the causes

[2] Other considerations are the following :—The landlord was always sure of his rent, for it was a first charge on the tenant-right. Evictions were therefore uncommon. If the custom tended to reduce rent, it had a compensating influence in making payments certain. The landlord's rent being thus secure, any depreciation in the value of land fell in the first instance wholly on the tenant-right, *i.e.* upon the tenant. The custom is compatible only with the ownership of land in large estates. Large proprietors can afford to be liberal and respect the tenant's interest. Petty landlords are grasping and are sure to encroach upon it. The result of the sales under the Incumbered Estates' Act demonstrated this. Mr. Morris thought in 1870, that the right was on the wane, being gradually eaten into by the commercial spirit. —See *Land Question of Ireland*, pp. 244, 248, 254, 258-9, 278.

of discontent in other parts of Ireland, where respect for the tenant's interest had not become a local social custom, and had acquired no binding force which could restrain a landlord from raising rents and evicting tenants without regard to what their industry or that of their forefathers had done to improve, and increase the value of, the land. The Report of the Devon Commission recognized the fact that, outside Ulster, there existed even then general uneasiness and a want of harmony in the language used by landlords and tenants respectively when speaking of their rights. The universal complaint was the "want of tenure;" and Lord Devon warned landlords of the irreconcilable difference between the rights claimed by tenants and those conceded to themselves by law, impressing on them the extreme danger which impended over their legal position, if this conflict of right was not speedily terminated.[3]

Relation of Landlord and Tenant more unsatisfactory outside Ulster.

[3] "The evidence," he wrote, "proves that the safety of the country and the respective interests of both those classes call loudly for a cautious but immediate adjustment of the grave questions at issue between them. In every district of the country we find that a widely-spread and daily increasing confusion as to the respective rights and claims of these classes exists; and it is impossible to reject the conviction that, unless they be distinctly defined and respected, much social disorder and national inconvenience must inevitably be the consequence." After referring to tenant-right in the North of Ireland, he continues:—"In the remaining portions of the country, the evidence would lead to the conclusion that the practice, although equally claimed by the tenant as his right, is not allowed, either openly or by sufferance, by proprietors, except in rare individual instances, and then upon a very much modified scale. It is difficult to deny that the effect of this system is a practical assumption by the tenant of a joint proprietorship in the land . . . . . Landowners do not appear aware of the peril, which thus threatens their property and which must increase every day that they defer to establish the rights of the tenant on a definite and equitable footing . . . . . They do not perceive that . . . . . an established practice not only may, but must, erect itself finally into law; and any one who will take the pains to analyze this growing practice will soon perceive how inevitable that consequence must be in the present case, unless the practice itself be superseded by a substitute that shall put the whole question on a sound, equitable, and invigorating basis. This basis can only be one that shall accurately define the property of the landowner from that of his tenant, and ensure to each the full enjoyment of his own." The tenant's *property* in the land may be said to be due (1) to the traditional prevailing sentiment of the people based upon the old Brehon law: that law was never effectually superseded by the feudal system, the only

Unhappily it was not terminated, and the improvement of the country and the increased value of agricultural produce only embittered the contest, as the subject-matter of dispute became more worth disputing for. The agrarian crime, which is so terrible a blot upon the history of the people, the shedding of blood, which cries from the earth, perhaps for this accursed to those who have abetted its shedding—have been the unhappy outcome of a system under which a foreign law, totally inconsistent with the history and unsuited to the circumstances of the country, has been forced upon the people. The law of the land has thus been put in direct conflict with the rights of its inhabitants, who, failing to find protection for their interests from the constituted tribunals, have set up a tribunal and a law of their own, vindicating by terrorism the title of the tenant to his holding, according to the popular standard of right, and punishing those who attempted to disturb it.[4] The period from 1848 to 1866 was one of considerable material progress. Farming of all kinds was more profitable than it had ever been;[5] and

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incident of which, that became thoroughly well known in Ireland, was *forfeiture*: (2) to the value which the tenants have added to the soil by building, enclosing, fencing, draining, clearing of stones, and otherwise reclaiming and making fit for cultivation, or more productive. The tenant's claim to any permanent interest in the land may be denied, so far as it is based upon the first ground; but it is difficult to argue away the equitable right based upon the second ground.

[4] For instances of this disturbance, see *The Land Question of Ireland*, p. 120; and the Ballycohey episode as told in Sullivan's *New Ireland*, Vol. II, p. 350, *et seq.* It is an observable fact that the custom, which from the special circumstances of the Ulster plantation came to be allowed and acted upon in that part of the country, is quite in accordance with the old Brehon law, under which the occupant of land, while paying certain dues to his chief, had in his holding an interest much more extensive than a mere tenancy according to the modern conception.

[5] Mr. Sullivan, speaking of the period between 1845 and 1875, observes that progress depended almost entirely on agriculture, manufacturing industry being inconsiderable—and that this progress and increase of national wealth arose less from extension of earning power, or of productive area, than from a rise in the price of certain agricultural products.—*New Ireland*, pp. 407-8. The superficial area of Ireland is, in round numbers, 21,000,000 acres. In 1870 a fifth of this was waste, but more than 2,000,000 acres had been reclaimed and enclosed since 1841. The area devoted to tillage had not, however, received

Increase of Prosperity and of Discontent.

the peasantry accumulated large sums in the banks. Their discontent nevertheless did not diminish. Greater prosperity, better education and increased intelligence only made them more impatient of the dependence and insecurity of their position; and their spirit was not improved by the only answer vouchsafed from Government and the Legislature to their complaints of "want of tenure" by "The Landlord and Tenant Law Amendment Act, 1860," which provided that the relation of landlord and tenant shall be deemed to be *founded on the express or implied contract of the parties, and not upon tenure or service,* and that a reversion shall not be necessary to such relation, which shall be deemed to subsist in all cases in which there shall be an agreement by one party to hold land from or under another in consideration of any rent.[6]

Landlord and Tenant Act of 1860.

any considerable extension. On the contrary, between 1855 and 1868 it was diminished by 140,000 acres—See *The Land Question of Ireland*, pp. 283—5. Between the famine year (1847) and 1860, the last of the middlemen with few exceptions may be said to have disappeared. The extinction of middlemen was due to the combined operation of several causes. The great fall in the value of land after 1815 ruined many of them, the head landlords being thus left to deal direct with the immediate occupiers. Then Acts of Parliament were passed to prevent or discourage subletting; and above all the landlords became alive to their own interests in this matter.

[6] With reference to this Act, the Foreign Office Circular of 1869 addressed to Her Majesty's representatives abroad, and calling for reports respecting the tenure of land in the several countries of Europe, says:—"It must be borne in mind that in Ireland the relations of landlord and tenant are founded on the express or implied contract of the parties, and not upon tenure or service; and that, as the vast majority of the occupiers of land hold by verbal agreement from year to year, they are liable upon the determination of their tenancy to be evicted without any compensation for their improvements, and also to have their rents raised at the discretion of the landlord." In the Report of Lord Bessborough's Commission, it is said that the Act of 1860 produced little or no effect, and may be said to have given utterance to the wishes of the Legislature that the traditional rights of tenants should cease to exist, rather than to have seriously affected the conditions of their existence.

This Act further provided that in suits by and against a landlord proof of receipt of rent for one year shall be sufficient proof of his title in cases not on the original contract—that a tenant may be ejected, if a year's rent remain unpaid—that a continuance in possession for one month after demand of possession by the landlord shall at his election be deemed to constitute a new

§ 150. The history of the Irish Land System before 1870 may then be thus briefly summarized. The manufacturing industry of the country was restrained and suppressed, when it was prepared to start fair with that of other nations—the restraints were withdrawn too late, when those other nations had made too great progress to be overtaken. The inevitable consequence was, that the whole population was thrown on the land for subsistence, and thus an excessive competition was created, which had the effect of raising[7] rents beyond the fair value of the land for that very class, who were least able to pay the excess. This evil was facilitated and aggravated by the employment of middlemen, who like an iron wedge driven into a

Summary of the History of the Irish Land System.

holding from year to year on the former terms—that a tenant's interest may be assigned, granted or transmitted by devise, bequest, or act or operation of law; and, if undisposed of on his death, shall pass to his personal representatives—that a lease for a definite period, not being from year to year or for any lesser period, must be by deed or note in writing—that any assignment of a tenant's interest must be by deed—that a lease may be renewed without surrender of the undertenancies—that the benefit of covenants and agreements shall pass to the landlord's assignee and to the tenant's assignee—that subletting contrary to agreement is void—that, when a tenant fails to pay rent, the landlord may give notice to the sub-tenant to pay rent to him—that a lease may be proved by the counterpart—that a tenant may cut turf not however for sale, but may not cut or lop trees—that the title to land shall not be drawn in question in proceedings under the Act. Finally there were provisions for apportionment of rent in certain cases, for compensation upon the determination of cottier tenancies by landlords, and for compensation for prospective improvements. The system of compensation for improvements was one that it was found impossible to work; and the Act has been termed a legislative abortion.

[7] "The excessive competition is owing mainly to the fact that apart from the land there are few, if any, other means of subsistence for the population, and it has led to serious abuses, which have come before your Commissioners in the evidence they have taken, such as—(*a*) unreasonable payments for tenant-right, (*b*) arbitrary increase of rents, (*c*) over-crowding of the population in certain districts, (*d*) minute subdivision of farms."—*Report of the Duke of Richmond's Commission*, p. 7. There is no real freedom of contract between a landlord and a tenant, when the latter is not a capitalist farmer; when he cannot sink into a day labourer because there is no work for him; when there is no local industrial employment to which he can turn himself; and when he has not enough of money to pay his passage and enable him to emigrate. See on this subject the debate in Parliament in *The Times* of 29th April 1881, p. 7, col. 6: and *The Land Question of Ireland*, pp. 226-227.

block of wood severed what was naturally coherent. The subdivision of the land under the pressure of a redundant and poverty-stricken population had in many parts of the country produced such *morcellement*, as to reduce the standard of comfort below the average of other nations, and to keep the people upon the brink of famine and terrible calamity,[8] while any attempt to unite these petty holdings into farms sufficiently large to maintain a family, involved bodily suffering and mental anguish to the tenants who were without means to emigrate and who were passionately attached to their humble homes and the spot which gave them birth.[9] A further result was that abnormal prominence was given to every question connected with the land and the tenure of land. Then a system of land-law developed under different social conditions, inconsistent with the history and unadapted to the circumstances of Ireland, was imposed upon the country by superior power.[1] The want of fitness and the incon-

[8] "It is proved by the evidence that in some parts of Ireland agricultural depression arises from the population upon the soil being larger than can be profitably employed in the cultivation of the land, or than can be sustained by its produce. This has arisen from various causes, chiefly from the subdivision of holdings into lots too small to sustain the tenant and his family; and partly from the laying down of arable into pasture land, which renders less labour needful."—*Report of the Duke of Richmond's Commission*, p. 7. One mischievous result of this subdivision is the loss of land taken up by fences, which is estimated at as much as six acres in a hundred.

[9] The Irish tenant clings to his land. Rather than be evicted, he will make any promise, any contract, however incapable of performance—See Mr. W. E. Forster's speech on the Irish Land Bill in *The Times* of 26th April 1881, p. 8, col. 1.

[1] "The Land-Law of England, a country differently situated, and in which he social system has received a different development, has been, by force of circumstances, imposed upon Ireland; and in many instances, principally in connection with the law of ejectment, powers have been conferred upon the landlords in Ireland that have no existence in England. That law may have been beneficial in its operation in a country where it was merely the embodiment of existing relations or the expression of prevailing tendencies; but when transplanted into a country where the relations between landlord and tenant were of a different character, and were being developed after a different fashion, not only did it fail to change those relations into the likeness of English traditions, but also, by its attitude of continual antagonism to the

gruities inherent in this system were exacerbated by difference of race and difference of religion ; and the feelings arising from difference of religion were still further embittered by legislative measures, which those disabled and disqualified by them regarded as persecution. A very large proportion of landlords lived and spent their incomes abroad, thus giving rent the semblance of a tribute, and depriving the country of all those advantages to which it was entitled from their presence, their residence and their discharge of their duty. While in England serfdom and dependence had long ceased, and in every civilized country

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prevailing sentiment, it became detestable to tenants, and helped to bring the Courts that administered it, and the Government that enforced it, into undeserved odium. In the result, a conflict of rights, legal and traditional, has existed in Ireland for centuries. The degree of quiet which the country has enjoyed has been due quite as largely to non-enforcement of the legal right, as to the overriding of it by the traditional."—*Report of Lord Bessborough's Commission*, § 13.

"The condition of society, in which the land suitable for tillage can be regarded as a mere commodity, the subject of trade, and can be let to the highest bidder in an open market, has never, except under special circumstances, existed in Ireland. Not, certainly, in the times of Irish independence, when Chiefs and their Septs held land under some form of common ownership ; not in the times of its disintegration, when the chiefs had become owners and dealt with their followers at pleasure, but never, we may be sure, allowed any but their own personal dependents to settle on their land ; nor yet in the later days of English Settlement, when landowners were glad to invite tenants of the same race and religion to settle round them on easy terms in order to secure themselves in their estates—was there any trace of an open land market, and of land let by competition at a commercial rent. The epoch of wars closed, and the population multiplied ; but the condition of society remained the same. Manufacturing industries failed from well-known causes. Instead of a native landowning class rooted in the soil, the landlords of Ireland were as a class alienated from the mass of the people by differences of religion, manners, and sympathy, and were many of them strangers and 'absentees.' Instead of a cultivating class deeply imbued with traditions of migration and of adventure, with other modes of life open to them besides agriculture, and a Poor Law to fall back upon us the last resort, Ireland swarmed with a homekeeping people, without manufactures, colonies or commerce, dependent upon tillage, and holding on for life and living to the soil of which they were not the owners. Not even when the numbers of the population became excessive, did the commercial theory begin to regulate the letting of farms in Ireland. The economical law of supply and demand was but of casual and exceptional application."—*Idem*, § 11.

of the world attempts had been or were being made to enfranchise the peasantry, Ireland was offered no share in this progress, her earnest importunities for participation were unheeded—nay rather, the hands of the landlords were strengthened, that they might the more effectually constrain their tenants.[2] The population unchecked in its increase depended for life on one precarious crop, any deficiency in which was sure to bring suffering and misery, while in the event of its total failure (which actually happened) the horrors of famine were inevitable ; and all these evils exasperated men's minds against the system, of which they were alleged and thought to be the result. Whilst the lives of the people depended upon agriculture, improvement was discouraged and hindered by the absence of any certainty that those who laboured would be permitted to enjoy the fruits of their industry ;[3] by the knowledge that these fruits might be appropriated by others, and the law would maintain them in this appropriation. This might be done in two ways. The landlord might

[2] The landlord was allowed to distrain by his own bailiffs without proof of his demand. The tenant could not contest this demand without giving security ; and to discourage him from contesting, he had to pay double costs, if he failed. By the common law goods distrained could not be sold. An Act of Parliament empowered the landlord to sell and pay himself. By the common law growing crops could not be destrained. An Act of Parliament altered the law in the landlord's favour. Acts of Parliament were passed to give the landlord a power of eviction for non-payment of rent, and of recovering possession of the land when he was not entitled by contract or by the common law. Mr. Longfield well observes that these laws were injudicious by leading the landlord to rely more on the extraordinary powers given to him by law than on the character of the tenant or the liberal terms on which he let his land.

[3] "The feeling of insecurity has operated to check the process of improvement of the soil."—*Report of Lord Bessborough's Commission*, § 29 : and *The Land Question*, *passim*. The law of fixtures—the principle that whatever is added to land becomes the property of its owner—worked no hardship in England, where the landlord has always made the improvements ; but the introduction of this principle into Ireland necessarily worked injustice, "the most conspicuous difference between the relations of landlord and tenant as they exist in Ireland, and in England and Scotland, being," according to the Duke of Richmond's Commission, "the extent to which in Ireland buildings are erected and improvements are made by the tenant, and not by the landlord."

raise the rent at his pleasure; or he might evict the tenant without giving him compensation.[4] Although the majority of the landlords[5] had not committed acts of

[4] "For many generations the great bulk of the land under cultivation in Ireland has been held in small farms of under thirty acres without leases upon parol tenancies from year to year . . . . . The landlord might, from year to year, practically alter the future rent as he pleased; and was entitled to turn out the tenant, if so minded, without assigning any reason." —*Report of Lord Bessborough's Commission*, § 7. "The two great evils which constituted the land grievance in Ireland (where the 'Ulster right' did not prevail) were confiscation of tenant-property and capricious eviction. A tenant by expenditure of his capital or his labour, quadrupled the value of his land—made it worth two pounds an acre instead of ten shillings. The landlord confiscated or appropriated that tenant's property either by raising the rent slowly or suddenly to two pounds an acre, or by forthwith evicting the tenant and letting the land to some one ready to pay forty shillings for it. Usually the tenant, rather than be evicted, agreed to each rise of rent on his own outlay. That was in brief the confiscation grievance. The eviction or tenure grievance was this: that even where the tenant punctually paid his rent, even where the highest rent demanded was given, even where the tenant was industrious and improving, even where the farm had for hundreds of years been the possession and home of the tenant's family, the landlord could of mere caprice, giving no reason at all, evict that tenant and do what he liked with the land. This was the case at Ballycohey."—Sullivan's *New Ireland*, II, pp. 367-8. See also Mr. Gladstone's speech when introducing the Bill of 1881 in 'The Times' of April 8th, 1881, p. 10, col. 1: and *The Land Question of Ireland*, pp. 40, 289—290. Mr. Morris divides the occupiers of the soil in Ireland into two broad classes—*peasant* farmers, and *capitalist* farmers. The grievances above stated are the grievances of the first class, who are by far the most numerous. As to the second class he observes that, speaking generally, they can deal with their superiors on equal terms; they usually hold by lease or definite contract; they do not make improvements which add permanently to the value of the land; and the law of the land has not worked them wrong. They hold in fact on the English system. This class he estimates as one-sixteenth of the whole, while the peasant farmers, about 573,000 in number, hold nearly three-fourths of the lands of the island.—*Land Question of Ireland*, pp. 288, 316, 328 and 330.

[5] That the present generation of Irish landlords differs much from former generations—is in general prudent and thrifty; includes fewer absentees; more faithfully discharges the duties of property; and as a body respects the equitable rights of the tenants (while occasionally harsh men disregard them) —is beyond doubt. Mr. Gladstone stated this publicly, when introducing the Land Bill of 1881. See also Mr. Kavanagh's Minute appended to the *Report of the Bessborough Commission*, pp. 55, 59; and *The Land Question of Ireland*, pp. 160, 311. Not the landlords, but the system which they have inherited is in this generation to blame.

oppression or injustice, yet the instances of harsh and unjust exercise of these arbitrary powers had been sufficiently numerous to create widespread uncertainty, insecurity and consequent discontent.[6] While a large proportion of the peasantry had an equitable claim to a permanent interest in their holdings, all that the law conceded and allowed was a tenancy-at-will. The popular notion of justice and the law of the land were thus in conflict upon the one question of vital interest to an agricultural community. Even in those parts of Ireland, where custom and the consent of the landlords had admitted a substantial interest in the tenant, this interest was not law-worthy, and the purchaser held, at the mere pleasure of an individual, that for which he had paid a large sum of money. The very progress which the country had made in wealth, in education, in intelligence, and general prosperity made the injustice of this state of things more clearly understood, more keenly felt, more deliberately resented.[7]

[6] "But both" (Fenianism and Agrarianism) "may be traced to the same source—a deep sense in the hearts of thousands of Irishmen that the laws under which they live are unjust in many particulars to large classes, the sense being of course quickened by passion, by evil memories and traditions, by ignorance, by the contagion of sympathy, by bad counsels, by the temptation of poverty."—*Land Question of Ireland*, p. 180. "The extent and mischief of this feeling of insecurity are not to be measured by the number of cases of rent-raising which have been brought into Court, nor even by the number of cases where the rent has actually been unduly increased, or of estates on which the owner has been thought to have unduly raised the rent of one or more of his tenants. The feeling is contagious and has spread far and wide. Even a single case, very likely misapprehended, in which a landlord, of previously good reputation in this respect, is thought to have acted unfairly by a tenant, may largely affect the condition and the good feeling of an entire neighbourhood."—*Report of the Bessborough Commission*, § 19.

[7] "Poverty and ignorance, and the absorption of political feeling by other subjects of interest, have retarded the arrival of the controversy at its present acute stage. Ireland is now richer and has fewer grievances of a social or political sort than at any previous period of her history. For this very reason the great grievance that remains has now come to the front, and demands an instant remedy."—*Report of the Bessborough Commission*, § 13.

CHAPTER XIV.

The Tenure of Land, and the Relation of Landlord and Tenant in Ireland—Proposed Remedies for Undoubted Evils.

§ 151. Many remedies for the condition of Ireland have been devised and suggested, recommendations in this behalf being made by persons who have taken different sides of the argument upon the great questions involved in the controversy. Of these remedies, the following are the most important and the most practicable :—

Remedies proposed for the Condition of Ireland.

I.—That long leases should be granted at existing rents or reasonable rents, and subject to fair covenants :

II.—That the Ulster Tenant-Right should be expressly legalized, and extended to all Ireland :

III.—That the landlord's right to receive rent should be commuted into a perpetual rent-charge, the present occupiers becoming owners subject to the payment of this rent-charge :

IV.—That the landlord seeking to increase rent or evict a tenant should be required to prove that such increase or eviction is compatible with the tenant's equitable rights :

V.—That the tenants should have State aid and other facilities afforded them to enable them to purchase from the landlords the absolute interest in their holdings :

VI.—The three Fs—Fixity of Tenure, Fair Rents, and Free Sale.

First Remedy: Long Leases.

I. With respect to the first of these remedies, there can be no doubt that the security of holding and the certainty of demand afforded by a long lease stimulate

improvement and better cultivation, and induce contentment. "On the whole, I believe," said Mr. Longfield in 1870, "that most of the tenants would gladly accept a lease for thirty-one years at some increase of rent, rather than remain in their present somewhat dependent and precarious condition."[8] "An amount of evidence, to my mind conclusive," wrote Mr. Morris in 1869, "proves that the Irish tenant, as a general rule, is quite satisfied with a just lease, proportioned in length to the requirements of his land, and not hampered by difficult conditions—two points sometimes not borne enough in mind—and that he will make great sacrifices to obtain such an interest."[9] The Report of the Devon Commission pointed in the same direction. But, of late years, the views of the tenants as to the desirability of leases appear to have undergone a material change. A lease generally involves an immediate increase of rent; at all events, rents are found almost invariably to be raised on its termination. The tenants, therefore, thinking it better to abide by the tradition of their having a property in the soil, now generally refuse leases; and this method of settling the land question has, in the opinion of the Bessborough Commission, apparently become hopeless.

Second Remedy: Recognition and Extension of Tenant-Right.

§ 152. II. The second remedy is the legal recognition and extension of tenant-right. But a mere legislative declaration to this effect in so many words would not be a sufficient solution of the difficulty. The value of the right varies with the circumstances and the past history of each holding; and the valuation of the tenant's interest in all holdings would be a more difficult task than the general settlement of rents, seeing that it would involve an inquiry into past transactions, the evidence of which must be in many cases wanting. Then what shall be the occasion of valuing the right; and when

[8] *Cobden Club Essays.*

[9] *Land Question of Ireland*, p. 206. Mr. Morris gives some remarkable instances of the good effects of leases—See pp. 137—139, 189-190, 213-214.

valued, what shall be the form of its commutation—how shall effect be given to the valuation? Shall the tenant be declared to have for ever a proportionate share in the fee-simple, a joint interest with the landlord; or shall he have merely a lien, or become an incumbrancer, or receive a lease equivalent to the value of the right? Shall the landlord be prohibited from evicting under any circumstances a person, who is really a joint owner with himself; or may he deal with him as an incumbrancer and evict him on payment of the money value of his interest? If as a tenant and co-owner he continue to occupy the land, how is his rent to be adjusted? The Ulster custom never provided for this; shall the Legislature supplement the custom by enacting that his rent shall bear the same proportion to a competition rent, as the absolute value of the fee-simple *minus* his interest bears to the whole of such absolute value? At what intervals is the rent to be adjusted upon this principle, if adopted; and is any, and if so, what account to be taken of new improvements? These are questions difficult to answer; and even if they could be answered with any degree of satisfaction, it would not be very easy to devise rules, which would give practical operation to the answers. III. The third remedy, namely, the conversion of the landlords into recipients of a rent-charge, was proposed by Mr. Mill; and is sometimes spoken of as Fixity of Tenure. It is fixity of tenure and a good deal more. The Government, it is suggested, should, after sufficient inquiry, fix definitely the rental of Ireland. The landlords should be declared entitled to an annual sum equivalent to the rental so fixed. The actual cultivators of the soil should possess the land in absolute ownership, as long as they pay this rental. The landlords should be indemnified by the State for loss in respect of the difference between this rental and the rents formerly paid, and also for deprivation of the valuable incidents and prospective advantages of landed property. The landlords should further have the option of receiving direct from the National Treasury the annual sum

Third Remedy: Conversion of Landlords into Rent-chargers.

to which they are individually entitled, by being inscribed as owners of consols sufficient to yield the amount. This plan resembles that which was adopted in Prussia, only it does not go so far. It does not provide for the redemption of the rent-charges, and the conversion of the tenants into peasant proprietors. Admitting that the tenant has an interest in the soil, which makes him a joint-owner with a share in the fee-simple, this only entitles him to a corresponding share of the unearned increment: it gives him no claim to the share of this increment which corresponds with the landlord's interest in the land. But the above plan proposes to make him a gratuitous gift of this latter share, and indemnify the landlord at the cost of the State. Then there is grave reason to suppose that the adoption of this remedy, as a general one, would merely have the effect of substituting a class of petty and harsh landlords for large and more or less liberal-minded proprietors; that subletting and the subdivision of the land would recommence anew, and the evils of the past would be repeated in the future.

Fourth Remedy: Burden of Proving Increase of Rent or Eviction consistent with Tenant's Equitable Rights to be on Landlord.

§ 153. IV. The fourth suggestion is that in every case in which the landlord seeks to raise the rent or evict a tenant, the burden of proof should be upon him to show that his doing so will not be inconsistent with the equitable rights of the tenant. "In this way," says Mr. Morris, who is the author of the suggestion, "in the great mass of cases, the ordinary relations of landlord and tenant would not be touched by the law at all; tenancies-at-will would, so to speak, be prolonged into continuous terms that would support the rights of the tenant, whatever their nature, and would give him legitimate security; and whenever a landlord attempted to impair or put an end to the subsisting tenure, he would be forced to prove that the meditated act was consistent with the interest of the tenant. In this state of things, if the raising of rent or the notice to quit, in the judgment of the Court, clashed with the custom of the estate, in case it were bound by tenant-right" (which, it is proposed, should be recognized by the Legisla-

ture), "or if it detracted from the title gained by the tenant in respect of improvements—these matters being determined upon the hearing of the cause—the landlord's proceeding would be defeated, and the tenancy would continue unimpaired, maintaining all rights attached to it." This proposal is really based on the presumption that the improvements have been made by the tenant—a presumption not inconsistent with fact in the great majority of cases in Ireland. It is part of the same suggestion that the Court, when sanctioning an eviction upon notice to quit, should have power to award the tenant the value of his improvements and also a capital sum by way of damages, the *maximum* of this sum being fixed by the Legislature, and being capable of reduction indefinitely according to the justice of the particular case. V. The fifth remedy is the conversion of the tenants into peasant proprietors by enabling them to buy their landlord's interest. It is obvious that the sale to the tenants may be either permissive or obligatory upon the landlords; and opinions as to the desirability of the scheme will differ according as the landlords are allowed an option or not. Mr. Bright at first proposed this remedy in a voluntary form, and as applicable to absentee landlords only. His proposal was that the State should advance the price, and that the tenantry should ultimately acquire the freehold from the State by paying the purchase-money in yearly instalments added to the existing rents. Another proposal would extend this to all landlords, whether absentees or not; and a third proposition would give the landlords no option, but would make the sale by them of their interest in all cases compulsory. The great danger of peasant proprietorship in Ireland is that the peasant, as soon as he found himself a proprietor, would prefer the *rôle* of proprietor to that of peasant cultivator, and would sublet his land, thus introducing again the worst evils of the cottier system.[1] Many

Fifth Remedy: Conversion of the Tenants into Peasant Proprietors.

[1] See *The Land Question of Ireland*, p. 213; Mr. Longfield's article in *The Cobden Club Essays;* and Mr. Kavanagh's Minute appended to *The Report of*

persons, whose opinions are deserving of consideration, think that peasant proprietorship is not suited to the Irish people.

No single Remedy alone sufficient.

§ 154. VI. There can be little doubt that none of these remedies alone would sufficiently meet all the difficulties of the position. The Devon Commission wisely observed that substantial and permanent relief can only be hoped for from a combination of measures adapting themselves to the varying circumstances under which the owners and occupiers of land are placed in different parts of the country. The Duke of Richmond's Commission, quoting this observation with approval, add that the very nature of the soil and the geographical attributes of the country vary so much, that remedies which would serve in one locality might be inapplicable, or of little value elsewhere. The soundness of this view has been admitted and acted upon in the legislation of 1870 and of 1881, the Acts passed in these years respectively embodying more than a single remedial principle. Before considering the measure of reform comprised in the Three Fs, the provisions of "The Landlord and Tenant Act, 1870,[2]" will properly be noticed. The Ulster tenant-right custom is declared to be legal and capable of being enforced under the provisions of the Act. A similar provision is made with respect to any usage which in all essential particulars corresponds with the Ulster tenant-right, and which appears to prevail in the case of any holding[3] not situate within the Province of Ulster. The Act contains no definition of 'tenant-right.' When the landlord purchases from the tenant the Ulster tenant-right custom or other corresponding custom, the holding[3] thenceforth ceases to be subject to such custom. A tenant entitled to the benefit of the Ulster or other

Provisions of "The Landlord and Tenant Act, 1870."

Tenant-Right legalized.

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the Bessborough Commission, for instances in which it has been tried in Ireland and has failed; and for arguments adverse to its introduction.

[2] 33 & 34 Vict., cap. 46.

[3] 'Holding' is defined to mean all land, *agricultural* or *pastoral*, or partly agricultural and partly pastoral, held by the same tenant of the same landlord for the same term and under the same contract of tenancy.

corresponding Custom has the option of claiming this benefit, or, with the consent of the Court, of claiming compensation under the other provisions[4] of the Act. Where the latter course is successfully followed, the holding is not to be again subject to the Ulster or other corresponding Custom. When the tenant of any holding *created after the passing of the Act* is not entitled to, or does not claim, compensation under the Ulster or other corresponding Custom, and is disturbed in his holding by the act of his landlord, he is declared entitled to compensation for such disturbance according to a scale provided by the Act. The principle of this scale is that a certain number of years' rent (from one to seven) is allowed as compensation, a larger number of years in the case of the holdings of smaller annual value; but this compensation is in no case to exceed £250. The same compensation for disturbance may be given to the tenant of a *holding of the annual value of not more than £100, existing at the time of the passing of the Act.* Any contract by which a tenant deprives himself of the right to this compensation is void at law and equity.[5] No tenant is entitled to compensation for disturbance, who *subdivides* his holding or *sublets* it or any part of it without the consent of the landlord in writing, or after he has been prohibited in writing by the landlord or his agent from so doing. There is no compensation for disturbance in the case of a holding under a tenancy from year to year existing at the time of the passing of the Act, when the tenancy is assigned without the landlord's consent and he does not accept the assignee — the landlord's refusal to accept the assignee as his tenant being reasonable; or the practice of the estate not warranting assignment without the landlord's consent; or the rent being in arrear so as to render the tenant liable to eviction. The transmission of a tenancy by bequest to certain near relatives,

Compensation for Disturbance.

[4] Except the provision relating to compensation in respect of payment to incoming tenant.

[5] This provision has effect only for 20 years, *i.e.*, to 31st December 1890.

Certain Acts of landlord not Disturbance.

or the devolution thereof by operation of law, is not an assignment within the meaning of this provision. It is not a disturbance by the act of the landlord within the meaning of these provisions, (1) when the tenant is ejected for non-payment of rent, or for breach of any condition against assignment, subletting, bankruptcy or insolvency; (2) when the landlord, after six months' notice in writing, resumes not more than the twenty-fifth part of a holding for the purpose of erecting one or more labourers' cottages, the Court not being of opinion that his doing so was unreasonable; (3) when the tenant of a holding existing at the time of the passing of the Act is evicted for the persistent exercise of any right not necessary to the due cultivation of his holding and from which he is debarred by agreement express or implied; or for his unreasonable refusal to allow his landlord to enter upon the holding for the purpose of mining; quarrying; cutting timber or turf; making roads, drains, or watercourses; examining the state of the holding, buildings and improvements; or hunting, shooting or fishing. When a tenant does not claim or has not obtained compensation in respect of the Ulster custom or any corresponding custom, or for disturbance, he is entitled, on quitting his holding, to such compensation as the Court thinks just in respect of any money or money's worth paid by him or his predecessors in title with the express or implied consent of the landlord, on account of coming into the holding. He will not, however, be so entitled, (1) when he has been given permission by the landlord to obtain satisfaction from an incoming tenant in respect of such money or money's worth, and has refused or neglected to avail himself of this permission; (2) when such money or money's worth was paid during the existence of a lease made before the passing of the Act.

Compensation on account of Payment made on coming into a Holding.

§ 155. Any tenant of a holding created before or after the passing of the Act, who is not entitled to, or does not claim, compensation under the Ulster or other corresponding custom, may, on quitting his holding, claim

from his landlord compensation for improvements[6] made by him or his predecessors in title. No such compensation is allowed in the following cases:—(1) for improvements twenty years old unless they consist of *permanent buildings* or *reclamations of waste land;* (2) for improvements prohibited in writing by the landlord and calculated to diminish the general value of his estate; (3) for improvements made in pursuance of a contract entered into for valuable consideration; (4) for improvements made in contravention of a contract in writing not to make such improvements, when such a contract is lawful; (5) for improvements which the landlord has undertaken to make, unless he has failed to make them within a reasonable time; (6) when the right to compensation is expressly excluded by a lease or written contract made before the passing of the Act; (7) where there is a thirty-one years' lease containing no special provision entitling the tenant to compensation; but this does not apply to *permanent buildings, reclamation of waste land,* or unexhausted tillages or manures; (8) when the tenant quits voluntarily, and the landlord has given him permission to dispose of his interest in the improvements to an incoming tenant, and he has not done so. From the amount payable as compensation may be deducted any sums due to the landlord as rent, or in respect of any deterioration of the holding, and also any taxes due and unpaid. A tenant who has been declared entitled to compensation cannot be compelled to quit his holding, until the amount of such compensation has been paid to him or deposited in Court. Any contract whereby the tenant is prohibited from making improvements necessary for the suitable occupation and due cultivation of the holding; or any contract whereby the tenant is deprived of his right to claim compensation for improvements—is void. But in

Further Provisions of the Act of 1870:—Compensation for Improvements.

[6] 'Improvements' are defined by the Act to be (1) any executed work which adds to the letting value of the holding; (2) tillages, manures, or other like farming works, the benefit of which is unexhausted at the time of the tenant quitting his holding.

the case of a holding of the annual value of not less than £50 and not subject to the Ulster or other corresponding custom, a tenant is precluded from making *any* claim for compensation when he has contracted in writing with his landlord that he will not do so. Provision is made for the registration, by landlords and tenants in the Landed Estates Court, of improvements made by them respectively. Nothing in the Act is to authorize or empower a tenant or occupier to break up grazing lands or cut timber without the landlord's consent. The tenant may, however, cut timber planted and registered by himself or his predecessors in title. All tenants are declared entitled to the away-going crops, or, at the option of the landlord, to be paid the value of them. No compensation either for disturbance or for improvements is payable in respect of (1) demesnes and town-parks; (2) holdings let for pasturage, on which the tenant does not reside, or of which the annual value is not less than £50; (3) holdings which tenants hold by reason of being hired labourers or servants; (4) lettings in conacre or for agistment or temporary depasturage; (5) holdings expressly stated in writing to be let for the temporary convenience of landlord or tenant, when such convenience has ceased; or (6) cottage allotments of not more than a quarter of an acre.

Certain Contracts void.

Pasturage and Timber.

§ 156. Every tenant entitled under the Act to make any *claim* in respect of any right or for compensation, and about to quit his holding, is to serve a notice of such claim on the landlord, or, in his absence, his known agent. On receipt of this notice the landlord shall be deemed to have admitted the claim, unless within a prescribed time he serves a notice on the tenant, stating that he disputes the whole or some portion of the claim. Upon service of this second notice a dispute is deemed to have arisen between the landlord and the tenant; and such dispute, unless settled by agreement, is to be decided by the Court. On the hearing of any such dispute, the Court is to take into consideration any such default or unreasonable conduct of either party as may appear to affect any matter in

Procedure by Tenant to enforce Claim.

dispute between the parties; and is to admit, reduce or disallow any such claim, objection or set-off, as the Court thinks just, giving judgment on the case "with regard to all its circumstances, including such consideration of conduct as aforesaid." The Act provides also for the settlement by abitration of disputes between landlords and tenants. It confers upon limited owners the power of granting agricultural leases for any term of years absolute or determinable at fixed periods: but no such lease shall be for more than thirty-five years. Every such lease shall take effect in possession or within one year after its execution, *and not in reversion;* shall reserve a fair yearly rent without any fine, premium or foregift being taken; and shall imply a condition of re-entry for non-payment of rent. The Commissioners of Public Works in Ireland are authorized to advance to any landlord any sum due as compensation under the Act to a tenant quitting his holding, but who has not been disturbed by his landlord. For every hundred pounds of the advances so made the holding is to be charged with an annuity of five pounds payable within a term of thirty-five years. The Commissioners are also empowered to advance, upon such security as they may approve, such sums as they may think fit for the purpose of enabling a landlord to reclaim waste lands; and these advances are repayable by a similar annuity. A notice to quit must be printed or written, or partly in print and partly in writing; and must be signed by the landlord or his duly authorized agent. In the case of a tenant from year to year, it is not to take effect until after the expiration of a period of not less than six months, such period, in the absence of agreement to the contrary, to terminate on the last gale day of the calendar year.[7] A tenant under any tenancy-

Consideration of Unreasonable Conduct.

Advances by Government to Landlords.

Notice to Quit.

[7] A later Act (1877—39 and 40 Vict., cap. 63) has since rendered a year's notice necessary to determine a tenancy from year to year; and has provided for giving yearly tenants compensation for the resumption of part of their holdings by their landlords.

at-will or less than a tenancy from year to year created after the passing of the Act is entitled to notice to quit and compensation in the same manner in all respects as if he had been a tenant from year to year. When a tenant dies leaving no legal personal representative, the Court is empowered to appoint a person to be administrator of the deceased tenant for the purposes of the Act. Any person, who, after the passing of the Act, takes at an acreable rent land adjoining or intersected by a public road, is not, in the absence of any agreement to the contrary, to be liable to rent for any portion of land contained in such public road.

Land covered by Public Roads.

§ 157. The remaining important provisions of the Act are those intended to facilitate the purchase by tenants of their holdings. The landlord and tenant may agree for the sale to the tenant of his holding at such price as may be fixed between them; and upon this, they or either of them may apply to the Landed Estates Court to have the sale effected. No sale can be made unless the landlord is the "absolute owner," or "tenant for life," or "other limited owner," within the meaning of these terms as defined in the Act. The Court is to make such inquiries as it thinks fit concerning the circumstances of the holding; the parties interested therein as incumbrancers, owners, or otherwise; the sufficiency of the price; and the capacity of the landlord to sell; and if it approve of the application, is to carry the sale into effect and execute the necessary conveyance. The tenant acquires the holding free of all incumbrances; but the following are not to be deemed incumbrances within the meaning of this provision:—rent-charges in lieu of tithes; rights of common, rights of way, rights of water and other easements; heriots, manorial rights and franchises; charges for drainage and other charges created by Act of Parliament—and to these the purchase is subject. The Court has full power to distribute the purchase-money amongst those entitled, and to apportion all charges, rents and covenants. The Commissioners of Public Works in Ireland are empowered to

Provisions of the Act of 1870 to enable Tenants to purchase their Holdings.

Where Landlord and Tenant agree.

advance to any tenant for the purpose of purchasing his holding any sum not exceeding two-thirds of the price. Any holding in respect of which such an advance has been made is to be charged with an annuity equivalent to five pounds for every hundred pounds advanced, and repayable in a term of thirty-five years. Similar advances, similarly repayable, may be made to tenants for the purchase of holdings forming part of estates, for the sale of which an absolute order has been made by the Landed Estates Court; and that Court is directed, so far as is consistent with the interests of the persons concerned, to afford, by the formation of lots for sale or otherwise, all reasonable facilities to occupying tenants desirous of purchasing their holdings. When a landlord is willing to sell his estate in its entirety but not in part, and the tenants of holdings comprising *four-fifths* in value of such estate are willing to purchase their holdings, and other purchasers can be found to buy, and pay one-half of the purchase-money of the residue, the Commissioners may advance such other purchasers one-half of their purchase-money upon the security of such residue, to be repaid in the manner already described; and as regards the holders of four-fifths the provisions above detailed will apply. Annuities created under the provisions of the Act are a first charge on the lands. They may be redeemed by payment of a sum of money equivalent to their value for the time being, calculated according to a schedule annexed to the Act.

When Holdings are part of Estate ordered to be sold by Landed Estates Court.

Where Landlord will not sell less than the whole Estate, and four-fifths of the Tenant's desire to purchase.

§ 158. "The Landlord and Tenant Act, 1870," constituted a reversal of the policy previously pursued in dealing with the relation of Landlord and Tenant in Ireland; and was the first step towards establishing a new order of ideas, the attempt to establish by law the commercial system of dealing with tenancies of agricultural land being now abandoned. The experience derived from the working of this Act proved two things—(1) that the provisions of the Act itself were not adequate to effectuate the intention of its author; (2) that the Act, as a measure of reform, was

Act of 1870 Defective and Insufficient.

insufficient. The principle of the Act was to increase the security of the tenant's interest in his holding by indirect means, while refusing him the direct protection which belongs to proprietary right. The most important of these means were compensation for improvements—compensation for money paid on entering his holding—and compensation for mere disturbance apart from any improvements. But the tenant could not obtain compensation of any kind without quitting his holding, and what he wanted in ninety-nine cases out of a hundred was not to be compensated for the loss of his land, but to be continued in its occupancy at a fair rent. The Act, however, contained no provision for fixing a fair rent, binding on both parties. Even the Ulster Custom, when legalized without limitation and without definition, failed under the strain of litigation to afford an effective remedy. The tenant, when served with notice to quit, made a 'claim' on his landlord for the value of his tenant-right. In order to afford a complete remedy, such a claim ought to have justified a decree to enforce the Custom, by way of specific direction to the landlord, who was found to be violating it, to abstain from doing so, and to charge no more than a fair rent, if he were found to have unduly raised it. But the absence of such a provision in the Custom itself and consequently in the law legalizing it, and the general tenor of the subsequent sections of the Act, caused the word 'claim' to have a signification, in all cases, of a claim for money representing the value of the tenant-right—in other words, for compensation for the loss of it.[8] Then experience showed that, where the Ulster Custom did not obtain, the scale of compensation for disturbance was insufficient to prevent eviction, it being found possible for a landlord to evict a tenant, pay him the full amount that could be awarded by the Court, and not only recoup himself, but put money in his pocket by the incoming payment of a new tenant at the same rent.[9] Thus, the provisions of the Act, which

No Compensation unless on quitting Holding.

Failure of the Ulster Custom.

Scale of Compensation for Disturbance insufficient.

[8] *Report of the Bessborough Commission*, §§ 17, 18, 37 & 39.

[9] *Idem*, § 25.

were intended to bring about security of tenure, added an additional element of insecurity.

§ 159. Another object of the Act of 1870 was to prevent landlords from unfairly raising rents; but here also the provisions intended to effectuate this object were found in practice to exaggerate the mischief which they were designed to stop or prevent. The evidence taken by the Bessborough Commission proved that the larger estates were, in general, considerately managed; but that on some estates, and particularly on some recently acquired, rents had been raised as well since the Act of 1870, as before, to an excessive degree, not only as compared with the value of the land, but even so as to absorb the profit of the tenant's own improvements. This process had gone far to destroy the tenant's legitimate interest in his holding; and in Ulster had, in some cases, almost 'eaten up' the tenant-right. "Some landlords, who previously were content to take low rents, appear," says the Report of the Bessborough Commission, "to have begun a system of rent-raising when the Land Act was passed, either because they judged that their former forbearance was not suitable to the new relations which legislation had established between themselves and their tenants, or because the profits of agriculture just then were high, or because the high price fetched by tenant-right, under the stimulus of the satisfaction engendered by the passing of the Act, made them think that they had hitherto been mistaken in letting their lands so cheaply."[1] But there is a stronger reason for this rent-raising than what is here put forward as the probable cause. The lower the rent, the greater was the value of the tenant-right, and therefore the larger the amount of compensation which the landlord might have to pay to his tenant. Now this low rent might have been due to one of two very different causes—it might have been due to the permanent value added to the land by the tenant's industry or money, and in this case the

Act of 1870 caused a New and Sudden Enhancement of Rents.

[1] *Report*, § 19.

tenant was entitled to the full value of the tenant-right—or it might have been due to the lenity of a good landlord, who abstained from exacting as much from his tenants as he might have done, or as much as was exacted from other tenants. The Act made no distinction between the two cases; and the good landlord lost doubly—*first*, in not receiving for years the higher rent which he might have taken; and *secondly*, in having to pay larger compensation. Landlords who had been, or might be, thus mulcted for their generosity, naturally hastened to protect themselves by raising the rents of their tenants to the prevailing rates.

Act rendered inoperative by raising Rent, when Tenant-Right offered for sale under Ulster Custom.

§ 160. On estates subject to the Ulster Custom an easy way was found to render the Act entirely inoperative to prevent rent-raising. The landlord selected the time when the tenant-right was in the market to announce an increase of rent. Before the Act landlords seldom or never meddled with sales of tenant-right. The fact of large sums being paid for the right[2] may have suggested that rents might reasonably be raised; but they raised them at their own convenience, either at fixed periods, or on the occasion of a general revaluation of their estates. After the Act, a demand for an increase of rent, if the tenant refused compliance, brought about this inconvenience, that the landlord, if he served a notice to quit, and the tenant replied by making a 'claim,' might have to pay down a large sum of money as compensation, when he had only calculated on receiving an increase of rent. If, however, he waited for a sale of the tenant-right, and then announced the increase, it was in the highest degree improbable that his demand would be resisted. If the sale went on, and the increase of rent was submitted to, the outgoing tenant generally had to bear the loss, in which case it was common to deduct £20 from the pur-

[2] In a leading article in "The Times" of the 22nd June 1881, it was stated that, after the rise in value caused by the Act of 1870, many farmers sold their interests, and with the sale-proceeds as their capital emigrated to America.

chase-money for every £1 added to the rent. In other cases the purchaser, who was in the nature of things richer and more sanguine than the vendor, was weak enough to pay the full value of the tenant-right, and the higher rent as well. No purchaser, who was well-advised, would pay the original purchase-money, and go into possession of the farm against the landlord's consent, while refusing to pay the additional rent. If he did, he would be served with a notice to quit, and would thus have bought a law-suit. If he made a 'claim' under these circumstances, he would only get the diminished value of the tenant-right at the increased rent, unless he could show conclusively that the additional rent demanded was excessive. He also ran the risk, having purchased without the landlord's consent, of having his claim entirely disallowed. If the negotiations for sale were broken off in consequence of the demanded increase of rent, the disappointed vendor, generally in difficulties and eager to realize, was obliged either to begin treating again for a sale at the reduced value or else to come to terms with the landlord under disadvantageous circumstances.[3]

§ 161. The Act made no provision for adjusting rent; but the question of rent underlay every other question. When rent was raised, although the rise might eat into the value of the tenant-right, although it might deprive the tenant of the benefit of his own improvements, although it might make it difficult for him to get a living on the farm, he had, as a rule, to submit. There was evidence to show that, under a system of gradual small increases of rent, tenants had submitted, long past the point at which they considered themselves to be unfairly rented. When at last they decided to make a stand, they refused to pay the additional rent. The landlord, if he did not withdraw his demand, then served a notice to quit, which at law determined the tenancy. The tenant had then to file a 'claim,' if under the Ulster Custom, for compensation for

Act Ineffectual, because it gave no Jurisdiction to determine Rent.

[3] *Report of the Bessborough Commission*, § 22, *verbatim*.

his tenant-right—if otherwise, for compensation for disturbance, and for improvements, if any. Under the Ulster Custom the Court had to inquire, whether the Custom existed on the estate, and whether the usages applicable to the particular holding supported the tenant in his claim for tenant-right on quitting his holding at the demand of the landlord. These points being decided in the tenant's favour, the Court proceeded to examine into the value of the tenant-right, and to adjudicate him a sum of money accordingly. In so doing it was necessary to take into account the amount of rent, upon which, as compared with the gross value of the holding, the value of the tenant-right in the first place depended; and in considering, as the statute authorized, any objection or set-off which either party had to urge, and any default or unreasonable conduct of either party affecting the matter in dispute, the question constantly arose for consideration whether the landlord was unreasonable in demanding the increased rent and whether the tenant was unreasonable in refusing it. In this way the question of rent became an element in the settlement of the amount to be paid by way of tenant-right, but no jurisdiction was given to the Court to adjudge or propose a fair rent as a settlement of the dispute. Outside the protection of the Ulster Custom, a claim for compensation was similarly inquired into and settled without any jurisdiction over the question of rent. In this case the Court was expressly directed to disallow the tenant's claim to compensation for disturbance, if it appeared that the landlord was willing to permit the tenant to continue in occupation upon just and reasonable terms, and that the refusal of the tenant to accept his terms was unreasonable. There was also an express provision that the amount of the old rent should be considered by the Court in reduction of the claim of the tenant for compensation for his improvements. The only case, in which the amount of rent was to be taken into account in a sense favourable to the tenant, was a provision by way of exception to the enactment depriving an ejected tenant of compensation

where his rent had not been paid. In the case of a holding not exceeding £15 rental, ejectment for non-payment of rent might be declared a disturbance where the non-payment was found to have been due to the rent having been 'exorbitant.' This provision has been almost inoperative,[4] and for the most part unnoticed. The use in it of the word 'exorbitant' apparently contributed to this result. From all this it became clear that the Act provided no effectual resource accessible to a tenant against an undue increase of rent; nor did it hold out to him any benefit whatever in cases of rent-raising, consistently with his remaining in possession of his holding.[5]

§ 162. The provisions of the Act as to compensation for improvements made by tenants were found in practice too hampered with restrictions to afford adequate security. The result of the decisions as to the construction to be put on the words "made by himself or his predecessors in title" was most injurious, inasmuch as they were interpreted so as to exclude from benefit all tenants whose continuity of possession and title had been broken by any change in their legal tenancy since the improvements were made. This opened many easy ways to evade the section altogether. A tenant remaining in possession after the expiration of a lease, so soon as he had paid his rent, became in law a tenant from year to year under such conditions of the lease as were applicable to that species of tenancy. If a landlord served a notice to quit, and then on its expiration arranged with the tenant for any change in the rent, a new tenancy might be created. If farms were re-arranged by the transfer of a portion of a farm from one tenant to another, and a re-arrangement made as to the rent also, or if a change were made in the rent merely, it was considered by some Judges that a new tenancy was created. In all these cases, the tenant's claim for compen-

Provisions of the Act of 1870 as to Compensation for Improvements insufficient.

[4] The Duke of Argyll stated in "The Times" of July 2nd, 1881, p. 8, col. 2, that not a single tenant availed himself of this provision.

[5] *Report of the Bessborough Commission*, § 21, almost *verbatim*.

Failure of the Purchase Clauses of the Act of 1870.

sation was held to be barred, even though he himself might have continued throughout in possession.[6] Finally the Purchase Clauses of the Act failed, almost entirely as to sales with the mutual consent of landlord and tenant, and only a degree less signally as regarded holdings in estates directed to be sold by the Landed Estates Court. With respect to sales by mutual agreement, the amount of purchase-money—two-thirds of the price—allowed to be advanced by the Commissioners was not sufficient to enable or induce the peasantry to avail themselves of the provisions of the Act, more especially as tenants, who purchased, were restrained from mortgaging, alienating, assigning, charging, subdividing, or subletting their holdings without the consent of the Commissioners under the penalty of forfeiture. Then the purchase-money of single holdings would not bear the cost of investigation of title necessary for a sale under the authority of the Landed Estates Court. An amending Act was passed in 1872, by which the taking of the property through the Landed Estates Court was dispensed with; and the Commissioners of Public Works were authorized to advance two-thirds of the *value*, instead of the *price* of the holding, when they were themselves satisfied as to the title. The Commissioners, however, proved unequal to the task of satisfying themselves as to the titles of estates; and the amending Act had no better success than the Act which it amended. The provisions for facilitating the acquisition by tenants of their holdings forming part of estates, the sale of which had been directed by the Landed Estates Court, failed chiefly in consequence of the general refusal of the authorities of the Landed Estates Court to arrange lots so as to suit the convenience of purchasing tenants, this course being found inconsistent with the interests of owners and incumbrancers. Another cause of failure was the total absence of any direct means of making the tenants acquainted with their rights, cheapening their law costs,

[6] *Report of the Bessborough Commission*, § 29.

and putting them generally in the way of making their bargain.[7]

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[7] *Report of the Bessborough Commission*, §§ 81, 89, in which a comparison is drawn between the operation of the Purchase Clauses of the Land Act, and the operation of the similar clauses in the Church Disestablishment Act, 1859. The causes of failure of the former set of provisions were thoroughly investigated by a Committee of the House of Commons in 1877-1878.

CHAPTER XV.

The Tenure of Land, and the Relation of Landlord and Tenant in Ireland—The Legislation of 1881-1882.

§ 163. The Act of 1870 having thus failed to effectuate the chief objects for which it was passed, a Royal Commission was appointed in July 1880 to inquire into and report upon the working and operation of the Act, and the Acts amending it, and whether any and what further amendments of the law were necessary or expedient with a view, *firstly*, to improve the relation of Landlord and Tenant in Ireland; and, *secondly*, to facilitate the purchase by tenants of their holdings. The Earl of Bessborough, Baron Dowse, the O'Connor Don, Mr. Kavanagh and Mr. Shaw constituted the Commission; and they commenced work in Dublin on the 7th August 1880, visited the most important districts in Ireland, held sixty-five sittings, examined upwards of seven hundred witnesses, and submitted their Report on the 4th January 1881. In this Report, which is a very valuable State document, they examined the working of the Act of 1870, and the causes which had occasioned its failure. They expressed an opinion that a thorough and very general change in the system of land-tenure seemed to be imperatively required—such a change as should bring home to the tenants a sense of security, should guard them against undue increases of rent, should render them no longer liable to the apprehension of arbitrary disturbance, and should give them full security for their improvements. They then proceeded to consider the question whether this change could be effected by any modification of the Act of 1870, which, without varying its principle, might supplement its deficiencies—the prin-

Appointment of the Earl of Bessborough's Commission: July 1880.

Opinion of this Commission.

ciple of that Act, having been, as already stated, to increase the security of the tenant's interest in his holding by indirect means, while refusing him the direct protection which belongs to proprietary right. This question they answered in the negative. So far as concerned this principle, they did not think it advisable to proceed by way of amendment and extension of the provisions of that Act. At the same time they regarded the Act with favour, in so far as it was a recognition of the actual condition of things, and an amendment of the land-law with the least possible disturbance of existing relations. It appeared to them that the conditions under which land had been held by yearly tenants in Ireland had been such that the occupiers had, as a general rule, acquired rights to continuous occupancy, which, in the interest of the community, it was desirable legally to recognize. Taking then as a guide the principle of giving legal recognition to the existing state of things, they proposed the enlargement of the tenancy from year to year into a new kind of statutory tenure, defeasible only upon a decree of the Land Court for the breach of certain well-ascertained conditions, and held subject to the payment of a rent, the amount of which should in the last resort be fixed, neither by the landlord nor by the tenant, but by constituted authority. In a word, so far as yearly holdings within the Act of 1870 were concerned, the Commission advocated the reform of the Land-Law of Ireland upon the basis known as 'The Three Fs,' *i. e.*, Fixity of Tenure, Fair Rents, and Free Sale.

Main Principle of the Act of 1870, *to be abandoned.*

The Three Fs advocated.

§ 164. The proposed conditions of the new tenure were these. Subdivision or subletting without the landlord's consent in writing; persistent waste, that is to say, the dilapidation of buildings and the systematic deterioration of the soil, when persisted in after a notice in writing from the landlord to desist; conviction for any serious criminal offence; and any of the acts enumerated in section 14 of the Act of 1870,[8] should authorize the

Proposed Conditions of the New Tenure.

[8] See *ante*, page 306.

landlord to serve a notice to quit, or entitle him to compel the tenant by a decree of the Land Court to sell his holding. If the law of ejectment were retained, the landlord should be entitled to maintain an ejectment after two years' rent were due, and the tenant should be entitled to sell his holding up to the expiration of the time allowed for redemption. The substitution of a decree for sale of the holding in place of ejectment[9] was proposed for consideration. "The arrears of rent, as at present under the Ulster Custom, including any hanging gale, would," says the Report, "be paid to the landlord out of the proceeds of the sale, and the tenant would be entitled to the balance. It is to this provision that we look for giving to the landlord an advantage under the new system, which would in some measure compensate him for what he loses. The amount annually lost by landlords in arrears is under the present system very large, except in Ulster." It was further proposed that the landlord should retain the right to resume possession of a holding or any portion thereof, for special reasons, on payment of the full selling price of the tenant's interest. It was argued that such a tenure as that, which has been thus delineated, would confer immense advantages upon the great body of Irish farmers; that there had been for generations a virtual fixity of tenure, and the change would practically be not great after all; that the landlord's control, absolute in law, but confined in fact to very narrow lines, would be legally confined in future to those same lines on which it had been beneficially and generally exercised; that there would be a certain loss to the landlord, namely, that of his legal reversion, considered as a substantive piece of property; that his greatest loss, however, would be that of sentiment—the sentiment of ownership; that it would be a far greater interference with the existing state of things to carry out in practice the theory of the existing law; that a chasm existed between the law

Advantages of Sale of Holding for Arrears of Rent.

Arguments for the Change.

[9] This has long been usual in respect of certain tenures in Bengal.

and the facts; and in order to fill it up, either the realities of society as they had existed for centuries must at last be moved from their foundations, or the law must be altered.

§ 165. So much for Fixity of Tenure—but "Fixity of Tenure," says the Report, "without Fair Rent is an absurdity"—it might have been said—an impossibility. "It would be nugatory to secure to the tenant a proprietary right, of which the value depended on the will of another. But it is highly probable that the proposal for settling disputes as to rent by arbitration, or by authority in any form, will appear to many a still greater innovation than the proposal to give yearly tenants a secure tenure. The proposal is sometimes spoken of, as if it were analogous to the attempts so often made in the Middle Ages to fix the rate of wages, or the price of commodities by legislation. It is often assailed with arguments drawn from the armoury of Free Traders in their war against Protection. The principle is invoked of 'freedom of contract;' and it is asked whether in this case alone there exists an exception to the principles which promote the wealth of a community. On this subject of freedom of contract, we have a few words to say. The proposal of settling rent by authority is undoubtedly inconsistent with the ideal freedom of contract between landlord and tenant, which the Act of 1860 postulates and which is by many imagined to exist. That ideal pictures the landlord as possessor, and the tenant as desirous of possession, bargaining together and coming to an agreement, by which land in the landlord's possession is transferred under certain conditions of proper cultivation, rent-payment, and ultimate restitution to the tenant. But what are the facts? It is, in the large majority of cases, the tenant, and not the landlord, who is, and has been for years, in possession of the holding. The process of bargaining may end, and under the Land Act of 1870 it is bound to end, unless the tenant submits to the landlord's demands, with a dispossession of the

No Fixity of Tenure without Fair Rent.

Mistaken notions as to Freedom of Contract.

tenant by the landlord, against which there is no resistance possible and no appeal. An ejected farming tenant in Ireland has nothing to turn to, except the chance of purchasing another holding, the offers of which are limited and the prices high. Not to come to terms with his landlord means, for him, to leave his home, to leave his employment, to forfeit the inheritance of his father, and to some extent, the investment of his toil, and to sink at once to a lower plane of physical comfort and social rank. It is no matter to him of the chaffer of the market, but almost of life and death."

Settlement of Rent by Judicial Authority in cases of Dispute an Inevitable Conclusion.

§ 166. The majority of the Commission, therefore, came to the conclusion that some procedure in the nature of an arbitration or of a trial at law must be provided for the settlement of disputes arising either through the desire of the landlord to raise the rent, or of the tenant to have it lowered.[1] In giving effect to this recommendation, they were of opinion that it would be wise to minimize the function of the State, to make legislation responsible for as few rules, and those as simple as possible, and to call upon authority for particular decisions only when no other resource may be available.[2] If, however, it should appear desirable to lay down by law some principles or general rules for deciding what is a fair rent, they suggested as the first step to negative the idea that it means what in England is known as a full, or fair, commercial rent, but in Ireland as a rack-rent. They rejected the view that, after deducting the cost of cultivation and the ordinary profits of trade, the whole of the surplus receipts should be the unquestioned property of the landlord—observing that the Irish tenant farmer had in general possessed

Should the Legislation provide the Principles of Settlement?

[1] In India this procedure has existed since we obtained possession of the country. The reference of the question of rent to judicial authorities was stated in Parliament to be the *core* of the Bill of 1881—See "The Times" of May 28th, 1881, p. 9, col. 1.

[2] The law for Enhancement of Rent in Bengal broke down, because the Courts were forced to expect and require exact evidence upon too many details, and give precise reasons for deciding. The nature of the subject does not admit of this precision.

something more, and that he should be secured in that possession.[3] They thought that the computation should in general start with an estimate, *first*, of the gross annual produce; and *secondly*, of the full commercial rent[4] according to the rules observed by the best professional valuators. From the latter should be deducted any portion of the annual value found to be due to improvements not made or acquired by the landlord. The amount of annual value added to the holding by landlord's improvements, either on or outside it, should be included. Regard should be had to any sum paid by the tenant on incoming, or to sums ordinarily paid by tenants in the locality on purchasing, in so far as such sums represented an existing valuable interest in the tenant over and above any value due to improvements made by himself or his predecessors in title; to any reasonable way in which the value of the tenant's interest in the farm could be ascertained; and also to the rents commonly paid by tenants in the locality whose rents are considered to be fair.[5] The unreasonable conduct of either party should receive consideration. When possible, a start should be made from some time when the rent was fair in the opinion of both parties, and the investigation should be confined to the circumstances alleged, on the one side, as altering the condition then existing, or, on the other, as a set-off against these circumstances. A rent paid at any time within the previous twenty years, and which continued to be paid for not less than ten years, should in all cases be taken as such a starting point. A fair rent once fixed should not be liable to alteration for thirty-one years, or such term as the parties might settle by mutual consent. On the expiry of this period, any revaluation should start with the rent

Principles proposed by the Bessborough Commission.

[3] The Bengal Rent Commission took the same view of the position of the Bengal raiyat in the Report of the 19th June 1880.

[4] This is often the *modus operandi* of the Indian Settlement Officer.

[5] Upon careful consideration it was deliberately resolved to abstain from giving in the Act of 1881 any directions as to how a fair rent should be fixed.—See "The Times" of July 1st, 1881, p. 7.

previously settled, and should be limited to an investigation of the circumstances which had since occurred. The landlord and tenant should each receive one-half of the 'unearned increment,'[6] and each bear one-half of the decrease caused by external causes. The Commission were strongly opposed to the proposal that a new general valuation should be made in order to afford a basis for the settlement of a fair rent. "To interfere with rent," they wisely observed, "except where a dispute arises, is to raise more difficulties than are solved. It is objectionable to bring the authority of the Central Government into direct universal and unnecessary collision with the interests of landlords and tenants."[7]

General Revaluation undesirable.

§ 167. With regard to Free Sale, the Commissioners were of opinion that the tenant, upon whom Fixity of Tenure at a Fair Rent had been conferred, would be in a position differing little from that of a legal owner of property, and that he ought not to be unnecessarily deprived of any of the ordinary incidents of property. He should, therefore, they considered, be at liberty to sell his interest or right of continuous occupancy, the improvements made by himself or his predecessors in title, and all the right which he may have in the land under the previous law or the new Act—subject, however, to some reasonable restrictions[8] suggested by the nature of the tie between himself and his landlord. They observed that it was extremely doubtful whether a prohibition of sale would be feasible under the new condition of things, seeing that it had been found difficult to prevent it from creeping in, even when the tenant had, at law, nothing but a bare yearly tenancy to sell. They argued that to oblige the landlord to come upon the land

Recommendations of the Commission upon the subject of Free Sale.

Arguments for Free Sale.

[6] A similar recommendation was made in the Report of the Bengal Rent Commission.

[7] The proposal is equally inadvisable, and the above observations equally applicable, with respect to Bengal.

[8] The restrictions recommended were adopted, and will be found noticed in connection with the Act—see *post*, p. 329. It has been said that one result of Free Sale will be that farms will be kept in good condition, that their price may not be reduced.

for his remedy for arrears, and evict the tenant, would be to leave the old sore unhealed. It would even be worse in future than before, for, the tenant's interest being recognized at law, and having become in every sense of the word a valuable property, it would be inequitable to inflict a forfeiture for non-payment of rent without a power of sale. "It appears to us further," they said, "that to confer a valuable interest, and refuse the right of alienating it, will not be a judicious measure. The lack of right to convert into money the interest, which the Irish cultivator really possessed in the soil of his holding, has been one cause of his too great attachment to the spot where he found himself. The concession of Free Sale will introduce a much-needed solvent. Men will not go away willingly, if they have to leave their property behind. The money often paid to them by the landlords, who have promoted emigration, has been looked on, we fear, rather as a bribe to go, than as the fair purchase-money of their interest in their holdings. Let the sale be free and fair, and there will then be no feeling in the emigrant that he has been ousted, and no outcry at home against 'ruthless exterminators.'"

§ 168. With respect to the purchase of their holdings by tenants, the Commissioners recommended that a larger proportion than two-thirds of the purchase-money, say four-fifths, should be advanced—that when tenants comprising one-half in value of a *lot* instead of four-fifths in value of the whole *estate* are willing to purchase, and other purchasers can be found for the residue of the lot, the advance of one-half the purchase-money should be made to such other purchasers; and that the benefit of these advances should be extended to sales not made under agreements between landlord and tenant, but in open Court. They were of opinion that the restrictions upon alienations and assignments by the tenant purchasers should be repealed; that a sale should be substituted for a forfeiture in all cases; and that purchasers should be entitled to pay off at any time parts of the debt due, so as to

Recommendations to facilitate the Purchase of their Holdings by Tenants;

give them encouragement to save for that object. They thought that in selling to tenants the annual payments should be arranged so as not to exceed the former yearly rent; and they pointed out how this might be done, and that it was even possible so to adjust the loan and its repayment that the whole of the purchase-money might be advanced to a tenant and repaid by him in the course of half a century without adding a penny to his former rent. "By providing funds liberally for the purpose of purchase, by judicious arrangements for the conduct of sales, and by energetically pushing the work through the agency of a body specially constituted to do it, we consider," they said, "that means may be provided for satisfying all, or nearly all, that landlords in this respect have a right to demand; and at the same time for rendering the experiment of proprietor-cultivators a real factor in the social and political life of Ireland." The Commissioners did not approve of a proposal that those landlords, who preferred to sell their estates to the State at a value to be settled by arbitration, should be entitled to do so. They thought that, where landlord and tenant had mutually agreed, facilities should be afforded to the tenant to purchase a perpetuity, and to fine down the perpetuity rent when settled, by advances of the same kind, and to the same extent, as in the case of purchases of the fee. They recommended that power to sell land should be given to limited owners having an interest not less than a life-estate, and to corporations, all limitations under settlements, and all incumbrances being transferred to the purchase-money, which should be invested in securities authorized by the Court of Chancery, in the name of the Accountant-General, for the benefit of those entitled. They thought that the power to advance money for purposes of reclamation should be extended to enable advances to be made to landowners for the purchase of quit-rents, tithe rent-charge, and other permanent charges on their estates, and for effecting permanent improvements and drainage; and that the benefit of these provisions should be extended to tenants equally

And the Purchase of Perpetuities.

Limited Owners and Corporations should be empowered to sell Land.

with landlords ; and also to applications made by landlord and tenant jointly. Finally they recommended that the transfer of land should be simplified and the expense lessened ; and that local Registry Courts should be established at the offices of the Clerks of the Peace or elsewhere, for recording cheaply and quickly all dealings either by a landlord or a tenant with his interest in land.

Transfer of Land should be simplified and made less expensive.

§ 169. The recommendations of the Earl of Bessborough's Commission were to a great extent made the basis of "The Land-Law (Ireland) Act, 1881," [9] which was passed on the 22nd August 1881. This Act provides [1] that the tenant for the time being of every holding, not specially excepted, may sell his tenancy for the best price that can be got, subject to the following regulations :—(1) the sale must be made to one person, unless the landlord otherwise consents ; (2) the tenant must give notice to the landlord of his intention to sell ; (3) on receipt of notice the landlord may purchase at a sum agreed, or, in case of disagreement, settled by Court ; (4) a tenant agreeing to sell to a third person must, when informing the landlord of such person's name, state in writing the agreed consideration ; (5) if tenant fail in (2) or (4) the Court may declare the sale void ; (6) landlord may on reasonable grounds refuse to accept purchaser, the Court will decide as to reasonableness ; (7) when a sale is brought about by landlord for the purpose of recovering possession in consequence of the breach of any statutory condition,[2] the Court shall grant the landlord out of the purchase-money any arrears of rent or other debt due to him by the tenant and also damages for the breach ; (8) permanent improvements made by landlord may be sold with the holding, if landlord consent, and shall become the property of the purchaser, the landlord receiving a proportionate share of the purchase-money ; (9) in case

The Land Law Act of 1881.

Free Sale of Tenancies subject to certain restrictions.

[9] 44 & 45 Vict., cap. 49.

[1] Section 1. 'Tenant' is defined in section 57 to mean a person *occupying* land under a contract of tenancy and to include the successors in title to a tenant. This definition excludes middlemen.

[2] See *post*, page 332.

of sale to third person, landlord may give notice to seller and purchaser of sums claimed from seller for arrears of rent or breach of contract, which if not disputed by seller must be paid to landlord by purchaser out of purchase-money—if disputed, must be paid into Court—otherwise landlord need not accept purchaser; (10) the Court is to decide whether landlord or seller is entitled to sums so paid into Court; (11) tenant selling his tenancy is not entitled to compensation for disturbance or improvements, and tenant receiving such compensation is not entitled to sell; (12) tenant of holding subject to Ulster or corresponding Custom may sell under that Custom or under these provisions, but must elect; (13) if he sell under these provisions, the tenancy, unless purchased by the landlord, continues subject to the Custom; (14) sale of tenancy under judgment or other process of law to be subject to these provisions so far as applicable; (15) any sum payable to landlord out of purchase-money to be a first charge thereupon; (16) landlord receiving notice of intended sale and not desirous of purchasing, except to secure sums claimed for arrears of rent or breach of contract, may claim to purchase for these sums, if no purchaser be found to give the same or more.

Subdivision and Subletting forbidden.

The tenant from year to year of a tenancy, to which the Act applies, may not, without the consent of his landlord in writing, subdivide his holding or sublet it or any part of it.[3]

Succession and Inheritance to Tenancies.

When a tenant has bequeathed his tenancy to one person only, and the personal representatives of the tenant have assented to the bequest, such person shall have the same claim to be accepted as tenant by the landlord, as if the tenancy had been sold to him by the testator. In the case of a bequest to more than one or of an intestacy, the same

[3] Section 2. Agistment or letting for the purpose of temporary depasturage, or letting in conacre for growing patotoes or other green crops, the land being well manured, is not to be deemed subletting within this prohibition. The letting of half an acre in every 25 acres for the use of labourers *bonâ fide* employed and required for the cultivation of the holding is also excluded from the prohibition—See section 18.

right attaches to any one of the legatees or persons entitled to the personal estate, who has been nominated in a notice served on the landlord by the personal representatives; in default of such notice, the landlord may compel a sale of the holding. When a tenant dies intestate, and leaving no one entitled to his personal estate, the tenancy passes to the landlord, subject, however, to the debts and liabilities of the deceased tenant.[4] In the case of the death of a tenant not leaving any legal personal representative, the Court has power to grant to any proper person administration limited to the purpose of selling the deceased's tenancy, where such sale is expedient.[5]

§ 170. A tenant from whom his landlord demands an increase of rent has three courses open to him under the Act.[6] *First*, he may agree to pay the increase; and in this case his tenancy will be subject to the *Statutory Conditions*[7] of the Act for a term of fifteen years, called a *Statutory Term*. *Secondly*, he may refuse to pay the increase, and then if he is compelled to quit the tenancy by a notice to quit, he may claim compensation for disturbance. The *third* course depends upon whether the tenancy is a *present tenancy*[8] or a *future tenancy*.[9] If the tenancy is a present tenancy, the tenant may, in place of agreeing or refusing to pay the increase, apply to the Court to have the rent fixed. If the tenancy is a future tenancy, the tenant may refuse to pay the increase, and may sell his tenancy, in which case it shall be sold subject to the increased rent; and then, if the Court decide that by the demand of an increase of rent, the selling value has been depreciated below the amount which would have been the selling value, the tenant shall

Three Courses open to Tenant required by Landlord to pay Increased Rent.

[4] Section 3. [5] Section 14. [6] Section 4.

[7] Specified in section 5. See next page.

[8] A tenancy subsisting at the time of the passing of the Act, or created before 1st January 1883 in a holding in which there was such a tenancy. Every tenancy is presumed to be a *present* tenancy until the contrary is proved.

[9] A tenancy beginning after the passing of the Act.

be entitled to the difference, together with costs and expenses of sale. The tenant of a tenancy subject to *Statutory Conditions* is protected during the *Statutory Term* of fifteen years (1) from enhancement of rent; (2) from capricious eviction—in other words he cannot be compelled to pay a higher rent than the rent[1] payable at the commencement of the term; and he cannot be compelled to quit his holding, unless he commit a breach of one or more of the following conditions:—(1) he must pay his rent at the appointed time; (2) he must not commit persistent waste by the dilapidation of buildings or the deterioration of the soil; (3) he must not, without his landlord's written consent, subdivide his holding or sublet it or any part of it, or erect on it any dwelling-house otherwise than in substitution for those already upon it at the time of the passing of the Act; (4) he must not do any act whereby his tenancy becomes vested in an assignee in bankruptcy; (5) he must not persistently obstruct the landlord, or any person authorized by him, in entering upon the holding for the purpose of mining; quarrying; cutting timber or turf (save timber planted by the tenant or his predecessor); opening or making roads, fences, drains, or watercourses; passing to and from the sea-shore for exercising any right of property or royal franchise; viewing or examining at reasonable times the state of the holding, buildings and improvements; hunting, shooting, fishing; (6) he must not, without his landlord's consent, open on his holding any house for the sale of intoxicating liquors. The Court may authorize the resumption by the landlord, during the statutory term, of a holding or part thereof for a reasonable and sufficient purpose having relation to the good of the holding or estate, as for example, building houses, labourers' cottages, churches, schools, dispensaries, and the like—full compensation being made to the tenant.[2]

Incidents of Tenancy subject to Statutory Conditions.

Specification of Statutory Conditions.

Resumption by Landlord for Reasonable Purpose.

[1] Unless for capital laid out to effect improvements, under an agreement between the landlord and tenant, that in respect thereof a certain amount shall be added to the rent.

[2] Section 5.

A landlord may not take proceedings to compel a tenant to quit his holding for breach of a statutory condition except (1) when the condition broken is a condition relating to payment of rent, then by ejectment; and (2) when the condition broken is any other statutory condition, then by ejectment founded on notice to quit. In the latter case the Court may grant relief against forfeiture upon payment of damages or otherwise, as appears equitable.

§ 171. The provisions of the Act of 1870 as to compensation for disturbance and compensation for improvements were amended. A new and higher scale of compensation for disturbance was provided,[3] and it was enacted that the section[4] of that Act shall be read as providing that the tenant therein mentioned[5] shall be entitled to such compensation as the Court, in view of all the circumstances of the case, shall think just, subject to the new scale. A tenant compelled to quit his holding during a statutory term in consequence of a breach by him of a statutory condition is not entitled to compensation for disturbance.[6] With respect to compensation for improvements it was provided[7] that a tenant shall not be deprived of his right to such compensation by reason only of the determination by surrender or otherwise of the tenancy subsisting at the time when the improvements were made, and the acceptance by him of a new tenancy; that when it appears that an outgoing tenant has surrendered his tenancy, that some other person may be accepted by the lord as tenant in his place, and such other person is so accepted, the outgoing tenant shall not be precluded by reason only of such surrender from being deemed the predecessor

Amendment of the Law as to Compensation for Disturbance and for Improvements.

[3] Section 6. The new scale is higher as to all tenancies, the yearly rental of which is above £10.

[4] Section 3.

[5] *i.e.*, the tenant of any holding held under a tenancy created after the passing of that Act.

[6] Section 13, sub-section 6.

[7] Section 7. This was intended to remedy the hardship pointed out, *ante*, pp. 317-318.

in title of the incoming tenant; and that, in adjudicating on a claim for compensation for improvements made before any such change of tenancy, the Court shall take into consideration all the circumstances under which such change took place, and shall admit, reduce, or disallow altogether such claim, as may seem just. When proceedings are taken by a landlord to compel a tenant to quit his holding, the tenant may sell his tenancy at any time within six months from the execution of a writ or decree for possession in an ejectment *for non-payment of rent*, and at any time before, but not after, the execution of such writ or decree in any *ejectment other than for non-payment of rent;* and the tenancy, if sold, shall be deemed to be a subsisting tenancy notwithstanding such proceedings, without prejudice to the landlord's rights, in the event of the tenancy not being redeemed within six months. In the case of a judgment or decree in ejectment obtained before the passing of the Act, the tenant may within the same periods respectively apply to the Court to fix the judicial rent of the holding. When the sale of a tenancy is delayed by reason of any application being made to the Court, or for any other reasonable cause, the Court may, on such terms as it thinks proper, enlarge the time during which the tenant may sell, or, in case of ejectment for non-payment of rent, redeem the tenancy. When proceedings to evict the tenant of a *present tenancy* taken before or after an application to fix a judicial rent are pending before such application is disposed of, the Court, before which such proceedings are pending, may postpone or suspend them until the application for a judicial rent has been disposed of; and the pendency of the eviction proceedings shall not interfere with the power of the Court to fix the judicial rent, or with any right of the tenant resulting from the rent being so fixed; and the Court's order fixing the rent shall have effect from the day of making the application.[8]

Tenant about to be Ejected may sell his Tenancy.

Suspension of Eviction Proceedings until determination of Judicial Rent.

[8] Section 13, sub-sections 1, 2 and 3. The effect of this provision is to prevent eviction for the non-payment of a rent found not to be a fair rent.

§ 172. The tenant of any *present tenancy* or the landlord and tenant jointly, or the landlord after having demanded an increase of rent which the tenant has refused to pay, or after the parties have otherwise failed to agree, may, during the continuance of the tenancy, apply to the Court to fix the fair rent to be paid by the tenant. Upon such application, the Court, after hearing the parties, and *having regard to the interest of the landlord and tenant*[9] *respectively, and considering all the circumstances of the case*, holding, and district, may determine what is such fair rent. The rent so fixed is termed the judicial rent, and is payable from the period commencing at the rent-day next succeeding the decision of the Court. When the judicial rent has been thus fixed by the Court, the present tenancy, in respect of which it has been fixed, becomes for the Statutory Period of fifteen years a tenancy subject to the Statutory Conditions. There can be no alteration of a judicial rent at less intervals than fifteen years; and during the currency of the statutory term an application to determine a judicial rent can be made only during the last twelve months of the term. An application to have a judicial rent fixed may be disallowed, if the Court is satisfied that the permanent improvements, for which if made by the tenant he would be entitled to compensation, were made and maintained by the landlord or his predecessors in title. When fixing a judicial rent, the Court may impose conditions as to labourers' cottages; and tenants required to build or improve such cottages may for this purpose obtain loans under the Irish Landed Property Improvement Acts.[1] When an application is made to fix the judicial rent of a holding not subject to the Ulster or any corresponding Custom, the landlord and tenant, or, in case of dispute, the Court may fix a specified value for the

Fair Rent to be fixed by the Court.

Rent so fixed termed the Judicial Rent.

Tenancy becomes subject to Statutory Conditions.

Valuation of Tenancy.

[9] Section 8. A good deal of discussion took place in settling the above language. What is the tenant's interest—does it include compensation for disturbance? See the leading articles in "The Times" of the 21st and 26th April 1881, and the debate reported in the latter issue.

[1] Section 19.

tenancy ; and when such value has been fixed, if the tenant wish to sell at any time during the statutory term, the landlord may purchase at such fixed value, paying also for any improvements subsequently made by the tenant. Where there is no statutory term, or where there is, then during the last twelve months of the term, the landlord and tenant of a present tenancy may by writing agree and declare what is then the fair rent of the holding, and such agreement and declaration on being filed in Court shall give to the rent so agreed the effect of a judicial rent. No rent is to be allowed in respect of improvements made by a tenant, who has not been compensated therefor by the landlord. The rent of a holding is not to be reduced or increased on account of money or money's worth paid by the tenant otherwise than to the landlord. When the Court, on hearing an application, thinks that the conduct of landlord or tenant has been unreasonable, or that either has unreasonably refused any proposal made by the other, it may disallow the application, or allow it on conditions, or may impose costs, and generally may make any order consistent with justice.[2]

Judicial Rent by Agreement.

Unreasonable Conduct how to affect Application.

§ 173. The landlord and tenant of any *ordinary tenancy*,[3] and the landlord and *proposed* tenant of any

[2] Section 9.

[3] Defined to mean a "tenancy to which the Act applies, and which is not a tenancy subject to statutory conditions, or a judicial lease, or a fixed tenancy." The tenancies to which the Act applies are the tenancies of persons *occupying* land under a letting or agreement for the letting of land for a term of years or for lives, or for lives and years, or from year to year. The Act (except the amendment of the Act of 1870 as to compensation for improvement and Part V) does not apply to tenancies in (1) any holding not agricultural or pastoral or partly agricultural and partly pastoral ; (2) demesne land or town-parks : (3) holdings let for pasturage and of an annual value of not less than £50 ; (4) holdings let for pasturage to non-resident tenants ; (5) holdings of hired labourers or servants ; (6) lettings for conacre and agistment ; (7) holdings let to tenants while in any office, appointment or employment, or for temporary convenience or necessity ; (8) cottage allotments not exceeding half an acre ; (9) glebes—See section 58. Section 16 further provides that a tenancy for a year certain created after the passing of the Act shall be deemed a tenancy from year to year ; and that a

holding to which the Act applies,[4] and which is not subject to a subsisting tenancy, may agree for a lease for a term of *thirty-one* or more years on such conditions and containing such provisions as the parties may mutually settle; and such lease, if sanctioned by the Court, after considering the tenant's interest and the power of the landlord when a limited owner to grant it, shall be deemed to be substituted for the former tenancy, if any, in the holding; and the tenancy shall then be regulated by the provisions of that lease only, and shall not be deemed to be a tenancy to which the Act applies. Such a lease is termed a 'Judicial Lease.' When such a lease is made to a tenant of a *present tenancy* for a term not exceeding sixty years, the lessee is, on its expiry, to be deemed to be the tenant of a *present ordinary tenancy* from year to year at the rent and subject to the conditions of the lease, so far as they are applicable.[5] Similarly the landlord and tenant may agree to convert any tenancy into a Fixed Tenancy, which shall then be substituted for the tenancy previously existing in the holding and shall be excluded from the operation of the Act.[6] A Fixed Tenancy is a tenancy held at a fee-farm rent,[7] which may or may not, as the parties agree, be subject to revaluation by the Court at intervals of not less than fifteen years, and the tenant shall not be compelled to quit except on breach of one of

Judicial Leases.

Fixed Tenancies.

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tenant holding under a tenancy less than a yearly tenancy created after the passing of the Act shall have the same rights under the Act as a yearly tenant.

[4] See previous note. 'Holding' during the continuance of a tenancy means a parcel of land held by a tenant (*i.e.* a person *occupying* land) of a landlord for the same term and under the same contract of tenancy; and, upon the determination of such tenancy, means the same parcel of land discharged from the tenancy.

[5] Section 10.

[6] Section 11.

[7] Section 12. Fee-farm rent is where an estate in fee—of inheritance—is granted, subject to a rent of at least one-fourth of the value of the lands—so called, because a grant reserving so considerable a rent is indeed only letting lands to farm in fee-simple instead of the usual method for life or years.

Next Superior Landlord to take the place of Immediate Landlord, whose estate is determined.

the statutory conditions. These provisions as to Judicial Leases and Fixed Tenancies afford landlords and tenants, who are mutually disposed to be reasonable, an opportunity of effecting security of tenure at fair rents by mutual agreement and without the expense and harassment of litigation. When during any tenancy from year to year in a holding, the estate of the immediate landlord is determined, the next superior landlord for the time being shall, for the purposes of the Act, stand in the relation of immediate landlord to the tenant of such tenancy, and have the rights and be subject to the obligations of an immediate landlord.[8]

Determination of Tenancies to which the Act applies.

A tenancy to which the Act applies is determined when the landlord resumes possession of the holding either on purchasing the tenancy, or on default of the tenant in selling, or by operation of law, or reverter, or otherwise. A surrender for the purpose of the admission of a tenant or otherwise by way of transfer to a tenant is not a determination of the tenancy. If a landlord, who has resumed possession of a tenancy from a present tenant, reinstates the tenant in his holding as a present tenant, the tenancy becomes again subject to the conditions of the Act; but the parties may at the time of the reinstatement agree as to the rent to be paid, which shall then become a *judicial rent*.

Landlord Purchasing and Reletting Holding.

If a landlord, who has purchased a present tenancy in the exercise of his right of pre-emption, and not by the wish of the tenant or as a bidder in the open market, relets the same holding within fifteen years from the passing of the Act, it becomes subject to all the provisions of the Act applicable to present tenancies.

Breach of Statutory Condition, &c., does not deprive of benefit of Ulster or other Custom.

A tenant holding under the Ulster or other corresponding Custom is entitled to the benefit of the Custom notwithstanding any determination of his tenancy by breach of a statutory condition, or of an act or default of the same character as the breach of a statutory condition. When a *present tenancy* is sold for a breach of a *statutory condition*,

[8] Section 15. 'Landlord' is defined to be the immediate landlord or the person for the time being entitled to receive the rents and profits, or take possession of the land held by his tenant.

the purchaser is not entitled to apply to have a judicial rent fixed; but he may hold at the judicial rent previously fixed for the remainder of the statutory term, if any.[9]

§ 174. Leases and other contracts of tenancy existing at the date of the passing of the Act, except yearly tenancies and tenancies less than yearly tenancies, remain in force as if the Act had not passed; but upon the expiration of these leases, or such of them as expire within sixty years after the passing of the Act, the lessees, if *bonâ fide* in possession of their holdings, are to be deemed tenants of *present ordinary tenancies* from year to year at the rents and subject to the conditions of their leases, so far as they are applicable to tenancies from year to year. On the termination of any such existing lease in a holding, which if held from year to year would have been subject to the Ulster or other corresponding Custom, the person who would have been entitled to make a 'claim' under the Act of 1870, shall be entitled to do so, unless the lease contain an express provision excluding the Custom. In order to provide for cases in which leases containing unreasonable or unfair terms had been forced upon tenants, after the Act of 1870, by threat of eviction or by undue influence, it was provided that the Court might, upon the application of the tenant, made within six months after the passing of the Act of 1881, declare any such lease to be void from the date of the application; and the tenant should thereupon be deemed to be the tenant of a *present ordinary tenancy* from year to year at the rent mentioned in such lease.[1] A tenant, the annual value of whose holding or aggregate of holdings is not less than £150, is entitled by writing under his hand to contract himself out of the Act of 1881, or the Act of 1870. When the tenancy in a holding subject to the Ulster or other corresponding Custom was purchased by the landlord from the tenant by voluntary purchase before the Act of 1881, and the owner was in actual occupation at the time

Provisions as to Leases existing at the time of the passing of the Act.

Unreasonable Leases forced on Tenants after the Act of 1870 by Threat of Eviction or Undue Influence.

Power to Contract out of the Act.

[9] Section 20.

[1] Section 21.

of the passing of the Act, it is lawful in the case of the first tenancy afterwards created to contract by writing, that the provisions of the Act as to tenancies being saleable shall not apply. With these exceptions every contract inconsistent with the provisions of either the Act of 1870 or that of 1881, is void.[2] Limited Owners[3] are authorized to exercise any powers under the Act which an absolute owner may exercise, with this exception that, save in the case of a body corporate, or other like body, a limited owner may not grant a Judicial Lease or create a Fixed Tenancy without the sanction of the Court.[4]

Powers of Limited Owners extended.

§ 175. Increased facilities for acquiring their holdings were afforded by the Act of 1881 to tenants, the Land Commission appointed under the Act[5] being empowered to advance sums of money to tenants to enable them to purchase their holdings under the following circumstances and in the following proportions, (1) when a holding is about to be sold by a landlord to his tenant for a principal sum—any amount not exceeding three-fourths of such sum ; (2) when a holding is about to be sold by a landlord to a tenant in consideration of the latter paying a fine and engaging to pay to the landlord a fee-farm rent —any sum not exceeding one-half of such fine, provided that the fee-farm rent does not exceed seventy-five per cent. of the rent which, in the opinion of the Land Commission, would be a fair rent of the holding. Sales may be negotiated and completed through the medium of the Land Commission at a fixed price or percentage according to a scale to be settled from time to time by the Land Commission with the consent of the Treasury. Where an estate is subject to incumbrances, or any doubt arises as to the title, the Land Commission, if satisfied with the indemnity given by the landlord, may indemnify the tenant against any such incumbrances, or any right, title or

New Provisions as to Advances to Tenants for the Purchase of their Holdings.

Provision for reducing the Expenses of Transfer.

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[2] Section 22.

[3] As defined in the Act of 1870, section 26. [4] Section 23.

[5] Consisting of a Judicial Commissioner and two other Commissioners—See section 41. A third Commissioner was afterwards added.

interest adverse to or in derogation of the landlord's title.[6] Limited owners, as defined in the Act of 1870, are empowered to sell holdings and leave one-fourth of the price on mortgage.[7] The Land Commission are vested with the power of purchasing any estate for the purpose of reselling to the tenants of the lands comprised in such estates their respective holdings, provided that the Commission are satisfied that a body of tenants not less in number than three-fourths of the whole number of tenants on the estate, and who pay a rent not less than two-thirds of the whole rental, are able and willing to purchase their holdings; and further, that of these three-fourths, a number comprising not less than one-half of the whole number of tenants on the estate are able and willing to pay the whole price of their holdings either immediately or by means of advances under the Act. The Land Commission may sell either for a principal sum or for a fine and a fee-farm rent; and the sale may be made either under the Act of 1870,[8] or in such manner as the Land Commission may think expedient. No separate charge is to be made for the expenses of purchase, sale or conveyance, but these expenses are to be included in the price or fine. The Commission may purchase estates, although subject to incumbrances or interests adverse to the vendor, and may indemnify the persons to whom they sell holdings against such incumbrances or adverse interests.[9] Parcels not purchased by the tenants may be sold to outsiders either for a principal sum or for a fine and a fee-farm rent; and the Land Commission may advance to any such purchaser, on the security of the parcel purchased by him, one-half of the principal sum or of the fine.[1] Advances made by the Land Commission are repayable by an annuity for thirty-five years of five pounds for every hundred pounds advanced. Any person liable to pay an annuity may redeem it or any part of it.[2]

Purchase of Estates by the Land Commission for the purpose of selling to Tenants.

Sale to outsiders of parcels not purchased by Tenants on the estate.

Repayment of Advances.

§ 176. No person, who has purchased a holding with

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[6] Section 24. [7] Section 25. [8] Section 29; and see *ante*, p. 310.
[9] Section 26. [1] Section 27. [2] Section 28.

money advanced by the Land Commission, may subdivide or let it without the consent of the Commission, until the whole charge due to the Commission has been repaid. If he do so, or if his title is divested by bankruptcy, the Commissioners may cause the holding to be sold, and the sale-proceeds are to be applied, in the first instance, to discharge all moneys due to them, including the costs of the sale, and to redeem any annuity charged on the holding; and any balance remaining shall be paid to the persons appearing to the Land Commission to be entitled to receive the same. These provisions may be applied to holdings purchased under the Act of 1870 with money advanced by the Commissioners of Public Works.[3] The Act further provides for advances for the purpose of the reclamation or improvement of waste or uncultivated land or foreshores, drainage of land, or for building labourers' dwellings, or any other works of agricultural improvement. The Treasury may authorize the Board of Works to make these advances to Companies or occupiers of land. Advances to a Company must not exceed the amount expended by the Company for the purpose for which advances may be made, and security must be given that the advances will be expended for the purpose for which they are made. Advances to occupiers are to be made upon the security of the tenancy or upon other sufficient security, and they have priority over all charges and incumbrances except rent, and except those charges and incumbrances of which notice in writing has been given to the Board of Works before the advance is made. To enable persons interested to do this, a month's previous notice of the advance is to be given in a newspaper, and in such other manner as the Board may prescribe.[4] The Land Commission are further authorized to advance money to assist emigration, especially of families and from the poorer and more thickly-populated districts of Ireland. They may from time to time, with the consent of the Treasury, and on being satisfied that a sufficient

Holding purchased with money advanced by Land Commission may not be Sub-divided or Let without Consent of Commission.

Advances for Reclamation of Land and Works of Agricultural Improvement.

Advances to assist Emigration.

[3] Section 30. [4] Section 31.

number of people in any district desire to emigrate, enter into agreement with any person having authority to contract on behalf of any State or Colony or public body or public company, with whose constitution and security the Land Commission may be satisfied, for the advance by way of loan of such sums as the Commission may think it desirable to expend. Every such agreement must contain such provisions relative to the mode of the application of the loans and the securing and repayment thereof to the Commission, and for securing the satisfactory shipment, transport and reception of the emigrants, and for other purposes, as the Commission with the concurrence of the Treasury approve. No greater sum than two hundred thousand pounds is to be expended under these provisions; and of this not more than one-third is to be expended in any one year.[5]

§ 177. "The Land-Law (Ireland) Act" was passed on the 22nd August 1881. The first sitting of the Court of the Land Commission commenced on the 20th October, and continued till the 12th November 1881. In the case of evicted tenants, whose period of redemption had not expired before the 22nd August, and who were desirous of applying to have the time of redemption enlarged with a view to the fixing of a judicial rent and to the subsequent sale of their holdings, the effect of the 60th section was that an application made on the occasion of the first sitting of the Court was to be taken as if made on the 22nd August; and even if the applicant's period of redemption had expired in the interval, the Court might, if it thought fit, direct it to be extended. Not only evicted tenants, however, but other tenants, were entitled to the benefit of the 60th section, and every application for the fixing of a fair rent, made on the occasion of the first sitting of the Court, had the same operation as if it had been made on the 22nd August, with the result, if granted, that the judicial rent when fixed would commence to accrue due from

First Sitting of the Land Commission.

[5] Section 32.

the rent day next succeeding the 22nd August, instead of from the rent day next succeeding the date on which the judicial rent should be decided. This important effect of an application to the Court, on the occasion of its first sitting, soon became widely known, and an enormous number of applications to fix fair rents was consequently poured into the office of the Land Commission immediately before the 12th November, with the object of having them recorded as made upon the first occasion on which the Court sat. For some time after the 1st October, the applications were few in number, but towards the end of the month they began to increase, coming in at the rate of 2,000, 3,000, and 4,000 a day, and amounting—on the 12th of November—to more than 12,000. At the end of October four Sub-Commissions were constituted, each Sub-Commission consisting of one legal and two non-legal Assistant Commissioners; and in November and December eight more Sub-Commissions were similarly constituted.

Large number of Applications to have Fair Rents fixed.

§ 178. As soon as the hearing of applications before the Sub-Commissions commenced, certain defects in the procedure provided by the Act were brought to light, and considerable dissatisfaction with the proceedings was expressed in various quarters. In consequence, a Select Committee of the House of Lords was appointed on the 24th February 1882 "to inquire into the working of recent legislation in reference to land in Ireland, and its effect upon the condition of the country." After examining a number of witnesses, this Committee made their first report on the 28th April. They recommended that longer notice of the hearing of cases should be given; that landlords should be enabled to obtain, in reasonable time before the trial, particulars of the improvements in respect of which tenants claimed; that in fixing the judicial rent of a holding the Sub-Commissioners should state separately the fair rent and the sum to be deducted from this rent in respect of tenant's improvements; and that provision should be made to enable limited owners of estates in settlement to charge upon the settled estates the costs

Select Committee of the House of Lords to inquire into the working of the Act.

properly incurred by them in defending the interests of all parties interested in such estates. With reference to certain points, as to which much public dissatisfaction had been expressed, they observed as follows :—" It has been a subject of much complaint before the Committee that no statement or record is made by the Sub-Commissioners as to what are the improvements which they adjudicate to have been made by, and to belong to, the tenant ; and also that in the great majority of cases no statement is made by them as to the *ratio decidendi* or principle on which they proceed in settling a fair rent. As to the former of these complaints, it is contended that it is the interest both of the landlord and tenant to have it decided and placed upon record once for all, what improvements upon the farm have been made by the tenant in past times, and it is said that without such a record the authorship of non-existing improvements may again be brought into controversy at the end of the first judicial period of 15 years, and also that improvements existing at the commencement of the judicial period may hereafter be alleged to have been made at a later date. The Committee have heard with satisfaction that the Commissioners have, since the commencement of this inquiry, adopted a rule for the purpose of meeting this complaint, and that the Sub-Commissioners will henceforward be required to specify the improvements made by the tenant. As to the complaint that no *ratio decidendi* is given, it is said that without some statement of reasons neither party is able to determine whether he should be satisfied with the decision, or should appeal ; that there is no security that the various Sub-Commissions are acting on the same principles ; no evidence that they take into account matters which should be considered, such as deterioration of land by the tenant, and that landlords and tenants, being without any knowledge of the principles that would be applied to other cases, are unable to settle them out of Court as often as they are desirous of doing. The Committee are of opinion that there is much force in these arguments, and they think in particular that great

Complaints as to non-specification of Improvements, and non-statement of principle on which Fair Rents are settled.

advantage would arise from an adherence to the rule which has been found so beneficial in all judicial proceedings, the rule, namely, of the Judge stating the reasons for his decision."

§ 179. The Committee then remarked upon the failure of the provisions of the Act, intended to facilitate the purchase by tenants of their holdings, which were by some persons looked upon as the most important, and by almost all as among the most important, features of this legislation. They observed upon the concurrence of opinion amongst the witnesses examined as to the great national benefit, political and social, which might be expected from an operation, which would, on just and reasonable terms, convert a number of tenants in Ireland into proprietors of their farms. They remarked that this view and the arguments in support of it derive great additional force from the present condition of Ireland; the unexpected operation of the Act of 1881 upon the interests of owners of land in that country; the dislocation of the relations which have long subsisted between landlords and tenants, and the circumstance that it is no longer possible for landlords, by reason of this dislocation, to discharge the great public functions hitherto devolving upon them. The causes of failure have been, in the opinion of the Committee, threefold: two connected with the position of the landlord, and one, and that the principal reason connected with the position of the tenant. Of the two reasons connected with the position of the landlord the first is based upon the provision which, while allowing a limited owner to sell to a tenant, directs the purchase-money to be dealt with according to the Lands Clauses Consolidation Acts, the effect of this being that the money must be paid into the Court of Chancery and invested in Government stock, thus materially reducing the income of the limited owner. The Committee recommended that the purchase-money should be paid to the trustees of the settlement, if any, and if not, to trustees appointed by the Land Tribunal; and that such trustees should have power to invest the money on any of the

Failure of the Purchase Clauses of the Act of 1881.

Causes of Failure.

securities on which trustees are authorized, either by the settlement or the general law, to invest, and pay the income to the limited owner. The other reason connected with the landlord's title arises where the land is subject to head-rent or quit-rent, which is said to be the case with one-third of the land in Ireland. The Commissioners having no power to apportion this rent, it continues to be payable out of every holding into which the estate is divided. As to this, the Committee recommended that power be given to a tenant for life to redeem the head-rent out of the purchase-money, and that the Land Tribunal have authority, in any case in which an arrangement for that purpose can be made, either to apportion the head-rent, or to indemnify a holding called on to pay more than its share, by cross rights of distress against the other holdings.

§ 180. "The main obstacle, however, to the working of the Purchase Clauses," say the Committee, "is, as all the witnesses concur in stating, the circumstance that, under the present arrangements, there is no sufficient inducement for a tenant to purchase his holding at any price at which the owner would be likely to sell it. The law has given to the tenant the right of applying to a Court which hitherto has almost invariably reduced his rent, and it has conferred on him a practical fixity of tenure, and for fifteen years at the same rent, together with the right of selling his tenancy. On the other hand, the conversion of the tenancy into ownership would, for fifteen years at least, hardly give to the tenant any higher rights than he at present possesses; while the terms at present proposed for the conversion are such as would subject him from the outset to a yearly charge greater in amount than that which he now bears in the shape of rent. The position of the tenant will be made more clear by an example. A tenant, who pays for his holding £50 a year, agrees with his landlord to buy the holding at 20 years' purchase. For this he will, therefore, have to provide £1,000. According to the provisions of the Act he must himself find one-

Main Cause of Failure—no Inducement to Tenant to Purchase.

fourth of this amount, or £250, and the Government will advance the remaining three-fourths, or £750. Assuming that he borrows the £250, it must be taken to cost him not less than five per cent., and the Government advance is repayable by instalments of five per cent., spread over 35 years. Under these two heads his annual payment will amount to £50. But to this must be added the payments for poor rate and county cess, which will fall upon him as owner, over and above what he would pay as tenant, which on an average over Ireland must be placed at not less than £5. The tenant would thus be subject to an annual charge of not less than £55, being an increase of £5 or upwards above his present rent. If the holding were sold at 24 years' purchase, the annual payment would be £65, or £15 above the present rent. There is a concurrence of testimony that no scheme for converting tenants into proprietors, which requires the tenant to pay down a portion of the purchase-money, or to pay a yearly instalment greater than his rent, is likely to be successful; but that, on the other hand, if these difficulties could be avoided, there would be a very general desire on the part of the tenants to become purchasers."

Suggestions for encouraging and facilitating Purchase by Tenants.

§ 181. The Committee accordingly proceeded to consider whether these difficulties can be avoided, and whether this can be done without loss to the State; and with respect to this question, they say:—"The Committee are aware that it has been suggested that the judicial rents of holdings should be fixed, as a test of their value, before public money is advanced for their purchase. They think, however, that there are many reasons against insisting on a judicial settlement of rent as a preliminary, and that a sufficient test of value can be obtained without it. Several months, or even years, might elapse before the case of a holding, the tenant and owner of which were prepared to buy and sell, might come on for hearing. It is to be supposed that very many tenants in Ireland have no desire or intention to litigate the question of rent with their land-

lords, and would deprecate any rule that forced them to do so. And in other cases, one of the inducements most likely to lead a landlord and tenant to treat for a sale would be the desire, on both sides, to avoid the uncertainty, expense and irritation of a contentious inquiry as to rent before the Land Commission. The Committee are of opinion that the advances of the State for the purpose of facilitating purchases should be made at the rate of £3 per cent., and that the repayment should be by annual instalments of 3½ per cent., spreading over 66 years, or of £4 per cent., spreading over 46 years, whichever term may be selected for the operation. They think that the landlord and tenant should be left to agree as to the capital sum to be paid for the holding, and that the Land Tribunal should be authorized to advance the whole of the purchase-money, subject to the conditions for the protection of the State which are hereinafter mentioned. The Committee will consider, in the first place, the effect which an arrangement on this basis would have on the position of the tenant, and will then examine the security for repayment which would be obtained by the State. Taking the case previously supposed of a tenant paying a rent of £50, and agreeing with his landlord for a sale at 20 years' purchase, the tenant would make to the State an annual payment of £35, being £3 10*s.* per cent., or of £40, being £4 per cent., or £1,000. He would also be liable for £5, already assumed to be the additional taxation falling on him as owner. His annual liability would therefore be £40, or £45 (as the case might be), or a reduction of 10 or 20 per cent. on his present rent, with the advantage of any possible increment to the value of the property. Supposing the landlord and tenant to have agreed to a sale at 22 years' purchase, the annual instalment to be paid by the tenant would, on the same basis of calculation, be £38 10*s.* or £44, making with the amount of additional taxation a yearly charge of £43 10*s.* or £49. If the agreement was for 24 years' purchase, the annual

instalment would be £42, or £48, and the total charge on the tenant £47, or £53.[6]

Further Recommendations of the Select Committee of the House of Lords.

§ 182. Observing that the Land Commissioners now are, and may be expected for years to come to be, fully occupied with appeals and the contentious business under the Act, the Committee recommended that the working of the Purchase Clauses be assigned either to the Landed Estates Court, with a suitable expansion of its powers and machinery, or to a new Department created for the purpose. The Committee further recommended that, if Parliament

[6] The Land Commissioners make the following observations upon the failure of the Purchase Clauses in their First Report on the working of the Act, dated 4th November 1882:—"The reasons for the indisposition of tenants to purchase their holdings were probably—(1) The general and paramount desire to have a fair rent fixed before taking any other step; (2) the very advantageous position of a tenant whose rent has been judicially fixed—he having full security in the occupation of his holding at a moderate rent; (3) the necessity of paying one-fourth of the purchase-money of his holding in cash, and the fact that a purchasing tenant, unless he should buy at a price which, as a rule, the landlord would not accept, made himself liable to a larger annual payment than his rent in the shape of interest and redemption of principal; (4) a vague feeling of political disquietude which disinclined men to do anything but await the course of events. With regard to the landlords there was reason to believe that considerable numbers were anxious to sell their estates, but a large proportion of them are limited owners, and to such owners a sale might cause a serious reduction of income. The proceeds of sale would, necessarily, be invested in such Government or other securities as are open to trustees, from which investments a low rate of interest would be derived, whilst the same capital invested in land produced, when rents were paid, a higher rate of interest. This consideration must have operated strongly in deterring limited owners from offering their estates for sale, even if purchasers had been forthcoming, which was not the case. There was also another serious obstacle to sales owing to the existence of head-rents. Head-rents are not apportionable by us, and consequently when there is a head-rent on an estate for sale, the estate cannot be purchased unless, as is seldom the case, there be a holding on the estate of sufficient value to bear the entire head-rent in addition to the ordinary rent. Under any circumstances an estate with a head-rent is an undesirable purchase for us to make, the security being, from the nature of the tenure, unsatisfactory. The occupant of a holding mortgaged to us might be evicted for non-payment of the head-rent without notice to us, and thus the owner of the head-rent might conceivably become the proprietor of the holding discharged of our advance—his charge taking precedence of ours."

should, in order to meet a great national difficulty and danger, adopt measures which may lead to the conversion into proprietors of a large number of tenants in Ireland, the opportunity should be taken of raising the procedure between the tenant, the owner, and the Department, out of the ordinary rules which obtain on the occasion of sales and mortgages, more especially as regards costs; that a short statutory form of conveyance to the tenant and mortgage to the State should be provided; that the provisions of the Record of Title in Ireland should, if possible, be amended or enlarged, so as to embrace the titles when passed; that a cheap system of local registry and transfer should be adopted; that the costs both of landlord and tenant, once the landlord has delivered a complete abstract of his title, should be covered by one small fixed charge; and that stamp-duty on the transaction of sale and charge should not be required. Some few of the recommendations made by the Select Committee of the House of Lords, and which were capable of being dealt with in that manner, have had effect given to them by Rules made by the Land Commissioners, and the rest yet remain for consideration.

§ 183. The immediate object of The Arrears of Rent (Ireland) Act,[7] 1882, was to afford relief to certain tenants, who were burdened with old arrears of rent, which they had no means of discharging. The relief is limited to tenants of holdings, to which the Act of 1881 applies, and which are valued at not more than thirty pounds a year. A tenant who has two or more holdings, one of which is valued at not more than thirty pounds, while the aggregate value of them all is more than thirty pounds, is excluded from the operation of the Act. In the case of the tenant of a holding within the scope of the Act, it must be shown to the satisfaction of the Land Commission (1) that the rent payable for the year of the tenancy expiring in 1881, has been satisfied on or before the 30th November 1882;[8]

Provisions of "The Arrears of Rent (Ireland) Act, 1882."

[7] 45 and 46 Vict., cap. 47, passed on the 18th August 1882.

[8] The Act expressly provides, in order to avoid any question of appropriation of payments, that all payments made on account of rent in or subsequent

Relief to Tenants of £30 Holdings burdened with antecedent Arrears of Rent.

(2) that antecedent arrears of rent are due to the landlord; and (3) that the tenant is unable to discharge such antecedent arrears without loss of his holding, or deprivation of the means necessary for its cultivation. When these facts are satisfactorily proved, the Land Commission may make an order for the payment to, or for the benefit of, the landlord, of a sum equal to one-half of such antecedent arrears, subject, however, to the limitation that the sum so paid shall not exceed the yearly rent payable in respect of the holding for the year next preceding the year of the tenancy expiring in 1881. Such order shall have the effect of extinguishing all antecedent arrears, and of vacating any judgment, decree or security for the rent of the holding, and any judgment or decree for the recovery of the holding for non-payment of rent so far as regards rent due before the last gale day in the year of the tenancy expiring in 1881. If, however, the tenancy be sold within seven years from the making of such order, the arrears of rent dealt with by such order and not satisfied by payment or remission shall, to an amount not exceeding one year of the arrears nor one-half of the proceeds of the sale, be a sum payable to the landlord out of such proceeds within the meaning of the Act of 1881. Applications for the relief thus afforded were ordinarily to be made on or before the 31st December 1882; but the Land Commission were allowed a discretion to admit applications up to the 30th April 1883, in cases in which it was proved to their satisfaction that injustice would otherwise be done. The relief afforded by the Act was in certain cases available to tenants who had been evicted from their holdings for non-payment of rent, or whose tenancies had been purchased by their landlords at execution sales under judgments obtained for arrears of rent.[9] Provision was also made for suspending proceedings taken for the recovery of

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to the year of the tenancy expiring in 1881, but before the 30th November 1882, shall be deemed to have been made on account of the rent of the first-mentioned year.

[9] Section 2.

arrears of rent in respect of which relief was obtainable under the Act.[1] When the Land Commission had made advances under the 59th section of the Act of 1881 for the payment of arrears, and holdings had been charged with the repayment of such advances by rent-charges, the Land Commission were empowered to cancel any such rent-charges upon its being proved to their satisfaction that the tenant was, at the date of the advance, unable to discharge the arrears in respect of which it was made.[2] In the case of any holding valued at a sum not exceeding £50 a year, when the tenant had paid the whole of the rent for the year of the tenancy expiring in 1881, and antecedent arrears were due, the Land Commission were empowered to advance to the landlord a sum not exceeding one year's rent, and not exceeding half the antecedent arrears, such sum to be repaid by a rent-charge payable half-yearly.[3]

Relief to Tenants of £50 Holding.

§ 184. The Emigration provisions of the Act of 1881 failed to have any effectual operation for several reasons. In the first place the Land Commission were empowered to enter into an agreement with parties representing a State, a Colony or a Public Body: but no applications were received which satisfied these conditions. Resolutions passed at public meetings and approving of the principle of emigration were forwarded by more than one Colony, but no definite scheme such as the Act required was laid before the Commission. Numerous applications were indeed made by persons in all parts of the country asking for assistance to enable them to emigrate, and also from clergymen, emigration agents and others, on behalf of families and individuals in whom they were interested. But the Commission had no power to entertain such applications. Then with respect to the powers of Boards of Guardians, it was found that these Boards had no power to charge the rates with a repayment of loans in the man-

Failure of the Emigration Provisions of the Act of 1881.

[1] Section 13. [2] Section 15.
[3] Section 16.

ner contemplated by the Act.[4] Advantage was taken of the passing of "The Arrears of Rent Act" to give Boards of Guardians power to borrow money for the purpose of defraying, or assisting to defray, the expenses of the emigration of poor persons.[5] Power was also given to the Treasury to authorize the Commissioners of Public Works to make grants to the Board of Guardians of any Union, or such other body or persons and on such terms, as the Lord Lieutenant may approve, for emigration purposes. The sums so granted may not exceed one hundred thousand pounds in the whole, and shall not exceed five pounds per each person. Each grant is to be made upon the recommendation of the Lord Lieutenant, stating that he is satisfied that the Guardians of the Union are unable without unduly burdening the rate-payers to make adequate provision by borrowing for emigration purposes.[6] The Lord Lieutenant may from time to time make provision that arrangements shall be made for securing the satisfactory emigration of persons for whom means of emigration are provided under the Act, by prescribing rules in relation to such matters, and for the employment of special agents for that purpose, and otherwise as he thinks expedient.[7]

Amending Provisions of "The Arrears of Rent Act, 1882."

§ 185. The Act of 1881 has not yet been long enough in force to enable any complete forecast to be made of its probable results; but the recently published Report of the Land Commissioners gives some interesting details of its first year's operation. Owing to the unsettled state of the country, the Sales of Tenancies by private arrangement were understood to be few in number; and the work done by the Court in dealing with landlord's claims to pre-emption, or objections to the price or the purchaser, was insignificant. On the 5th December 1881, the Land Commissioners began sittings to hear applications made under the 21st section to set aside leases accepted

Report of the Land Commissioners on the First Year's working of the Act of 1881.

[4] *Report of the Irish Land Commissioners for the period from 22nd August* 1881 *to 22nd August* 1882, p. 6.

[5] Section 18. [6] Section 20. [7] Section 21.

by tenants after the passing of The Landlord and Tenant (Ireland) Act of 1870. These applications had to be lodged within six months after the passing of the Act of 1881. In a large portion of the cases brought into Court under the section, the applicant failed in proving what was essential, *viz.*, that he was a tenant from year to year of the holding at the time when the lease was made; and in another large portion he failed in proving that the lease, which he sought to break, had been forced on him by threat of eviction or undue influence. In comparatively few instances did a case get so far as to raise the question, whether the lease contained terms unfair or unreasonable, having regard to the provisions of the Act of 1870. On many occasions, moreover, where a case that had been put in the list for hearing was called, the tenant failed to appear, and it was consequently struck out. From all these causes combined the number of leases set aside was comparatively small.

Applications to have Leases declared void.

§ 186. The heaviest work, which the Land Commissioners had to deal with, arose from the applications for fixing fair rents which were lodged in overwhelming numbers. Having had under consideration the provision of some additional means for disposing of these applications, they finally decided to make new rules, under which a landlord and tenant, who were unable to agree upon a fair rent, might, without coming before a Sub-Commission, have a fair rent fixed by the determination of Valuers, to be named by the Land Commission on the joint application of landlord and tenant. On the 22nd of April 1882, they accordingly issued rules to this effect with such forms as were necessary for persons desiring to take advantage of this procedure, and they appointed Valuers to carry these rules into effect. Thenceforward, four courses were open to persons seeking to have fair rents fixed—(1) They might proceed in Court, either before the Land Commission, or the County Court Judge. (2) They might come to an agreement for a fair rent outside the Court, which rent, on agreement being filed in Court, would become the

Vast number of Applications for fixing Fair Rents.

Four Courses open for fixing Fair Rents.

judicial rent. (3) They might have a rent fixed by the award of Valuers named by the Land Commissioners, which rent would be subsequently inserted in a formal agreement, and filed as the judicial rent. (4) They might refer the amount of rent to be paid to the decision of an Arbitration Court, consisting of two arbitrators and, if necessary, an umpire, in the manner provided for by the Landlord and Tenant (Ireland) Act, 1870. Very few persons availed themselves of this last course, and only 275 references to arbitration were made during the year.

Settlement of Fair Rents by Agreement of Parties.

§ 187. In a very considerable number of cases fair rents were settled by agreements between landlords and tenants without the intervention of the Court. By adopting this course all litigation and all expense were avoided by the parties. These agreements were naturally regarded as affording a proper, convenient and desirable solution of the fair-rent question; and they also afforded a very practical test of the soundness of the conclusions arrived at by the Civil Bill Courts, the Sub-Commissioners, and the Valuers. The following Table gives the result, as regards reduction of rent, of the applications disposed of by the Sub-Commissioners and by the Civil Bill Courts, compared with the similar result of the agreements of parties lodged with the Land Commission and with the Civil Bill Courts :—

Table showing Percentage of Reduction of Rent by Judicial Decision and by Agreements of Parties.

Percentage of Reduction of Rent, In	made by Sub-Commissions.	Civil Bill Courts.	Agreements of Parties lodged with the Land Commission.	Agreements of Parties lodged with the Civil Bill Courts.
Ulster	22.588	22.767	18.013	17.188
Leinster	18.028	18.412	17.171	18.688
Connaught	20.747	22.186	21.543	21.487
Munster	20.469	21.034	20.151	21.888
Ireland	20.547	22.040	18.730	19.766

Percentage of Reduction in Rents fixed by Valuers, 20.437.

The total number of originating notices to fix fair rents lodged during the year was 80,187. Of these 13,384 were disposed of by fixing rents, and 4,099 were dismissed, withdrawn and struck out, making a total of 17,483, so that 62,704 remained for disposal at the end of the annual period covered by the Report. The result of appeals from Sub-Commissions and from the Civil Bill Courts made very little alteration in the rents fixed by the Tribunals of first instance—the total of the rents fixed in the Courts below being £17,000, and the totals of the same rents as fixed on appeal being £17,716. It is impossible to resist drawing from all these figures the conclusion that rents had been raised above fair and reasonable rates.

Result of Appeals in Fair-Rent Cases.

§ 188. There were but 40 applications for Judicial Leases ; and upon some of these the parties concerned had for a long time taken no steps, so that it was supposed that their applications had been abandoned. Three leases only were executed and sealed during the year. Twenty applications for Fixed Tenancies were lodged, two of which were withdrawn, while fifteen were pending ; and three had been granted, and the necessary documents sealed. Only 85 tenants obtained advances and purchased their farms by means of such advances. Under the Act of 1881 the Land Commissioners had no power to direct accommodation to be provided for labourers in cases in which the landlord and tenant filed an agreement as to the fair rent of a holding, the Act conferring this power only in those cases in which the judicial rent was fixed by an order of the Court. This defect was remedied by The Labourers' Cottages and Allotments Act, 1882.[8] The little practical operation given by the agricultural public to other parts of the Act of 1881 as compared with the very great strain put upon those provisions of the enactment, which provide for the settlement of rents, would seem to show as the result of a very practical test that the question of fair rent is the one which the parties interested regard as of vital and paramount importance.

Applications for Judicial Leases and Fixed Tenancies.

The Labourers' Cottages and Allotments (Ireland) Act, 1882.

[8] 45 & 46 Vict., cap. 60.

CHAPTER XVI.

Landholding, and the Relation of Landlord and Tenant in the United States of America.

American Lands granted in English form as part of English Manors.

§ 189. The fundamental principle of English law, derived from the Feudal System—that the King was the original proprietor or lord paramount of all the land in the kingdom and the true and only source of title—was applied to the territories in America discovered and taken possession of by the English; and the Sovereign from time to time made grants of portions of these territories to companies and individuals, who undertook to colonize and settle them. The lands, to which title was thus given, were granted as tenures according to the law of England to be held as parts of English manors.[9] The English law of real property was thus introduced into America. By the Statute of New York of the 20th February 1787, entitled "An Act concerning Tenures," the Legislature re-enacted the Statute of 12 Car. II. cap. 24,[1] which abolished military tenures and converted tenures

Statute 12 Car. II., c. 24, re-enacted in New York.

[9] The Province of Maryland, for instance, was granted by Charles I. under Letters-Patent dated June 20th, 1632, to Cecil Calvert, second Lord Baltimore, to hold of the Crown of England in common socage, *as of the Manor of Windsor*, paying yearly on Easter Tuesday two Indian arrows of those parts at the Castle of Windsor, and the fifth part of the gold and silver ore, that should be found in the country.—*Blount by Hazlitt*, p. 215. Mr. Blount observes that the American lands, for the most part, seem to have been granted by the Crown to be held *as of the Manor of East Greenwich*. See also a note in Kent's Commentaries, Vol. III, § 511, p. 548, where the Great Patent of New England, granted by King James in 1620, the Charter of Massachusetts in 1629, the Charter of Virginia in 1606, the Charter of the Province of Maine in 1639 and other Charters are referred to as instances of the same fact.

[1] See *ante*, p. 29.

of all kinds into free and common socage. Under the Statute of 1787 all estates of inheritance at common law were held by the tenure of free and common socage; but all lands under grant of the people of the State (and which included, of course, all the lands in the western and northern parts of the State, which were granted and settled after the Revolution) were declared to be allodial and not feudal, and to be owned in free and pure *allodium*. The New York Revised Statutes, which took effect on the 1st January 1830, went the entire length of abolishing the pre-existing theory of Feudal Tenures of every description with all their incidents, and declaring all lands within the State to be allodial, and that the entire and absolute property is vested in the owners, according to the nature of their respective estates, subject only to the liability to escheat.[2] Feudal Tenures were also abolished in Connecticut in 1793: and they have never existed, or they have ceased to exist, in all essential respects, in every other State. The only feudal fictions and services, which can be supposed to remain in any part of the United States, consist of the principle that the lands are held of some superior or lord, to whom the obligation of fealty and to pay a determinate rent are due. The New York Act of 1787 provided that the socage lands were not to be deemed discharged of "any rent certain or other services incident or belonging to tenure in common socage, due to the people of this State, or any mean lord, or other person, or the fealty or distresses incident thereunto." The Revised Statutes also provide that "the abolition of tenures shall not take away or discharge any rents or services certain, which at any time heretofore have been, or hereafter may be, created or reserved." The lord paramount of all socage land was the people of the State, and to them the duty of fealty was to be rendered. The quit-rents, which were due to the

Feudal Tenures of every description abolished.

[2] Kent's *Commentaries on American Law*, Vol. III, §§ 488-489, pp. 627-628.

King on all colonial grants, and to which the people succeeded at the Revolution, have been gradually diminished by commutation, under various Acts of the Legislature, and are now nearly, if not entirely, extinguished.[3]

§ 190. The principle that the King is the true and only source of title was adopted by the United States after the Revolution, and applied to Republican Government; and it is now a settled and fundamental doctrine that all valid individual title to land within the United States is derived from the grant of the Local Governments, or from that of the United States, or from the Crown, or Royal Chartered Governments, established in America before the Revolution.[4] It was also held to be a settled rule that the Courts could not take notice of any title to land not derived from the State or Colonial Government, and duly verified by patent. America, like Australia, was not a totally uninhabited country, when first discovered by Europeans; and therefore the question of the rights of the Native Indian inhabitants arose and had to be dealt with. The European nations, who established colonies in America, assumed the ultimate dominion to be in themselves, and claimed the exclusive right to grant a title to the soil, subject only to the Indian right of occupancy. The natives were admitted to be the rightful occupants of the soil, with a legal as well as just claim to retain possession of it and to use it according to their own discretion, though not to dispose of it at their own free will otherwise than to the Government, which by right of discovery had obtained the sole right of acquiring it from them against all other European powers. Each nation asserted the right to regulate for itself, in exclusion of all others, the relations which were to subsist between itself as the discoverer and the Native Indians. As to how these relations were to be regulated, there was some diversity of opinion. Some persons argued that it was the destiny and duty of the human race to

Title to Land in the United States how derived.

Rights of the Native Indians how far considered.

[3] See Kent's Commentaries, III, § 510, p. 647.

[4] *Idem*, 378, p. 482.

"subdue the earth and till the ground whence they were taken"; that the white race of men fulfilled this destiny and duty, having been "land-workers from the beginning"; and that if unsettled and sparsely scattered tribes of hunters and fishermen showed no disposition or capacity to emerge from the savage to the agricultural and civilized state, their right to keep some of the fairest portions of the earth a mere wilderness, filled with wild beasts for the sake of hunting,[5] becomes utterly inconsistent with the civilization and improvement of mankind. The majority of the original English emigrants crossed the sea believing in their right to possess, subdue, and cultivate the American wilderness, as being by the law of Nature and the gift of Providence open and common to the first occupants in the character of cultivators of the earth. This belief was supported by the Great Patent of New England, which was the foundation of all subsequent titles and subordinate charters in that country. There were not wanting persons who argued that, as the practice of the European world had constituted a law of nations, and the aborigines had never been admitted into the society of nations, their possession should be disregarded. Notwithstanding these abstract opinions and arguments, the colonists were not satisfied, or did not deem it expedient to settle the country without the consent of the aborigines procured by fair purchase under the sanction of the Civil Authorities. The provisions of the English patents were not relied on, and the prior Indian right to the soil of the country was generally, if not uniformly, recognized and respected by the New England Puritans.[6]

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[5] If there is anything in this argument, much less have men, however highly civilized, the right to reduce portions of the earth, which have become inhabited and cultivated, to a wilderness, filled with beasts for the sake of hunting.

[6] See the whole question discussed with the Author's usual research, ability and clearness, in Kent's *Commentaries on American Law*, Part VI, Lecture LI. In a letter of Governor Winslow of the Plymouth Colony, dated 1st May 1676, it is stated that, before King Philip's War, the English did not possess one foot of land in that colony, but what was fairly obtained by honest purchase

§ 191. The Crown of England never attempted to interfere with the national affairs of the Indians, further than to keep out the agents of other powers, who might seduce them into foreign alliances. The English Government, according to their usual policy, purchased the alliance and dependence of the Indian nations by subsidies,[7] and bought their lands, when they were willing to sell, at the price which they were willing to take, but never coerced a surrender of them. The United States, who succeeded to the rights of the British Crown in respect to the Indians, adopted the same principle; and while asserting their exclusive right (which has never been questioned) to extinguish the Indian title by purchase or conquest, and to grant the soil, and exercise such a degree of sovereignty as circumstances required, they recognized the duty of affording that protection, which was stipulated to be given to the Indians, was claimed by them, and was understood by all parties only to bind the Indians to the United States, as dependent allies. In order to prevent fraud and injustice by individuals, it was provided by law from the earliest period that no purchase of lands from the Indians should be valid without the licence or sanction of Government. Upon the first settlement of the English at New York in 1665, it was ordained that no such transaction should be valid without the Governor's licence and the execution of the purchase in his presence. The Colony of Massachusetts in 1633 prohibited the purchase of land from the natives without the licence of Government. The Colony of Plymouth passed a similar law in 1643. Soon after the peace of 1763 the King, by proclamation, prohibited purchases of Indian lands, unless at a public assembly of the Indians, and in the name of the Crown, and under the superintendence of the colonial authorities. A prohibition of individual purchases of land without the consent of Government has since been made

Indian Title extinguished by Purchase or Conquest.

Purchases of Land from Indians without sanction of Government prohibited.

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from the Indian proprietors, and with the knowledge and allowance of the general Court.

[7] This policy has been usual in India also.

a constitutional provision in New York, Virginia, North Carolina and other States. In New Jersey the proprietors of land secured all their titles by Indian purchases; and in 1758 the Indians at the treaty of Easton released for a valuable consideration all claims to lands in New Jersey. William Penn, the founder of Pennsylvania, notoriously obtained this territory on just and fair terms from the Indians. So Maryland was planted in 1633 by Governor Calvert after fair purchase from the Indians; and the territory of Virginia, Georgia and Savannah was similarly acquired. In some parts of the country war broke out from inevitable consequences between the colonies and the Indian tribes; and, as the result, a title by conquest was acquired to considerable portions of territory.[8] Thus by purchase or cession or conquest the Government and people of the United States acquired the vast area which stretches across the continent from ocean to ocean; and, feudal tenures of all descriptions having been abolished, proprietors have allodial rights[9] in the estates, the title to which was obtained by grant from the Crown before, and from the people after, the Revolution.

§ 192. The first census of the United States under the Constitution was taken in 1790, and the population then was 3,929,827. In 1860 the population was 31,443,322, of which number nearly 27 millions were white persons. The

[8] The aboriginal tribes of America, like those of Australia, appear likely to die out. "The neighbourhood of the Whites," says Mr. Kent, "seems hitherto to have had an immoral influence upon Indian manners and habits, and to have destroyed all that was noble and elevated in the Indian character. They have generally, and with some very limited exceptions, been unable to share in the enjoyments, or exist in the presence, of civilization: and, judging from their past history, the Indians of this continent appear to be destined, at no very distant period of time, to disappear with those vast forests which once covered their country, and the existence of which seems essential to their own."—*Commentaries*, III, § 399, p. 505.

[9] As a curious instance of the use of the term 'tenure,' it may be mentioned that the New York Statute of 1787 declared that the *tenure* of all lands derived from the people should be *allodial*, and not feudal. Strictly speaking, there is no *tenure* of allodial land, for it is held of no one. See *ante*, p. 24, *note*.

Population and Area of the United States.

total population may now be roughly taken as 45 millions; and if it continue to increase in the same ratio in which it has increased hitherto, it will be *one hundred millions* or more in 1900. According to the census of 1860, the agricultural area of the United States contained 163,110,720 acres of improved land, and 244,101,818 acres of unimproved land: that it is to say, for every two acres of cultivated land there were three acres connected therewith not under cultivation. The total uncultivated territory, fertile and waste, was 1,466,969,862 acres. According to the same census, there were 2,440,000 farms. The system of land-occupation in the United States is, generally speaking, that of small proprietors. The usage and practice of the country is that every man shall own land as soon as possible; and land is so cheap that every provident man may become an owner. The Americans are very averse to being tenants; and the position of landlord is not much sought after for two reasons—*first*, because land is so cheap and so easily procurable that it would not be a profitable investment to acquire land for the purpose of letting it to tenants; and, *secondly*, because the term 'Landlord' is an obnoxious one with the masses of the people, and attaches to the holder of it a certain taint of aristocracy. Every American desires to be a master of the soil and is content to own, if nothing else, a small homestead, a mechanic's home, or a dwelling-house in a town, with a lot of land, some 50 feet by 100 about it. This desire to be the owner of land is acknowledged and encouraged by the Legislature. Under an Act of Congress, passed in 1862 and known as "The Homestead Law," every citizen of the United States, or any foreigner who shall declare his intention of becoming a citizen, can, after a residence of five years upon the land, secure an absolute title to a farm of 160 acres in any of the unappropriated territory of the States, surveyed for occupation. The practice of the National Government is to lay off its unoccupied land in sections of one mile square, which are again divided into blocks varying from 80 acres to 640 acres. The Govern-

Occupation of Land.

The Homestead Law of 1862.

ment is ever willing to sell its unoccupied acres to the first bidder, and to afford him, at the same time, every facility in the way of payment. Absolute titles to land are easily and quickly acquired, and the cultivation of the soil is so remunerative,[1] that those who commence as tenants soon accumulate the means of purchasing land and of thus becoming proprietors. Tenancies exist in some parts of the country, as might be expected they are most frequent in those localities, which have been longest settled, while in the Western States, where unoccupied and cheap land is plentiful, tenancy is comparatively little known except in the cities and towns where non-agricultural pursuits are followed. It is said that while the tenant class is diminishing, being indeed principally supplied by immigration, the proprietary class throughout the country is rapidly on the increase.

Ownership of Land easily acquired.

§ 193. The American small properties or farms have the great advantage of not being intersected, having been originally laid out for the most part in compact blocks.

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[1] "Land is abundant and cheap, while labour is scarce and dear . . . . . Under such circumstances it is evident that the high farming system of agriculture which is practised in some older and more densely populated countries, where labour is abundant, and the land mostly under cultivation, cannot, as a general rule, be profitably adopted at present in this new country. It has been said that American agriculture is half a century behind that of Great Britain. In one sense this is perhaps true. Our land is not as thoroughly under-drained, manured and cultivated as that of England, Scotland, or Belgium; but we can, and do now, produce a bushel of wheat at much less cost than the most scientific farmer of England can by the best approved method of cultivation, *even if he paid nothing for the use of his land*"—C. M. Fisher, Counsellor at Law, United States, in *Cobden Club Essays*. Owing to the marvellous fertility of the virgin soil, and to the facility with which fresh land, owing to its abundance, can be taken up, the wheat-growers find it more profitable to crop the soil until it shows signs of exhaustion, and then take up fresh tracts, than to attempt any system of proper farming by rotation of crops or the use of manure. The gradual shifting westward of the centre of the wheat-growing region is said to be a proof of the rapid abandonment of old soils for new ones. The excessive production of grain crops for the purpose of profitable exportation is thought to have exercised a prejudicial influence upon the state of American agriculture.

Sizes of Properties in the different States.

There is some diversity in the sizes of farms in the different States. In Massachusetts[2] the majority of single owners hold from 20 to 50 acres. In Rhode Island there were in 1865 only 37 farms of 500 or more acres, while there were 1,493 of 20 and under 50 acres; the total number of all sizes being 6,486.[3] In the State of New York farms of less than 100 acres are rare, and the average size is from 100 to 200 acres. In the State of Pennsylvania[4] the size of properties varies from 1 to 50 acres near towns and cities, and from 50 to 400 acres elsewhere —the average for all being 109 acres. Poorer men hold the smaller areas; and wealthy men occasionally have much larger properties, especially of what are known as wild or unimproved lands. Minnesota contains about 54 million acres, of which about 24 millions have been appropriated, and about 16 millions only are under cultivation. Excluding the urban population, there is an average of about 40 acres of cultivated land for each rural inhabitant. In Louisiana the minimum quantity of land sold in one lot was 40 acres; the owner of 160 acres was formerly regarded as a small proprietor, and the owner of 1,000 acres was not considered a very large one, many properties including as much as 5,000 acres. In the

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[2] According to the census of 1860 there were—

2,032	farms of	not less than	3	but less than	10 acres.
4,196	,,		10	,,	20 ,,
11,765	,,		20	,,	50 ,,
10,831	,,		50	,,	100 ,,
6,370	,,		100	,,	500 ,,
29	,,		500	,,	1,000 ,,

There were none of 1,000 acres or more. The average for all sizes was 94 acres. Massachusetts is the most populous State in the Union. The soil is poor. The land in the vicinity of towns and cities commands a high price for residential purposes; and the small properties are cultivated rather as market gardens than as agricultural farms.

[3] As showing the large number of proprietors over labourers, it may be mentioned that there were in the same year 10,754 owners, and but 5,440 labourers.

[4] The total population of Pennsylvania in 1860 was over three millions, of whom 182,000 were farmers, the number of farms being 156,357.

Southern States large properties were common before the abolition of slavery; but since the Civil War there has been a tendency towards subdivision.[5] The owners of large plantations, being unable to get them cultivated, have become willing to part with portions of them even at low prices. In Virginia there are now farms from 10 to 250 acres; and in South Carolina[6] as small as from 5 to 50 acres. In Texas the total area of all the counties, according to the assessment roll of 1867, was 125,631,360 acres, of which, roughly speaking, seventy millions of acres belong to landowners, giving for a population of 1,300,000 about 54 acres for each person. In addition to this there are 72,385 square miles of territory belonging to the State, but not included in the counties. Estates vary in size from 100 to 200,000 acres. In 1850 the average size of farms was 942 acres. In 1860 this average had decreased to 591 acres. In Georgia, there are farms as small as 40 acres, the average being 430 acres. In Maryland they vary from 20 to 200 acres, the average

[5] Since the Civil War the great landowners have endeavoured to create small properties of forty-acre or fifty-acre farms for the purpose of encouraging white immigration into the healthy parts of the State. The plan has also been introduced of working the plantations on shares with the freed Negroes. The mode in which this has been done is extremely various. In some places ten acres have been allotted to each labouring Negro, and the produce is divided, as may be agreed.

[6] The total population of South Carolina in 1860 was 703,708, of which number 291,388 were Whites, and 412,320 Negroes or Mulattoes. The total cultivated land was 2,490,450 acres or 3½ acres to each inhabitant. The *other* land was 39,022,766 acres. Since the War small allotments of 5 to 50 acres have been made to the Negroes. An Act of 1869, passed by the local legislature, provided for the appointment of a Land Commissioner, who was empowed to buy up lands, improved or unimproved, for the purpose of reselling them in lots of not less than 25 or more than 100 acres to actual settlers, subject to the condition that one-half of the lot should be brought under cultivation within five years from the date of the purchase, that the purchaser should annually pay interest at the rate of six per cent. per annum upon any part of the purchase-money remaining unpaid, and should, in every year after the third from the date of purchase, pay one-fifth of the principal. The title to the land remained in the State until the whole of the purchase-money was paid, but the certificate of purchase might be assigned three years after the date thereof.

being 190 acres. In Alabama and Florida proprietors hold from 80 to 3,000 acres, the average being for Alabama 346, and for Florida 444 acres. In the State of Maine the size of farms varies from 20 to 500 acres, the average being 103 acres. California come into the possession of the United States with a considerable portion of its territory already the subject of ownership.[7] The policy of the States, to prevent the concentration of landed property and encourage proprietorship by the people, not having been pursued in its early settlement, one-ninth of its area or about eleven millions of acres were, at the time of the cession, held by some 650 persons under grants from the Spanish and Mexican Governments. A very considerable change has, however, since taken place; and farms from 80 to 800 acres are now to be met with. In the decade from 1850 to 1860 the average size of farms for all the States decreased from 203 to 199, the greatest variation being in California, where the average fell from 4,466 acres in 1850 to 465 acres in 1860. The smallest properties are found in the vicinity of towns and cities, the raising of garden and vegetable produce being most profitable on small well-cultivated farms.[8] The owners of

[7] So in Chilé and the Argentine Republic and many States of Southern America the families of the aristocracy have monopolized the whole of the land. There are no small tenantry, no peasant class, the land being cultivated by hired labourers.—See *Central America, The West Indies and South America*, edited by H. W. Bates, pp. 381, 389. "The conditions of land tenure have given rise to much political strife;" says Mr. Bates speaking of Chilé, "the families of the oligarchy have secured to themselves the possession of the whole land, and the poor wretches employed by them are really worse off than slaves, or than the Russian serfs were before their emancipation. The abject poverty of the labouring classes in Chilé can scarcely be paralleled elsewhere in the whole world, it being here the result of overpopulation. It is a fact attested by the official returns, that, in consequence of this intolerable state of things, no less than 30,000 labourers migrated in one year to Peru, where they have been chiefly engaged on the great railway lines."

[8] In 1860 there were in the whole of the United States

12,642	farms of	3	acres and	under	10	acres.
157,810	,,	10	,,	,,	20	,,
612,245	,,	20	,,	,,	50	,,

these small properties occasionally live in the neighbouring town or village: but other proprietors throughout the States reside, as a general rule, upon their properties.

§ 194. The testamentary power of landowners in the United States of America is unrestricted, and any owner may at his pleasure bequeath the whole or any part of his property to one of his children or to a stranger. If he die intestate, his real property is divided equally between his children[9] without distinction as to sex, subject, however, to the widow's right of dower, where there is a widow. This right gives her a third part of the real estate for life; but there is a custom very generally prevalent, by which the widow renounces her right of dower upon receiving an equivalent proportion of the land in absolute ownership. The representatives of a deceased child take the portion to which he or she would be entitled, if living. When the estate is inconsiderable in size, or cannot be divided without great inconvenience or depreciation of its value, the Court may decree the whole or any part of the land to one of the heirs, on condition of his paying such sum of money to the others, as Commissioners appointed by the Court shall deem to be just and fair. When it is considered advisable to give the whole of the land to one heir in this manner, the eldest male is preferred to those that are younger, and males are preferred to females. Those who receive their shares in money, are thus enabled to acquire lands in the West or otherwise make new homes for themselves. It is said that the discretion thus vested in the Court prevents excessive and injurious subdivision, while the distribution of property amongst heirs prevents

Succession and Inheritance in the United States.

607,668 farms of 50 acres and under 100 acres.
486,239 ,, 100 ,, ,, 500 ,,
20,289 ,, 500 ,, ,, 1,000 ,,
5,348 ,, 1,000 and over.

[9] If any child have been advanced by the intestate during his lifetime by settlement of portion of the real estate, this is taken into account in the distribution in the States of New York and Massachusetts and other States of the Union.

the concentration of large landed estates in the hands of individual owners. When there are no children or descendants, then, according to the general law of the United States, the property goes to the next-of-kin in equal degree; and amongst collaterals the children of a deceased brother or sister take, in equal parts amongst them, their deceased parent's share. No distinction is made between kindred of the whole and half blood. If the intestate leave no kindred, the property escheats to the State, in which it is situated. In Michigan and California escheated estates are applied to the support of schools. Upon the above general rules of succession the local Acts of particular States have grafted some variations, any detail of which would be beyond the scope of this work. One remarkable provision of the law of Massachusetts may, however, be mentioned. Every householder having a family is entitled to what is termed an "Estate of Homestead," to the value of 800 dollars, in the farm or lot of land and buildings thereon owned or rightly possessed by lease or otherwise, and occupied by him as a residence. Such homestead and all right and title therein are exempt from attachment, levy, execution, or sale for the payment of debts, or other purposes. To constitute such estate of homestead and to entitle it to such exemption, it must be set forth in the deed of conveyance by which the property is acquired, that it is designed to be held as a homestead; or, after the title has been acquired, such design must be declared by writing, duly signed, sealed, acknowledged and recorded in the Registry of Deeds for the county or district, where the property is situated. The estate of homestead of any householder existing at his death continues for the benefit of his widow and minor children, and can be held by them, if one of them occupy the premises, until the youngest child is twenty-one years of age, and until the marriage or death of the widow.

Homestead Law of Massachusetts.

§ 195. Land is sold, transferred or exchanged in the United States of America by a simple deed, which may be,

and usually is, registered. There is in each county in the Union a Registrar appointed by the County Court, whose duty it is to register deeds relating to land. The title to the land passes by the deed, not by the registration. Deeds are therefore binding upon the parties, even though not registered; but unless registered they are void as against creditors and other purchasers. The registration record is notice to all persons of the title of the grantee. The Registrar certifies upon every deed presented to him the time when it was received, and a reference to the book and page where it is recorded. He keeps an Alphabetical Index of the names of parties. Every conveyance of real estate not recorded by the Registrar is void as against any subsequent purchaser, in good faith and for a valuable consideration, of the same real estate or any portion of it, whose conveyance has been first duly recorded. As a security against fraud there is in some of the States a provision that all deeds must be acknowledged by the grantor before a Justice of the Peace, who will endorse a certificate of such acknowledgment on the deed. If the grantor refuse to acknowledge the deed, the grantee may apply to a Justice of the Peace, who will summon the grantor and the subscribing witnesses; and if he is satisfied as to the execution, will make an endorsement accordingly. If the witnesses are dead, the deed may be proved before any Court of Record or Probate by proving the handwriting of the grantor and the witnesses. When conveyances and other instruments have been recorded in the registry, the record or a transcript of the record, certified by the Registrar, may be read in evidence in any Court within the State without further proof, but the effect of this evidence may be rebutted. The ordinary fee charged for preparing simple deeds or leases is from one to two dollars. When, upon the conveyance of valuable property, careful abstracts have to be prepared and legal opinions obtained, the expense may be from 10 to 100 dollars or even more. In the State of New York conveyances cost from £1 to £2; and in California from £1 to £10. In Louisiana deeds are usually

Sale, Transfer and Exchange of Land—Registration.

Cost of Conveyances and Registration.

executed before a public notary, whose fee of about ten dollars is paid by the purchaser. The cost of registering an ordinary deed is from 50 cents to a dollar. In the case of all deeds the cost of registration depends upon the length of the document, the charge being eleven cents per folio. Stamp-duties have been imposed since the Civil War in order to pay off the debt thereby incurred; and every conveyance must now bear a stamp of 50 cents for each 500 dollars of the consideration-money.

Stamp-duty.

§ 196. Although tenancy, as a system, does not exist generally in the United States of America, land is let in most of the States, when it suits the convenience of parties. In Massachusetts and Rhode Island farms of various sizes are rented, varying from 30 to 500 acres. In California farms, seldom less than 80 acres in extent and often comprising as much as 8,000 acres, are let to tenants; but no lease of agricultural land can be for a longer term than ten years. In Alabama and Florida tenancies exist, though they are not very common. A person renting land generally takes the whole farm or plantation, and usually for a single year. In Georgia holdings from 40 to 160 acres, and in Maryland holdings from 25 to 400 acres in extent are occasionally let to tenants. In the State of New York, an Act came into force on the 1st January 1847, which provided that no lease or grant of agricultural land for a longer period than twelve years, made thereafter and in which any rent or service was reserved, should be valid. A similar provision was adopted in Michigan in 1850. In none of the States are long leases of agricultural lands usual. The relation of landlord and tenant may be created by parol or by written agreement. Writing is more usual; and in Georgia, where the English Statute of Frauds is still in force, is necessary in the case of a lease for more than three years. In Pennsylvania a lease for more than three years, if not in writing and signed by the parties, has the effect of a lease for a year only. In every case in which there is no agreement as to the term, the presumption is that the tenancy is for one year only. No tenant is considered to have a right

Tenancy as a System non-existent in the United States, but occasionally found in some States.

Long Terms prohibited, or unusual.

Creation of Tenancy.

Holding over.

to continue to occupy his holding without his landlord's consent; but if he is allowed to hold over for a month after the expiry of his lease, the law presumes the revival of the tenancy for a whole year but not longer. In some places when the tenancy has continued from year to year by mutual consent, a three months' notice is necessary in order to determine it. The tenant's interest is by law assignable in the absence of any agreement to the contrary, the common law of England governing this and other matters. Most written leases, however, contain provisions prohibiting assignment or subletting without the landlord's consent. Subtenancies are very unusual.

Assignment of Tenant's Interest.

§ 197. Rent is variously paid in money, or in kind, or by a share of the produce. Its payment is regulated by the agreement of the parties—it is the subject of contract, not of custom. The landlord's power of raising the rent is unrestricted by law—but the tenant's power of refusing to pay increased rent is unfettered by any exigencies of his position in a country where unoccupied land is in abundance; and the latter power is as yet by far the stronger. Formerly the payment of rent in kind was very common,[1] but in the older States these rents have in many instances been commuted for money pay-

Rent in the United States.

[1] "The best way of reserving perpetual rents," says Mr. Kent, "if it be intended that rent should always be of the same value, is to stipulate that the payment be in kind, such as wheat or other produce, or in cattle or poultry. This was the almost universal practice in ancient times, and a great proportion of the ancient leases in New York, in the manor counties, were of that description. By the Statute of 18 Eliz. one-third part of the rent upon college leases was directed to be reserved in corn, to be paid either in corn or in the current prices at the nearest public market. We have an instance in New York of the same provident foresight in the act of instituting the University, and limiting its annual income to 40,000 bushels of wheat. This arrangement saves the interest of the persons, in whose favour rent is reserved, from sinking by the depreciation of money, owing to the augmentation of gold and silver, and the accumulation of paper credit. The rents which have been reserved in corn, says Dr. Smith, have preserved their value much better than those which have been reserved in money."—*Commentaries on American Law*, Vol. III, § 463, p. 597.

ments. For example, the former rent of a farm of 174 acres in the Livingstone Manor in the State of New York was twenty bushels of wheat and six hens annually ; and this was commuted into 50 dollars a year. In Maryland, on the other hand, payment of rent by a share of the produce is said to be on the increase ; and in the Southern States it has of late years become very usual to let farms to tenants on condition of receiving a portion of the produce. In Massachusetts and Rhode Island money-rents are usual, but farms are also rented 'to the halves,' under which arrangement the tenant bears all the expenses, and pays the proprietor interest on a valuation of the stock and tools. The landlord then receives one-half of the gross proceeds from sales of the produce, the tenant retaining the other half. In cases of this kind it is usually stipulated that the tenant shall sell no hay off the farm. A common mode of letting land in Virginia is for the landowner to give the farm for a single year, the tenant working it and finding his own agricultural implements. The landowner then receives two-fifths of the agricultural produce, such as grain, hay and the like ; and one-half of the fruit, poultry and produce of live stock. In those cases in which the landowner gives the land merely, the labouring tenant keeps the fences in repair, and finds his own teams, implements and seed. The landlord then receives one-quarter of the cotton and one-third of the corn. Occasionally the planters give the labourers half of each week and all the land they can cultivate in this time, paying them wages for the remaining three days. In Alabama and Florida rent is in many cases made payable in kind, either by a stipulated number of bales of cotton or a specific portion of the crop. In California similar arrangements are made, one-fourth of the produce being given on the ground, or one-fifth in bags delivered at the nearest shipping port or railway station ; or sometimes the landlord supplies seed, ploughs, reaping and threshing machines—in fact everything but labour and horses—and divides the crop with the tenant.

§ 198. In the State of Texas, an "Act concerning Rents," passed in 1843, enacted that all persons granting a lease of lands or tenements, either at will or for a term, shall have a lien upon all the property of the tenant, upon such premises for the payment of the rents becoming due under such lease, whether the same be paid in money, cotton, corn, or whatever else may be raised upon the rented premises; and in any case where the rent is to be in corn, cotton or other articles raised upon the rented premises, it shall not be lawful for such tenant to remove off the premises any of such corn, cotton, or other articles in which the rent is to be paid; and such lien shall continue and be in force so long as such tenant shall occupy the rented premises, and for three months thereafter. Landlords were empowerd to apply to any Justice of the Peace for a distress-warrant to seize the property of the tenant when the rent became due; but any person applying must now give a bond to indemnify the tenant, if the distress-warrant should have been illegally or unjustly sued out. It was subsequently provided that landlords should not have a preference over other creditors as to any portion of the tenant's property except the crop raised upon the rented premises; and that the three months' lien just mentioned should be limited to the same crop. In South Carolina rent is very commonly paid by delivering a share of the produce of the land. Here also there has been special legislation upon the subject. An Act was passed in 1869 "to protect Labourers and Persons working under Contract on Shares of Crops." This Act provided that all contracts made between owners of land and labourers shall be witnessed by one or more disinterested persons, and, at the request of either party, be duly executed before a Justice of the Peace or Magistrate, whose duty it shall be to read and explain the same to the parties—that such contracts shall clearly set forth the conditions upon which the labourer engages to work, embracing the length of time, the amount of money to be paid, and when; if it be on shares of crops, what portion of the crop or crops.

Special Enactments as to Rent in Texas and South Carolina.

The Act further provides that, whenever labour is performed under contract on shares of crops, such crops shall be gathered and divided off before they are removed from the place, where they were planted, harvested or gathered. The division is to be made by a disinterested person when desired by either party to the contract. Such disinterested person must be chosen by and with the consent of the contracting parties. Whenever the parties fail to agree upon a disinterested person, or if complaint is made that the division has been unfairly made within ten days after such division, it is declared to be the duty of the Justice of the Peace or Magistrate residing nearest the place where such crops are planted, harvested or gathered, to cause, under his immediate supervision, such equitable division as may be stipulated in the contract. Such disinterested person, or Justice of the Peace or Magistrate, is to receive a reasonable compensation for his service, to be paid by both of the contracting parties according to their several interests, except in cases of an attempt to wilfully defraud the other by one of the contracting parties, in which case such compensation shall be paid by the party so attempting to defraud the other. If either party is in debt to the other for any obligation incurred under contract, the amount of the said indebtedness may be then and there settled and paid by such portion of the share of the party so indebted as may be agreed upon by the parties themselves, or set apart by the Justice of the Peace or Magistrate, or any person chosen to divide the crop. Whenever labourers are working on shares of crops, or for wages in money or other valuable consideration, they are declared by the Act to have a prior lien upon the crops, in whatsoever hands they may be. The portion of the crops belonging to them, or the amount of money or other valuable consideration due, is recoverable by action in any Court of competent jurisdiction.[2] Whenever any such contract is violated or

Division of the Crop how made in case of Dispute.

Labourers' Lien on the Crops.

[2] The provisions of the Act have been reproduced above almost *verbatim*.

attempted to be violated, or whenever fraud is practised or attempted to be practised, by either party at any time before the conditions of the contract are fulfilled and the parties released from their obligation, complaint may be made before a Justice of the Peace or a Magistrate, or may be carried before any Court having jurisdiction. The landowner or his agent is liable to a fine of not less than 50 and not more than 500 dollars for practising, or attempting to practise, fraud either in keeping accounts between him and the other party, or in the division of the crops, or the payment of the money or other valuable consideration. The labourer may be sentenced to fine or imprisonment for failing wilfully and without just cause to give the labour required of him by the terms of the contract, or in other respects refusing to comply with the conditions of the contract, or fraudulently making use of, or carrying away, any portion of the crops, or anything connected therewith or belonging thereto. The Act also provides for punishing misfeasance on the part of the disinterested person, the Justice of the Peace or the Magistrate. There is a difference between this legislation and that of the State of Texas in this—that the latter State regards the cultivator as a *tenant*, and its legislation was directed to protect the landlord, while in South Carolina the cultivator is regarded as a *labourer*, and it is for his protection especially that the Act of this State was passed.

Penalty for Fraud or Breach of Contract.

§ 199. The legal means for the recovery of rent in most of the States is by distress, the tenant having the right of replevin. In some States the landlord must have recourse to a summary proceeding to establish the amount due, and for this amount, when proved, he has a first lien on the tenant's property on the premises, or wherever it may be found, if it be removed after the commencement of proceedings. Tenants holding over without permission, and tenants liable to eviction for non-payment of rent or for breach of the special conditions of their lease, may be evicted by a summary proceeding before a Justice

Recovery of Rent.

Eviction.

of the Peace.[3] There is usually a right of trial by jury, if the matter in controversy is of the value of twenty dollars. The proceedings usually take about ten days or less. If the defendant being defeated carry the case by appeal to another Court, he must give recognizances with sufficient security for the payment of all rent that many be due, and all damages which the plaintiff may sustain in consequence of possession being withheld. In cases in which there is no written agreement, the landlord must, before the commencement of eviction proceedings, give the tenant notice to quit. If the tenant pays his rent annually, he is entitled to six months' notice; if half-yearly, to three months' notice. In Massachusetts, three months' notice is required in the case of tenancies-at-will; or if the rent is payable at intervals of less than three months, then a notice equal to any such interval. In Massachusetts and Rhode Island fourteen days' previous notice is required before an action to evict for non-payment of rent; and a tenant defeated in any such action may, by paying all arrears of rent, interest and costs four days before the return of the writ, retain possession of the premises. In California, if the rent remains unpaid for three days after it is due, the landlord may serve a written demand of possession of the premises within three days; and if possession is not surrendered, he may, upon a verified complaint, obtain a summons from the County Court, to which the tenant has ten days to answer. If no answer be made, the plaintiff obtains judgment forthwith. In Georgia the proceedings are still more summary. The landlord makes affidavit before a judicial officer that the tenant is indebted to him for rent, stating the amount, or that he holds over, as the case may be, whereupon the judicial officer issues a writ of possession, and the sheriff or constable evicts the tenant. If the ten-

Notice to Quit when necessary.

Summary Eviction in California and Georgia.

[3] Where a tenant wrongfully holds over, the remedy is in some States termed "Process of Unlawful Detainer." Forcible entry is not allowed; it is expressly forbidden by the Statutes of Massachusetts.

ant desire to resist the eviction, he must make an affidavit, traversing the alleged grounds of eviction, and must give a bond with security for the payment of the eventual 'condemnation money.' If his rent is unpaid, he is allowed no time; but must pay at once or quit. Improvements especially to buildings are usually made by the landlord or are the subject of agreement between the parties. It is frequently stipulated that the landlord shall take the improvements, or the tenant buy the ground, each at an appraised value, and at some specified time. Improvements to buildings become part of the real estate, and the property of the landlord. Improvements and fixtures made by a tenant for the purpose of trade or commerce are removable by him. But in the case of agricultural improvements, if the tenant make them without any special agreement with his landlord, and they are not removable, he has in most States no right to compensation upon quitting the land. In Louisiana the tenant may remove improvements, which are removable without injury to the realty. If the landlord keep them, he must pay the value of them, appraised by a Court or a jury in case of suit. In California the tenant may remove division fences between fields which he has himself erected; but not fences between properties. The latter are, however, generally erected by the landlord. The question of improvements has not as yet become a very important one in the United States of America, as high farming has not been introduced, and tenancy is an exceptional mode of landholding.

Improvements in the United States.

§ 200. Before the Revolution, and immediately after the independence of the United States, large tracts of land in the State of New York were granted to private individuals, at the earlier period for the purpose of encouraging immigration and settlement, and at the later period as the reward of public or military services. The grantees leased portions of these tracts to settlers for periods of 999 years, on the annual payment of small sums, or the yearly delivery of a stipulated quantity of grain or other produce, and in

Certain Tenancies for 999 Years in the State of New York.

some cases the rendering of a number of days' labour. These tenancies were created on the Van Rensalaer and Livingstone estates and some other similar grants. The quantity of land included in each demise generally exceeded 100 acres, forming a large and profitable farm. The produce and labour rents have been almost all commuted for fixed money payments; but the making of money payments has in many instances been resisted by the tenants, notwithstanding that these payments bear a very small proportion to the present value of the farms. All improvements have been made by the tenants at their own expense, and this seems to have been regarded by them as creating a right to the absolute ownership of the property. Of late years the landlords have endeavoured to induce the tenants to capitalize and purchase the rentals, thereby converting themselves into absolute proprietors; but the sums paid as rent are so small that the tenants are rather indifferent about taking this step. The resistance at one time offered to making any payments at all led to serious disturbances, which are said to have occasioned the enacting of the provision that no lease or grant of agricultural land for a longer period than twelve years, in which any rent or service is reserved, shall be valid.[4] The disturbances just mentioned appear to be an exception to the general rule that the relations between landlords and tenants are friendly in the United States. Tenants are well able to look after their own interests, and, in some States, it is said that it is not the tenants but the landlords who require legislative protection.

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[4] An account of certain special tenures in Pennsylvania known as 'ground-rents' has already been given—See *ante*, p. 34, *note*. There is in America a light land tax, about one per cent. of the appraised value of the land.

CHAPTER XVII.

Landholding in Australia (New South Wales, Victoria, Queensland, South Australia, Western Australia), Tasmania, and New Zealand.

§ 201. The First British Settlement in Australia was made towards the close of the last century at Botany Bay by Captain Arthur Phillip, R.N., who landed near the spot where Sydney now stands, on the 26th January 1788, for the purpose of founding a penal settlement.[5] This settlement became the Colony of New South Wales, which originally included Van Diemen's Land (now called Tasmania), Victoria and Queensland. But these were subsequently separated and constituted distinct colonies—Van Diemen's Land in 1825, Victoria in 1851, and Queensland in 1859. The aboriginal inhabitants of Australia lived by hunting, had no settled homes and did not practise agriculture, of which they had no knowledge.[6] No difficulty, therefore, arose with them about the occupation of the land; and the whole territory of Australia was practically treated by the British Government as unoccupied. According to the law of England, unoccu-

Foundation of the Colony of New South Wales.

Separation of Van Diemen's Land, Victoria, and Queensland.

[5] Between this year and 1840, when transportation to this colony ceased, a total number of 137,161 convicts were sent to New South Wales. Between 1838 and 1878, 207,616 free immigrants landed in the colony.

[6] According to Vattel, erratic races of people, who sparsely inhabited immense regions and suffered them to remain a wilderness, because their subsistence was drawn chiefly from the forest, had little or no territorial rights. He observed that the cultivation of the soil is an obligation imposed by nature upon mankind, and the human race could not well subsist, or greatly multiply, if rude tribes, which had not advanced from the hunter state, were entitled to claim and retain all the boundless regions through which they might wander. —*Droit des Gens*, c. 1, s. 81, 209.

pied territory, of which possession has been taken by the Crown or its subjects, vests in the Sovereign, and private titles must thereafter be created by Royal Grant. By virtue of this principle the immense area of Australia vested in the Sovereign of Great Britain, from whom immediately, or mediately through the Governors of the Colonies, private individuals have obtained grants. The Governor of each Colony holds a commission, which authorizes him in the name and on behalf of the Sovereign, to convey the waste lands to those who obtain grants under the rules for the time being in force. Except by a grant under the public seal of the colony, issued in pursuance of such a commission, no private person can establish a valid title to land. The conditions under which such grants are now made are embodied in regulations drawn up for each colony; but in the early part of the present century large tracts of land were occupied in an irregular manner, and under the earlier land rules individuals acquired title to very large tracts of land, which have since in a comparatively short space of time become properties of enormous value. Many persons consider that a grave error was committed in allowing individuals to become the owners of large areas of land, which should have been reserved for partition amongst the people in allotments proportioned to the moderate requirements of single families of cultivators; and more than one attempt has been made to undo what has been done in this respect.

Territory of Australia vested in the Sovereign of Great Britain.

Grants to Private Individuals.

Creation of large Estates.

§ 202. Free settlers were not at first allowed to enter the convict colony of New South Wales, but more than one Governor recommended their introduction, and the prohibition against free immigration was withdrawn in 1821, whereupon a considerable influx, chiefly of Scotchmen, began. At first, grants of land were given without purchase; but free grants except for public purposes ceased in 1831, and the land was put up to auction at a minimum upset price of 5*s.* per acre, except in the case of town allotments, for which the upset price was more. The fund created by the sale of the land was applied in part to

Early Occupation of Land in New South Wales.

defray the cost of free immigration, which was at first confined to females with a view to rectify the disproportion of the sexes. This fund, which in 1832 was little more than £12,000, increased in five years to £129,000.[7] Besides those who entered upon the occupation of land in a regular manner under free grants or subsequently by purchase, there were a considerable number of persons, who pastured cattle over large tracts to which they had obtained no title by grant or purchase or even by licence. In the infancy of the colony, when land was practically valueless, the owners of flocks, like the old nomads, pastured them where they pleased, without question or let or hindrance; but the nomadic phase of existence was of very brief duration.

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[7] Lord John Russell, in his Despatch of the 14th January 1840, upon the occasion of the appointment of the first Colonial Land and Emigration Commissioners, stated that the Sovereign held the land in trust for the public good, and could not, without a breach of that trust on the part of the ministers of the Crown, be advised to make free grants; that the land must first be appropriated to public uses and for the public benefit; that of these uses the most important were public works, having for their object the future improvement of the colony—such as roads, quays, towing paths, sites of public buildings and military defences, sites of churches, school-houses, cemeteries, and places for public recreation and health; that, when these objects were provided for, the next use of the waste lands was to create a public revenue by their sale; that the appropriation of part of this revenue to the ordinary exigencies of the public service would probably be found inevitable in every colony; that while fully admitting and insisting on the principle that the Crown lands in the colonies are held in trust, not merely for the existing colonists, but for the people of the British Empire collectively, it is perfectly consistent with that opinion to maintain that in applying the proceeds of the sales to the essential purposes of local good government, which must otherwise be unprovided for, the real interest of the empire at large, not less than that of the colony itself, will be best consulted; that the funds raised by the sales of land would be applied to immigration so far, but only so far, as this use might be compatible with a due regard for the pressing and necessary demands of the local Governments, for which no other resource could be found; that the colonies should gradually provide for these demands by import duties and other means, thus leaving the produce of the sales free for the promotion of emigration from the United Kingdom. In 1842 an Act of Parliament was passed which prohibited the alienation of lands in the Australian colonies except by sale, and directed the appropriation of at least one-half the sale-proceeds to immigration. The total number of immigrants between 1838 and 1878 was 1,270,000.

The owners of herds and flocks very soon found that they could carry on the business of sheep-farming to much better advantage, when they had a local habitation for themselves, and proper sheds for shearing, storing and packing the wool, while the cost of herding and looking after thousands of sheep was much diminished by the construction of proper fences. When the sheep farmers thus came to settle in particular localities, a serious question arose as to their continued occupation of land, to which they had no title, and the purchase of which even at the low upset price fixed, would (owing to the great extent of the sheep-runs) have required more capital than they had at their disposal. The difficulty was met by the grant of annual licences, which entitled the holders to graze their sheep and cattle upon large tracts of land, to which they thus acquired no further title. The issue of these licences or leases had the result of creating a great pastoral interest, which forms an important feature in the history of the Australian Colonies. The persons, who by these leases acquired the right to the use of the soil for grazing purposes, were called 'Squatters,' because in the first instance many of them had taken possession of the land without any right or title whatever; and even, after the issue of licences or leases, they were liable to be superseded and set aside by persons, who by purchase acquired title to the whole or any part of the land over which their grazing rights extended.[8] Persons who desired to purchase were allowed to select lots freely wherever they pleased. They came thus to be called 'Free Selectors.' When the whole of a Squatter's sheep-run was purchased by a Free Selector, the Squatter had to take his flocks and herds elsewhere in search of suitable unsold tracts. But occasionally the Free Selector did not purchase the whole; he picked out the best parcels and left the worst to the

Licences for Grazing purposes. Squatters.

Free Selectors.

[8] The term 'Squatter' is applied to a person who settles on land without title or pretence to title. It appears to have come from America and to have been there originally applied to persons who settled on lands belonging to the Indians without having acquired title from them by purchase—See *ante*, p. 362.

Squatter, who had to content himself therewith or abandon the whole tract, and seek new pastures in another part of the colony. Thus it happened that a certain antagonism came to exist between the Squatters and the Free Selectors, their interests being mutually opposed.

§ 203. During the Governorship of Sir George Gipps (1838-1846) New South Wales received a Constitution, and a responsible Government with a Legislative Council was established; but the control and management of the Crown Lands were retained by the Executive. It was now proposed to increase the amounts charged for Squatter's licences or leases, whereupon a strong opposition was organized, and a Pastoral Association formed for the protection of the Squatters' interests. The question which was thus raised for settlement was by no means an easy one. The chief employment in the colony was sheep farming and the production of wool, and the chief interest at the time was that of the persons who followed this employment. Under the rules in force these persons could obtain no legal right, except from year to year, to the lands which they required for grazing their flocks. No price could be fixed, so low that the sheep-farmer could afford to purchase sufficient land for his purpose. At the same time the permanent alienation of large tracts without payment was opposed to the principle deliberately adopted and enunciated by the Home Government, was unjust to future emigrants from England, and opposed to the prospective interest of the colony. The Pastoral Association addressed remonstrances to the British Ministry and forwarded petitions asking for leases, fixity of tenure and the right of pre-emption. In view of these facts and considerations, the great object to be achieved was to frame a measure, which would confer all that was necessary for the wants and welfare of the Squatters without sacrificing the future and permanent interests of the colony. In order to accomplish this object the whole country was divided into 'settled,' 'intermediate' and 'unsettled' districts. Leases of 'unsettled' lands were granted to the Squatters for terms of fourteen

Difficulties of the Squatting Question.

years, no higher payment being required than that which they had made when holding from year to year. Upon the expiry of the term they were allowed a right of pre-emption; and, if they did not wish to exercise this right, they were entitled to pecuniary compensation for any improvement which they had made. They were also allowed to buy any separate parts of their runs which they desired; thus receiving encouragement to erect permanent and comfortable buildings, and to engage in agriculture. The class of *Intermediate* lands was intended as a provision for the more immediate wants of settlers; and in this class were included such lands as, in the gradual advance of cultivation, were likely to be sooner required by purchasers for agricultural purposes. Of these lands the Squatter was allowed to obtain a lease for a term of eight years only, and subject to the condition that at the end of each year the Government might, after due notice, offer any part of the land for sale to an intending purchaser of the fee-simple. But in the case of Intermediate lands also the Squatter was allowed a right of pre-emption, and was otherwise secured against pecuniary loss.[9]

Solution by granting Leases with a Right of Pre-emption, &c.

§ 204. The sale and settlement of land in New South Wales are now regulated by an Act of 1861, which was amended in 1875 and again in 1880. After the reservation of suitable sites for churches, schools, parks, works of defence and other public works, all Crown lands are to be sold. Crown lands are divided into four classes:—(1) 'Town lands,' being those in, or set apart as a site for, a city, town or village; (2) Suburban lands, being those declared in the Government Gazette to be such; (3) First Class Settled Districts; (4) Second Class Settled Districts. Classes (1) and (2) are sold by public auction only, at upset prices, if they are without improvements, of £8 per acre for class (1) and £2 per acre for class (2). The upset price of other Crown lands, intended to be sold without conditions of residence and improvement, is not less

Existing Rules for the Sale and Settlement of Land in New South Wales. Four Classes of Land.

Sale by Auction.

[9] See *The Colonial Land and Emigration Commissioners' Report*, 1847.

than £1 per acre. If no sale takes place at the first auction, the land may be again put up, or [except in the case of classes (1) and (2)] may in the interim be purchased at the upset price, if not previously withdrawn from sale by Government. One-fourth of the purchase-money must be paid at the time of purchase, and the balance within three months. Classes (3) and (4) may also be acquired by an arrangement termed 'Conditional Sale.' Under the provisions applicable to this arrangement any one, not under sixteen years of age and not a married woman, may make to the Land Agent of the District a written application for the conditional purchase of not less than 40, nor more than 640, acres. This application must be accompanied by a deposit of one-fourth of the purchase-money at £1 per acre, *i.e.* 5*s.* per acre. The applicant will thereupon be declared the conditional purchaser, unless there be more than one applicant for the same land in whole or part, in which case the successful applicant will be determined by lot. After three years and three months, the conditional purchaser has the option of paying the balance of the purchase-money, *i.e.* 15*s.* per acre, and receiving a conveyance in fee, or of paying by instalments of not less than one shilling per acre yearly in advance within three months after the 1st January in each year. In either case, however, the purchaser must make a declaration, and must satisfy the Minister of Public Lands, that he has *bonâ fide* resided continuously upon the lands and has made improvements to the extent and value of six shillings per acre. He must further continue to reside until the expiration of five years from the date of selection; and within three months after the completion of such period of five years he must make a further declaration that he has so resided, and that improvements to the value of at least ten shillings per acre have been effected on the land. After fulfilling these conditions as to residence and improvement, the selector is at liberty to make a fresh selection elsewhere, keeping or, if he so wish, transferring his first completed purchase. The conditional

Conditional Sale.

Conditions as to Residence and Improvement.

purchaser may also, before completing his purchase, at any time after he has fulfilled twelve months' residence, transfer his selection to any person not under sixteen years of age and not being a married woman ; and, in case of transfer, the transferree is bound by the same conditions as the transferrer. If the balance of the purchase-money be not paid upon due date, or if the conditions as to residence and improvement be not complied with, the land, together with any improvements that may have been made, is forfeited to the Crown. Conditional purchasers have the advantage of being able to obtain pre-emptive leases for grazing purposes, when there is available land in the neighbourhood, and also leases of adjoining unsettled land to the extent of three times the area of their conditional purchases and at an annual rental of £2 for each section of 640 acres. There are special provisions applicable to land required for mining purposes. The above rules have been framed with the object of encouraging the immigration of small farmers, who will settle on the land and cultivate it ; and they afford a great facility to the working agriculturist, who desires to become a substantial peasant proprietor.[1]

§ 205. Victoria, the most populous and wealthy of the Australian colonies, originally formed a portion of New South Wales, but, as has already been mentioned, was separated from it in 1851. Victoria was originally called Port Phillip, and may be said to have been first settled in

[1] Between 1862 and 1879 inclusive, 132,746 selections were taken up, the total area selected being 14,530,069 acres. In 1880, there were 39,918 holdings of above one acre ; there were 489,404 acres under cultivation, while some sixteen million of acres had been taken up, but not brought under cultivation. It is computed that there are yet from 170 to 180 millions of acres available in this colony ; but this includes mountain and other land not fit for cultivation. It has been said that agriculture, pure and simple, cannot be made profitable in New South Wales, and many large Squatters have strenuously maintained this opinion. It may not be profitable so as to make large fortunes in a comparatively short space of time ; but there is little reason to doubt that it will yield a comfortable and satisfactory livelihood to those sons of toil, whose ideas of success are regulated by some reference to the state of things in the old world, and are not altogether based upon the extraordinary experiences of Australia during the last forty years.

1835, in which year Melbourne was founded. This first settlement was made by free colonists from Tasmania, then called Van Diemen's Land, some of whom purchased[2] a tract of land from the aborigines; but this bargain, being made without the permission or consent of Government, was afterwards ignored and set aside. Victoria has never been a convict settlement, being colonized from the first by free immigrants. The first sales of land took place in June 1837. One hundred half-acre allotments on the site of the present city of Melbourne were put up at £5 each, and realized from £25 to £95, the average being £35.[3] In 1841 the proceeds of the land sales, which had previously been included in the general fund of New South Wales, were appropriated to the requirements of Port Phillip alone, which at the same time was allowed to return six members to the Legislative Council at Sydney. Agitation for separation commenced as early as 1840, and just ten years after, this agitation proved successful. On the 1st July 1851 Port Phillip became a separate colony under the name of Victoria, and obtained a Lieutenant-Governor and a Legislative Council. The subject of the Land-Laws and the Squatters forced itself within a few years upon the local Government thus created. By an Act of Parliament of 1855, the administration of the Colonial lands was transferred to the Colonial Legislative; and the Squatters' rights and the best mode of dealing with the lands of the colony excited interminable discussion inside and outside the Legislative Council. Under the old system the Govern-

First Settlement of Victoria in 1835.

Separation from New South Wales.

[2] The consideration consisted of 20 pairs of blankets, 30 tomahawks, 100 knives, 50 pairs of scissors, 30 looking-glasses, 200 handkerchiefs, 100 lbs. of flour, and 6 sheets! A similar bargain for 100,000 acres, in that part of the country now known as Geelong, was similarly set aside by Government.

[3] Another sale took place in the following November, when an average of £42 was realized. Some of the lots sold in 1837 were sold within two years for several thousand pounds each. There is a story told of a man to whom a lot was knocked down for £80. Believing it to be too dear, he would not pay the balance of the purchase-money, and his deposit of £8 was forfeited. The lot was resold for £72. Within two years it was valued at £5,000; and after the gold discovery it was sold for £40,000.

Old System of Selling the Crown Lands.

ment surveyed in those places, which its officers considered fit; and sections were sold in this or that locality, as to the same officers was convenient. The convenience of the public or the desire of individuals to acquire lands in particular parts of the colony, to which their judgment guided them, was not much considered. Then the lots were generally too large for the class of intending purchasers, who were further restricted in their operations by a rule, which required cash down or within a month, when the lots were sold by public auction. The general result was that immigrants, who possessed little capital beyond that of their own thews and sinews, were unable to obtain an opening on their own account; and, while the pastoral interest was sufficiently flourishing, agriculture made little or no progress.

Discovery of Gold in 1851 —Effect upon the Squatters' Rights of Pre-emption.

§ 206. The discovery of gold in the Colony of Victoria in 1851 led to a necessary modification of those rights of pre-emption which had been conferred upon the Squatters by the rules already mentioned in connection with New South Wales, of which Victoria formed an integral portion, when those rules[4] were made. Each Squatter's right of pre-emption was accordingly limited to one section of 640 acres, and the rest of the land was sold, as it was required. The immense excitement created by the gold fields and the enormous influx of immigrants in search of the precious metal for a time diverted public attention from agriculture and agricultural concerns. It was by the gold-seeking and mining colonists, not by intending agriculturists, that the Squatting interest was first assailed; and here the attack was too overwhelming, too overpowering to be resisted. As soon as the gold mania somewhat abated, and people found time for reflection, food that would be paid for in gold appeared as valuable as the gold itself, and many who had failed as gold-diggers were anxious to try the more patient task of cultivating the

[4] These rules were *Orders in Council* made by the Crown under the authority of an Act of Parliament.

soil, which had refused sudden wealth to their impatient energy. The high prices which prevailed for all articles of food, which had to be imported in order to meet the extraordinary consumption, offered hope and encouragement to persons, who understood the cultivation of the soil; and many of those, who were called to assist in guiding the progress of the new colony through the crisis of a sudden access of unexampled prosperity, saw the wisdom of promoting the settlement of its lands by a resident population and securing the use of the soil for the purposes of agriculture.[5]

Importance of encouraging Agriculture.

§ 207. In 1860 a measure was passed, which opened all the Squatting runs to the agriculturists; and this was followed by a more comprehensive Land-Law in 1862. During the interval between these two measures, a statement had been drawn up from which it appeared that the Colony of Victoria (which is about one-thirty-fifth of Australia) contained a little more than 55½ millions of acres; that of this total area 4¾ millions of acres had been sold, and 1,600,000 acres appropriated for pasturage; that there were still 10½ millions of acres suitable for agriculture, and of the remaining 38½ millions of acres about 25 millions were suitable for pasturage. The Act of 1862 made it clear that the Agricultural was to be paramount to the Squatting interest. Lands suitable for agriculture were to be made available to all persons seeking to acquire them for this purpose, as soon as a regular survey could be made, and it was hoped (though this expectation was not afterwards fully realized) that four millions of acres would be thrown open to selection within one year after the Act came into force, and the remainder at short subsequent intervals. The Squatters were allowed to continue in possession of the agricultural lands on sufferance, until the survey was made, and after the survey until the lands were taken up by settlers. Eventually, however, it was obliga-

The Victoria Land Act of 1862—The Agricultural Interest Paramount.

[5] See *The Colony of Victoria*, by William Westgarth, p. 480.

tory on them to give up the better soils, except so much as they were themselves able to purchase, and retire to the poorer lands suitable only for pasturage. Of these latter lands they were allowed to obtain leases for terms of nine years; but the Government reserved to itself the right of taking the land leased, or any portion of it, for sale or any other purpose, notwithstanding the leases. The public were not, however, allowed any right of selection over the pastoral lands, and the Squatters were liable to no interference except that of Government. In this respect the Victoria Act differed from that of New South Wales, which latter allowed intending purchasers to select from the whole of the Crown lands whether surveyed or not. In Victoria the charge to the Squatters per sheep was eightpence,[6] while it was only two-pence in New South Wales. Although the Squatter, who had taken a lease of pastoral lands, could not be intruded upon by the Free Selector, he had no protection against the 'Prospector,' as the gold-digger prospecting for mining purposes was termed. This privileged individual was allowed to search all over the colony for the metal which made it famous. The great object of the Act of 1862 was to encourage cultivation and improvement by affording facilities to intending resident agriculturists. The price of the land was maintained at twenty shillings an acre, but a long credit without interest on the purchase-money was allowed for half of the purchased area. There was a limitation to the quantity which each person was allowed to purchase, and residence was made a necessary condition. It was found, however, that the provisions of the Act were largely evaded, and that capitalists, by using the names of other persons, were

Leases of Land for Pasturage.

Evasion of the Act by Capitalists.

[6] By the Victoria Land-Tax Act of 1877, pasturage land was divided into four classes: (1) First class, carrying (*i.e.* that will feed) two or more sheep to the acre—this is assessed for the purposes of the Act at £4, and is to pay 1*s.* an acre; (2) Second class, carrying three sheep to two acres, assessed at £3, and to pay 9*d.* an acre; (3) Third class, carrying one sheep to the acre, assessed at £2 and to pay 6*d.* an acre; (4) Fourth class, carrying less than one sheep to the acre, assessed at £1, and to pay 3*d.* an acre.

buying up the best lands for speculative purposes; and an amendment of the Act became necessary in consequence.

§ 208. The settlement of lands in the Colony of Victoria is now regulated by the Land Act of 1869, which came into force on the 1st February 1870. It was to have expired on the 31st December 1880, but was continued and amended by an Act passed before its expiry. This Act, like the corresponding Act in New South Wales, provides in the first place for the reservation of suitable lands for public purposes. It then deals with the alienation of Crown lands, which may either be purchased or obtained upon licence or lease. Public sales by auction take place once a quarter or oftener. The upset price is not less than 20*s.* an acre; and purchasers must pay down fifty per cent. of the price, and the balance, under penalty of forfeiting the deposit, within one month. If land put up at more than 20*s.* an acre be not sold, it may be put up at another sale at a reduced upset price not less than 20*s.* an acre; and until directed to be so put up, may be purchased at the previous upset price, or at the highest price bid at the first auction. Unoccupied lands, whether surveyed or not, can be obtained by licence or lease. The intending licensee must apply to the Land Officer of the District, and at the same time deposit the fee for one half year's occupation. If a licence is required of unsurveyed lands, the applicant must mark out and describe the boundaries, which will be liable to adjustment at any time during the term of the licence. A licence will then be issued for the occupation of land not exceeding 640 acres, for three years, at a fee of two shillings a year per acre, subject, however, to the following conditions:—(1) the fee must be paid half-yearly in advance; (2) the licensee may not assign (except by will) or sublet; (3) the licensee must enclose the land with a substantial fence within two years; (4) he must cultivate every year one acre out of ten; (5) he must make substantial improvements to the extent of £1 an acre before the end of the

The Victoria Land Act of 1869.

Sale of Land by Public Auction.

Acquisition of Crown Lands by Licence or Lease.

third year of the licence; (6) he must within six months after the issue of the licence enter upon the allotment and continue to reside personally thereupon. The licence may be annulled for the breach of any of these conditions. If the licensee fulfil all the conditions, he is entitled to obtain, within thirty days after the expiry of the three years, a Crown grant upon payment of 14*s.* an acre; or, if he prefer, a lease for a further term of seven years at a rent of 2*s.* an acre payable half-yearly in advance, such lease to contain covenants for the payment of rent, and for re-entry in case of non-payment. Upon payment of the last half-yearly instalment of rent, or at any time upon payment of a sum sufficient with the rent previously paid to make up £1 per acre, the lessee is entitled to a grant of the land in fee. The licence or lease does not confer the right to search for, or take, minerals. The amending Act fixed the term of the licence at six years, the term of the subsequent lease at fourteen years, and the occupation fee at one shilling an acre. The strict conditions as to residence and improvements were introduced with a view to prevent the purchase of land by speculating capitalists; but they have been recently relaxed as regards residence, a non-residence licence being chargeable with an occupation fee of 1*s.* 6*d.* so as to make the cost of the land £1 10*s.* per acre; and residence within five miles for five years being accepted as sufficient in certain cases. The right to occupy 'runs' for pastoral purposes is to be put up to auction in future. The size of the runs is to be settled by the Governor-in-Council, provided that no run is to be larger than is sufficient to carry all the year round 4,000 sheep or 1,000 head of cattle.[7]

[7] Up to the 31st December 1879 the total area alienated was 11,737,718 acres, of which 4,610 acres were granted without purchase. The area in process of alienation by deferred payments was 7,459,452 acres. The total amount realized by the sale of Crown lands from the founding of the colony to the 31st December 1879 was £19,136,572, being an average of £1 12*s.* 7¼*d.* per acre. The total area remaining available for free selection at the

§ 209. Queensland, the youngest of the Australian Colonies, was separated from New South Wales in 1859; and this name was then given to it for the first time. It was previously known as The Moreton Bay District, the first settlement having been made in the Bay so named in 1825, when a convict depôt was established near the present site of Brisbane. In 1839 convict immigration came to an end, and in 1842 this district was thrown open to free settlers. In 1856 the total population was 17,082. In 1861, two years after the separation, it had just doubled, and the progress of the colony has been steady ever since. The greatest part of the population have been engaged in sheep-farming and cattle-raising,[8] and the pastoral element has been by far the most important; but of late years mining and agriculture have received considerable development, and now employ a considerable number of the inhabitants. Some of the sheep-runs are of enormous extent, including an area of ten, twenty and in some instances one hundred square miles. Leases of unoccupied land in the outside or unsettled districts, in tracts not less than twenty-five square miles or more than one hundred, are still granted for terms of twenty-one years, at a rental of five shillings per square mile for the first seven years, ten shillings for the second, and fifteen shillings for the third similar period. It is a condition of these leases that the land shall be stocked with sheep or cattle equal to one-fourth of its carrying capacity, which is taken to be one hundred sheep or twenty head of cattle per square mile. Upon the expiry of the twenty-one years, the leases may be renewed in whole or in part according as the land is or is not required for sale. Applications for new runs

The Moreton Bay District separated from New South Wales and constituted a new Colony as Queensland in 1859.

Pastoral Leases of Land in the Unsettled Districts.

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end of 1880 was 9,812,892 acres. The number of landowners in Victoria is over seven thousand, of whom 133 hold above 15,000 acres. Some few own above 40,000.

[8] In 1879 there were in this colony over 7¼ millions of sheep, 2½ millions of cattle, and 150,000 horses. Some Squatters possessed flocks of more than 100,000 sheep. Farmers holding 500 to 5,000 acres and grazing from 200 to 3,000 sheep are a very prosperous set of men in Queensland.

must be accompanied by a deposit of a year's rent. The alienation of Crown Lands in Queensland was regulated by an Act passed in 1868. Lands, required for settlement, were reclaimed from the Squatters by proclamation, and then classified by a Commissioner into (1) agricultural, (2) first class pastoral, and (3) second class pastoral. Any British subject not under disability might select for himself not more than 640 acres of *agricultural* land to be held on a ten years' lease at 1*s.* 6*d.* per acre per annum; or not more than 2,560 acres of *first class pastoral* land to be held on a similar lease at a rent of 1*s.* per acre; or not more than 7,680 acres of *second class pastoral* land to be held on a similar lease of 6*d.* per acre. The Selector was bound to erect substantial boundary posts within six months, and to reside in person or by bailiff. Upon the expiry of the ten years' lease, he was entitled to a grant of the land in fee-simple; or he could obtain such a grant at any time after three years' occupation upon paying down the balance of the ten years' rent, and proving that he had resided, and that he had spent on the land, in substantial improvements, 10*s.* an acre in the case of *agricultural* or *first class pastoral* land, or 5*s.* an acre in the case of *second class pastoral* land.

Crown Lands Alienation Act of 1868.

§ 210. The alienation and settlement of Crown lands in the Colony of Queensland are now regulated by the provisions of an Act passed in 1876. The quantity of land which an individual may purchase and the price which he has to pay vary according to the position and quality of the land. The Governor-in-Council is empowered to fix, within certain limits, the price and the maximum quantity for particular districts. In so doing, he is to have regard to the quality of the land and its proximity to market or otherwise. The maximum quantity allowed by law is 5,120 acres, and the Governor may by proclamation reduce this to 640 acres; the minimum quantity is 40 acres. Purchasers by *conditional selection* acquire the land by making application for it, subject, however, to their fulfilling the conditions as to residence personally or by

Existing Rules for Sale and Settlement of Land in Queensland.

bailiff, as to bringing a portion of the land annually under cultivation, and expending a certain amount per acre on improvements. The price of the land is declared, when it is proclaimed to be open to selection. The lowest price is five shillings per acre, but this may be increased by the Governor. If the Selector have complied with the required conditions, he will be entitled to the land in fee upon completing the ten years' annual payments, into which the price (without interest) is divided : or he may, upon the expiry of three years from the date of the selection, pay up the full purchase-money and obtain a Crown grant of the land or claim a certificate, which will enable him to transfer his interest. In addition to the general provisions for the sale of Crown lands, there is in the Colony of Queensland a special Act known as "The Homestead Act," passed in 1872, the object of which is to encourage the settlement of small industrious farmers by enabling them to acquire the fee-simple title to smaller blocks of land at a cheaper rate and within the shorter period of five years, the condition of continuous personal residence being however peremptory. The largest quantity of land which a homestead selector may take is 160 acres. Certain tracts supposed to be particularly suitable are reserved for this purpose alone, and in these tracts the largest selection allowed is 80 acres. The price is six-pence per annum per acre for five years, after which period the homestead selector, having observed the condition as to residence, and having made improvements to the extent of ten shillings an acre, becomes the absolute proprietor. He may also obtain his title-deed after three years by paying the balance of the purchase-money and giving proof of residence and fulfilment of conditions.[9]

The Homestead Act of 1872—Its object.

[9] At the end of 1879 the purchase of 3,986,509 acres had been completed, while 3,720,000 acres had been selected without the purchase having been completed. Land is also sold in fee in the Settled Districts, and Town and Suburban Lands are put up to public auction from time to time. In 1880 there were sold by public auction 82,714 acres, and the total amount realized was £100,166. Indian productions flourish in Queensland, sugarcane especially, and leases of land for this particular cultivation may be had at 2*s.* 6*d.* an acre.

§ 211. The Colony of South Australia was established by an Act of Parliament passed in 1834, and it was first colonized in 1836 by bodies of emigrants from Great Britain sent out by "The South Australian Colonization Association."[1] This Association obtained a grant of the territory of the colony from the Crown in 1835 upon condition that the lands should not be sold at less than 12*s.* an acre (afterwards raised to £1), that the funds derived from the sale should be appropriated to the immigration of poor emigrants; that the control of the affairs of the Association should be vested in a body of Commissioners approved by the Secretary of State for the colonies; and that the Governor should be nominated by the Crown. It was further stipulated that the colony should be self-supporting, and that it should not be used as a penal settlement. In 1861-2 No Man's Land comprising 80,000 square miles was included in South Australia; and in 1863 the territory of the colony was enlarged so as to comprise what is called "The Northern Territory," formerly known as Alexandra Land.[2] South Australia thus extends from the Southern Ocean to the Indian Ocean, and has an area of 903,690 square miles or more than 578 millions of acres. The first sale of Crown lands took place in 1837, and up to August 1839 there were sold 250,320 acres for £229,736. In 1840 the Home Government took the management of the colony out of the hands of the Association and placed the sale of the land

South Australia first settled by "The South Australian Colonization Association."

No Man's Land and the Northern Territory added.

[1] The formation of this Association was due in a great measure to the exertions made by Mr. Edward Gibbon Wakefield with a view to giving practical operation to the system of colonization, which has since borne his name. The fundamental principles of this system were (1) no free grants; (2) sale of lands and appropriation of the proceeds to introduce immigrants, whose labour would give value to the land sold; (3) land not to be sold except at a price which would preclude labourers from acquiring farms and so becoming employers at too early a period. The discovery of gold prevented the complete trial of this system.

[2] This extension of territory was in connection with the construction of the overland telegraph from Adelaide across the Continent of Australia to Port Darwin. It is now proposed to construct a railway along the same route, defraying the cost by grants of land along the line.

and the conduct of emigration in the hands of the newly-appointed *Colonial Land and Emigration Commissioners.* In 1843 more than 320,000 acres had been sold, and 14,000 immigrants had been introduced from the United Kingdom. In the same year provisions were made for Pasture Licences, the fee for which was fixed at 10*s.* 6*d.* per annum with an assessment of 1*d.* for each head of sheep; 1*s.* for each head of cattle; and 2*s.* 6*d.* for each horse depastured. Any one building a house and residing on the land had further to take out an Occupation Licence at £5. Originally the land in this colony was sold at one uniform price per acre; but this rule was subsequently abandoned, and an auction-sale at an upset price substituted. In South Australia, beyond all the Australian colonies, agriculture has progressed and flourished, the land being suitable for cultivation and more especially for the production of wheat, the yield of which is excellent. It has been calculated that the food produced in this colony is sufficient to support its whole population and afford a surplus of one ton per head for exportation.[3]

Pasture and Occupation Licences.

Agriculture most successful.

§ 212. The alienation of the Crown lands in South Australia is now regulated by "The Crown Lands Consolidation Act" of 1877, which codified and simplified the previous regulations upon the subject, and extended the quantity of land tenable by a single selector to 1,000 acres. Lands are divided into (1) Country, (2) Town, (3) Suburban, (4) Improved, and (5) Reclaimed, lands. A proper survey must be made before lands are sold, and all sales are to be by auction after four weeks' consecutive notice in the Government Gazette. No section is to contain more than 500 acres, and no individual may purchase more than 1,000 acres. *Town* and *Suburban* lands are sold by auction for cash only, the upset prices, which must in

The South Australia Crown Lands Consolidation Act of 1877.

[3] The Special Commissioner of the British Colonies at the Vienna Exhibition wrote thus:—"The industry which has so widely covered the land with farms, homesteads, tillage and fencing of every description, has probably never been equalled in its result in any British Colony, in the same number of years, by the same amount of population."

no case be less than £1 an acre, being fixed by the Governor-in-Council. The purchase-money must be paid, one-fifth down at the time of sale, and the balance (under penalty of forfeiting the deposit) within one calendar month afterwards. The minimum price of *Country* lands is £1 per acre; of *Improved* lands £1 per acre and the value of the improvements; and of *Reclaimed* lands £1 per acre and the cost of reclamation. These lands are put up to auction at the upset price of £1 per acre, and the competition is confined to persons, who declare their intention of residing upon their purchases. The successful bidder has the right of first choice. He must pay down ten per cent. of the purchase-money (and of the cost of reclamation or improvements in the case of *Reclaimed* or *Improved* lands respectively); and this is considered as payment of interest on the purchase-money in advance for three years. On the expiry of three years he must pay a further ten per cent.; and on the expiry of six years he must pay one-fourth of the purchase-money, and ten per cent. on the unpaid balance. At the end of nine years he must pay the remainder of the purchase-money; and, on so doing, he will be entitled to a grant in fee-simple. The purchaser may also at his option pay up the purchase-money without interest at the end of the first five years; and upon giving proof of having made improvements to the extent of 10*s.* an acre, and having fulfilled the other conditions of the agreement, he will receive his title-deed. He may also at any time during the nine years pay off any part of the purchase-money not exceeding nine-tenths in sums of not less than £50; and upon so doing, the interest will be proportionately reduced.[4] Land not sold to persons undertaking to reside personally

Terms of Payment of the Purchase-Money.

[4] The Crown Land Amendment Act, which came into force on the 1st January 1880, altered the mode of payment. Four per cent. interest on the purchase-money is payable for the first nine years, after which one-fourth of the purchase-money is to be paid. Five per cent. interest is then payable on the balance to the end of the twentieth year, when such balance must be paid.

is afterwards offered to persons not proposing to reside. The conditions to which the selector must bind himself are—(1) to reside on the land either in person or by substitute nine months in every year until the purchase-money is fully paid; (2) to make improvements[5] on the land to the value of 5*s.* per acre before the end of the second year, 7*s.* 6*d.* per acre before the end of the third year, and 10*s.* per acre before the end of the fourth year; (3) to plough and have under cultivation one-fifth of the land during every year; if one-fifth be not cultivated during the first year, two-fifths must be cultivated during the second year; (4) not to transfer or assign without the consent of the Governor-in-Council until the whole of the purchase-money is paid. Any breach of these conditions involves the forfeiture of the land.[6]

Conditions to which Selector must bind himself.

§ 213. South Australia enjoys the inestimable advantage of a simple and effective system of Registration of Title and Conveyancing, for which it is mainly indebted to Mr. Robert R. Torrens. This gentleman was strongly impressed with

[5] Improvements consist of dwelling-houses or farm buildings, wells, water-tanks or reservoirs, draining or cleaning the land, and fencing—the fences to be substantial and capable of resisting the trespass of great cattle. All improvements are subject to the inspection and valuation of a Government officer.

[6] Lands which have been for a certain time open to selection and not sold, or put up to auction and not sold, may be offered, in blocks of not more than two square miles, on lease for 21 years at an annual rental of not less than 10*s.* per square mile, with the right of purchase at any time during the last eleven years of the lease at 20*s.* per acre. These leases are put up to auction and sold to the highest bidder, after full particulars concerning them have been laid before Parliament for thirty days. The Southern portion of South Australia contains 380,070 square miles, equal to 243,244,800 acres. Of this area 8,942,415 acres were alienated up to the end of 1880; and the area held under pastoral leases to the end of the same year was 181,259 square miles at a total rental of £55,280. It may be noticed that persons under 45 years of age paying their own passages in full to Adelaide can obtain from the Emigration Agent for South Australia *Land Order Warrants* of the value of £20 for every adult above twelve, and of £10 for every child above one year, and not above twelve years, of age. These Land Orders are received in payment of interest on the purchase-money of land open for selection or sale, but no land grant will be made for them till after two years' residence.

the grievances imposed upon the Australian colonies by the introduction of the English law of real property, which by reason of its complexity, its costliness, its insecurity and its delay was not only unsuited to the requirements of a young and rapidly progressing community, but was likely to affect seriously the value of land as a secure and convenient basis of credit. Being officially employed in the Customs Department, he was struck with the facility and security with which transfers of shipping property are conducted, and he conceived the idea of applying to land the principles by which that property are regulated. Being elected by the citizens of Adelaide to represent them in the first parliament under the New Constitution of 1856, he was able to originate the measure which afterwards became law, on the 27th January 1858, as "The Real Property Act." The Act applies to all land alienated from the Crown on and after the 1st July 1858; but grants previously made may be brought under the operation of the Act by proper steps taken for this purpose, the parties being referred to the Civil Courts in case of any dispute as to rights or titles previously created. In the case of all property to which the Act applies, a Certificate of Title is made out in Duplicate by the Registrar-General. This instrument contains a sufficient description of the property to which it refers and declares that the person therein mentioned has in such property the estate or interest therein described. When property held under grants made before the 1st July 1858 is brought under the operation of the Act, all previous title-deeds are cancelled and superseded by the Certificate of Title made and issued under the Act. The Registrar-General endorses upon the Certificate of Title particulars of all unsatisfied mortgages or other incumbrances, and of every lease, rent, charge, term of years, or outstanding estate affecting the land. One of the duplicate certificates is bound up in the "Register-Book of Real Property," and the other is delivered to the proprietor entitled to the land. Similarly new Land Grants are made in duplicate, one copy being bound up in

The South Australian System of Conveyancing by Registration of Title.

Certificate of Title.

the Register, and the other made over to the person entitled. Every Land Grant and every Certificate of Title is deemed to be registered as soon as it is marked by the Registrar-General with a folio and volume as embodied in the Register-Book. Except in the case of fraud, every Certificate of Title or entry in the Register-Book absolutely vests in the person registered the estate or interest mentioned, in the manner and to the effect expressed in such Certificate or entry.

Indefeasible Title conferred by Certificate of Title or Entry in the Register-Book.

§ 214. When land under the operation of the Act is transferred, the instrument of transfer, which is to be in a prescribed brief form, must be produced to the Registrar-General, who enters a description of the parties and of the transaction in his Register, and endorses on the instrument of sale and also on the duplicate Land Grant or Certificate of Title the fact of such entry having been made. Upon the entry being made by the Registrar-General in his Register, the land or interest intended to be transferred passes to, and vests in, the purchaser. When the transfer is that of an estate in fee-simple, the Land Grant or Certificate of Title is delivered up to the Registrar-General, who cancels and retains it, and issues to the purchaser a new Certificate of Title which refers to the original Grant. In this way the cumbrous accumulation of records is prevented, every cancelled Grant and Certificate of Title being withdrawn from the Register-Book as the volumes require fresh binding.[7] When a lease is granted of land under the operation of the Act, such lease, which must be in a prescribed brief form, must be produced, together with the Land Grant or Certificate of Title, to the Registrar-General, who will record in the Register-Book the date and hour of production and the particulars of the lease. He will also record the like particulars by memorandum on the Land Grant or Certificate of Title. The lease takes

Procedure in Cases of Transfer, Lease, Mortgage and other dealing with the Land.

[7] The Parliamentary Commission of 1857 on the *Registration of Titles* laid it down as the first requirement, that Registration should be capable of indefinite expansion without becoming so cumbrous as to interfere with certainty and rapidity in making search.

effect upon entry in the Register. A similar procedure applies to surrenders, mortgages, incumbrances and other dealings with the land. "Thus," as Mr. Torrens observes, "each proprietor, whether of the fee or of any lesser estate or interest, holds one instrument and one instrument only, evidencing his title; and this bears upon it the number of the volume and folium of the Register-Book, whereon memorials of all existing interests, that can affect the title of the parcel of land in which that estate or interest exists, are exhibited together in the order of time in which each such interest was created."[8] Indefeasibility of title is secured by transferring the liability for the error, which has deprived a rightful heir or other person of the land, from the land itself to the individual who has benefited thereby. It is argued with great reason, more especially as regards a new country, that there is scarcely any appreciable hardship in compelling the acceptance of pecuniary compensation to the full value of the land, whilst grievous injury is inflicted by a law which, in restoring to a rightful heir his inheritance, bestows upon him therewith the capital of innocent persons invested therein, it may be, to an amount far in excess of the value of the land itself. In order to provide for those cases in which the registered proprietor, who benefited by the mistake, is dead or has been declared insolvent, the Act provides for the formation of an Assurance Fund by a charge of one halfpenny in the pound on the value of land first brought upon the Register; and payments may be made from this fund upon a certificate of the Chief Justice and a warrant under the hand of the Governor. These provisions apply only where an estate or interest has been derived *bonâ fide* for valuable consideration from or through a person wrongfully registered through fraud or error; but the remedy

Liability for error transferred from the Land to the Individual—Assurance Fund.

[8] *The South Australian System of Conveyancing by Registration of Title* by Robert R. Torrens, p. 19. The Commission of 1857 on Registration of Titles, observing on the failure of existing systems, said:—"These Registers are signally defective in not presenting at one view all the documentary evidence, which a party investigating a title may have occasion to see."

by ejectment still lies against persons who have obtained certificates of title by fraud. Amongst other practically useful provisions, the Act allows the issue of a provisional certificate in the case of a Land Grant or Certificate of Title being lost, mislaid or destroyed.[9] The Real Property Act of South Australia has been found to work so well in practice, that its provisions have been adopted by several of the other colonies.

§ 215. The disposal of land in the northern portion of South Australia was first provided for by "The Northern Territory Act," which directed 500,000 acres of country

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[9] The advantages fairly claimed for the South Australian System are (1) indefeasibility of title, and consequent security and freedom from litigation; (2) a saving of ninety per cent. in the actual cost of transfer, and the further possible saving of litigation expenses; (3) simplicity of procedure, so that men of ordinary education may transact their own business; and (4) expedition, fifteen minutes being the average time occupied in filling up the forms and completing a transaction. The Registrar-General can be communicated with by post or telegraph for purposes of search and information; and parties residing at a distance can send their Land Grants or Certificates of Title, and instruments of lease, mortgage, &c. for registration, endorsement, and return. The South Australian System combines *registration of title* and a cheap and effectual means of *transfer*. It possesses enormous advantages over mere *Registration of Assurances*, against which Lord St. Leonards urged so many powerful objections, two of which may be quoted. *First*, "By the negligence of an agent, a purchaser or mortgagee may lose an estate, if the seller or mortgagor fraudulently sell or mortgage to another person whose deed is the first registered." *Second*, "The number of deeds requiring registry would destroy the plan by its own weight." The soundness of both these objections has been exemplified under the System of *Registration of Assurances* introduced into India in 1864 at a great cost and continued outlay. The one single benefit obtained in return is the certainty that any particular document was in existence at a particular date. This, no doubt, is an advantage not to be undervalued in a country where forgery has been common. But with no greater outlay and by using native institutions and the means ready to our hands, we might, as I pointed out years ago, have established a system of registration as complete as the South Australian or any of the continental systems. There is in the Head Revenue Office of every district a complete Register of estates paying revenue to Government; and in the Rent Office of each of these estates there is a similar local Register of subordinate estates or interests. These existing materials might easily have been utilized to construct a system combining *registration of title*, and a cheap and effective means of *transferring* all interests in immovable property.

land in lots of 160 acres each, and 1,562 town lots of about half an acre each, to be sold by private contract at fixed prices. Half of the town lots and one-fourth of the country lands were to be sold in London, and a like quantity in Adelaide at *7s. 6d.* an acre. If the half of the 500,000 acres of country land were not thus disposed of within twenty-eight days after opening the sale at each place, the unsold portions and also the other 250,000 were to be sold at *12s.* an acre. No person was allowed to purchase in less quantities than 160 acres; and one town lot was allowed to be selected for every 160 acres purchased. The sale took place in March 1864 simultaneously in London and Adelaide, and the whole of the lands offered for sale were disposed of, a Company having been formed to buy up what remained after satisfying the wants of the general public. The alienation of lands is now provided for by "The Northern Territory Land Act" of 1872, which reserves lands for public purposes, and provides for the survey of all waste lands in sections not exceeding 640 acres, before they are granted in fee-simple. Country lands may be sold by private contract for cash at not less than *7s. 6d.* an acre. An intending purchaser may, by making an application in writing to the Commissioners of Crown lands and depositing the cost of the survey, obtain a special survey of 10,000 acres, which will be conveyed to him after survey at *7s. 6d.* an acre. Country lands may also be sold on credit. The applicant must with his application deposit sixpence an acre. He will then be granted a ten years' lease at an annual rental of sixpence per acre, payable yearly in advance. He must within six months erect boundary posts at the corners of the land, and before the expiration of the ten years' term must pay the purchase-money of *7s. 6d.* per acre, after which he will receive a grant in fee-simple. No married woman, unless judicially separated from her husband, and no one under the age of eighteen may purchase on credit; and no one may hold on credit at any one time more than 1,280 acres. Township and Suburban lands are sold by

Disposal of Lands in the Northern Territory.

"The Northern Territory Land Act" of 1872.

Rules for Conditional Purchase.

auction for cash only, twenty per cent. of the price to be paid down and the balance within a month. The Governor-in-Council fixes the upset price, which must in no case be less than *7s. 6d.* an acre. Leases for pastoral purposes are issued for periods not exceeding 25 years at such rent and on such conditions as may be prescribed by regulations framed and issued under the authority of the Act. By an amending Act of 1876 the Governor was empowered to let waste lands for grazing purposes, for a term not exceeding 25 years, in blocks not exceeding 400 square miles, to perons applying therefor, without previously offering the same for sale by public auction. In case of any such lease terminating by effluxion of time or other cause, the land will not again be let without offering the lease at public auction to the highest bidder at an upset rental of *2s. 6d.* per square mile.[1]

Pastoral Leases.

§ 216. Western Australia, originally known as Swan River Settlement, was first settled in 1829 by free colonists, who were induced to immigrate with considerable property in consequence of the Home Government making liberal offers of large grants of land to persons introducing labour and capital into the country.[2] In 1829-30 a thousand colonists arrived, bringing property worth £50,000. In 1851 a penal settlement was established in this colony at the request of the inhabitants themselves; and transportation continued until 1868. The progress of Western Australia, notwithstanding its excellent climate, was slow from the commencement; and although it is the most extensive of the Australian colonies, occupying one-third of the entire continent, it has been the least prosperous. This is, no doubt, due in some respect to the fact that no gold-field has been discovered within its territory, while the superior advantages of the neighbouring colonies have attracted

Western Australia first settled in 1829.

[1] At the end of 1879 there were nearly 335 millions of acres of unalienated lands in the Northern Territory.

[2] Mr. John Peel made a proposal to land 250 persons at his own cost on condition of receiving a grant of 250,000 acres, and this proposal was accepted by Government.

emigrants away from a country, which had no brilliant prospects to offer them. In 1872 regulations were made for granting assisted passages to able-bodied persons of sound health and of an occupation likely to be of service to the colony. Immigrants who had paid the passage of themselves and their families, and who within six months after landing selected land for purchase, were allowed a remission of purchase-money to the extent of £15 for each adult, on proving that they had occupied the land for two and a half out of three years. Further regulations were made in 1875, under which passage-money at the rate of £6 for each adult was offered to persons introducing from the Australasian Colonies European immigrants of the labouring classes, open to general engagement on arrival; and assistance towards the passages of the wives and families of the persons so introduced was offered to the same extent. Every adult immigrant so introduced may, after two years' residence, obtain permission to select, from the unimproved Crown lands open to selection, a lot not exceeding fifty acres, and every immigrant between the ages of sixteen and twenty-one may select a lot not exceeding twenty-five acres, provided that no greater quantity than 150 acres in all be allotted to any one family. The selectors first obtain Occupation Certificates, which may after three years be exchanged for grants in fee-simple on proof that the whole of the land has been properly fenced in, and that at least one-fourth of it has been brought under cultivation. In case of default in fulfilling the conditions, the whole lot, with any improvements made thereon, reverts to the Crown.

Regulations for assisting Immigration.

§ 217. A code of regulations for the sale and settlement of land in Western Australia was issued on the 22nd May 1873. Under these regulations the Crown lands were divided into (1) Town, (2) Suburban, (3) Rural, and (4) Mineral. *Town* and *Suburban* lands were to be sold for cash, one-tenth down at the time of sale, and the balance within thirty days. Waste lands in *Rural* districts might be purchased in blocks of not less than ten

Regulations for the Sale and Settlement of Land in South Australia.

acres, or on Occupation Licences in blocks of not less than 100 nor more than 500 acres by deferred payments of one shilling an acre spread over ten years. Under more recent "Land Regulations" the colony is divided into four districts, *viz.* the Central, Northern, Central-Eastern, and South-Eastern, the same fourfold classification of lands being retained. *Rural lands* in the Northern, Central-Eastern and South-Eastern districts are open to sale in blocks of not less than 400 acres at 5*s.* an acre. Ordinary Rural lands in the Central District are sold in sections of not less than 40 acres at 10*s.* per acre. The Pastoral lands are divided into two classes. The First Class includes all pastoral land within certain specified boundaries, and may be rented annually in blocks of not less than 3,000 acres at the rate of £1 per 1,000 acres. Blocks of 10,000 acres may be leased for fourteen years on the same terms. Second Class includes all other pastoral land in the colony, which may be had on lease, for terms not exceeding fourteen years, in blocks of not less than 20,000 acres, at a rental of 5*s.* for the first seven years, and 10*s.* for the remainder of the lease, for each 1,000 acres or part of a 1,000 acres in the block. Within twelve months after the date of his lease, the lessee may select from his run such land as he wishes to hold under an unconditional pre-emptive right to purchase upon the following conditions:—(1) the right of pre-emption continues for the term of the lease; (2) the land selected must be in blocks of not less than 1,000 acres; (3) the rent is to be £5 per 1,000 acres paid in advance annually; (4) the unconditional pre-emptive right may be redeemed in fee on payment of sums varying, according to the district and the time within which payment is made, from 2*s.* 6*d.* to 10*s.* per acre. Special regulations were made for the new district of Kimberley with a view to encourage the cultivation of the cotton plant, the sugar-cane and other tropical products, for which this part of the country is particularly suited.[3]

[3] In order to save cost of conveyancing, the Regulations of 1873 provided for an uniform charge of 20*s.* for each deed, with a further charge of 10*s.* for

§ 218. Van Diemen's Land, called Tasmania[4] since the 1st January 1856, was first settled in 1803 as a penal colony, and transportation thereto continued till 1853. In 1806 sheep and cattle were introduced. Cultivation was not at first very successful, and the new settlement made very slow progress. In 1813 the ports were opened to general commerce, and within ten years wheat and wool began to be exported. In 1823 the first Courts of Justice were established : and in the following year upon the petition of the inhabitants, Van Diemen's Land was separated from New South Wales and erected into an independent colony. War was ruthlessly waged upon the aboriginal inhabitants of the country from the first occupation up to 1832, when those that remained were collected and located upon South Bruni Island, whence the survivors were transferred to Gun Carriage Island, and subsequently to Oyster Cove, a few miles from Hobart Town, where the last of them died in 1876. The climate of Tasmania is remarkably mild. There is no excess of heat in summer or of cold in winter ; and the purity of the atmosphere gives to the inhabitants a measure of health beyond that enjoyed by the dwellers in other lands. The operations of agriculture can be carried on all the year round. The chief crops produced are wheat, oats, barley, hops, potatoes, peas and hay. Fruits of all kinds, currants, gooseberries, raspberries, strawberries, cherries, plums, apricots, peaches, quinces, mulberries, figs, almonds, walnuts and filberts grow in luxuriant abundance. Large quantities of green fruit are exported, and the making of jam and preserves is an important branch of industry. Gold, tin, copper, lead and coal are amongst the mineral productions.

Early Settlement of Tasmania.

Extirpation of the Aborigines.

Climate and Productions of Tasmania.

§ 219. The rules for the sale of Crown lands in Tasmania are contained in an Act passed in October 1870, and known as "The Waste Lands Act." Some amendments were made by minor Acts passed in 1871 and 1872. The

recording the same. Mr. Torrens' Act has been adopted by the Legislature of Western Australia, and has been now for some years successfully in force.

[4] After Abel Jans Tasman, the Dutch navigator, who discovered it in 1642.

Governor is empowered to reserve such lands, as to him appear suitable, for public purposes. The lands of the colony generally are divided into three classes: (1) Town lands, (2) Agricultural lands, and (3) Pastoral lands. The first class comprises all lands within the limits of a town or village. The second class includes all lands which from time to time are proclaimed as agricultural divisions or as suitable for agricultural purposes. The third class consists of lands which are better suited for grazing than for cultivation. A list of *Town Lands* put up to sale, and not sold, showing the upset prices, is published from time to time, and such lands can be purchased by private contract within one year. The upset price of *Agricultural Lands* is £1 per acre. The upset price of Pastoral Lands is a sum equivalent to twelve years' rental, but not less than five shillings per acre. Any individual has the right of selecting and purchasing by private contract one plot only of land, not exceeding 320 acres in extent, at £1 per acre. The purchase may be made either for cash or upon credit; but, if the land is purchased on credit, an additional charge of one-third is made. In the case of cash purchases, one-fifth of the price must be paid down, and the balance within a month. Purchases above £15 in value may be made on credit. It is a condition of such a sale that the purchaser, his tenant or servant, shall reside upon the land until the full purchase-money has been paid. The payments are allowed to be spread over fourteen years. Under the Immigration Acts of 1867 and 1874, the Immigration Agents have power to issue to approved emigrants, proceeding from Europe to Tasmania at their own expense, Land Order Warrants, which entitle the holders on arrival in the colony to Land Orders of the nominal value of £18 for every emigrant of or over fifteen years of age, and £9 for every child over twelve months and under fifteen years. These Land Orders are available for their full value in payment for land purchased under "The Waste Lands Act." Under other provisions of the same Acts any cabin or intermediate passenger, arriving from Europe or India

Existing Rules for the Alienation of Crown Lands in Tasmania.

Free Grants to Persons arriving in the Colony at their own expense, and desirous of settling.

with the intention of settling in the colony, may at any time within twelve months after his arrival obtain from the Board of Immigration a Certificate, which will entitle him to select thirty acres of land. He may further, if married, obtain a Certificate entitling him to select twenty acres in respect of his wife; and, if he have children, he may obtain a Certificate for ten acres in respect of each child. Selection of lands must be made within one year from the date of the Certificates, which will then be received in payment for land taken up under "The Waste Lands Act." Persons obtaining land by virtue of Land Orders or Certificates must reside in Tasmania for five years, before they will be entitled to grants of the land from the Crown in fee."[5]

§ 220. New Zealand, the "Great Britain of the Southern Hemisphere," as it has been termed from the similarity of its climate and productions, consists of three Islands, the North, South or Middle, and Stewart's Island, which are sometimes called respectively New Ulster, New Munster, and New Leinster. They were first discovered and peopled by the Maori race, who were probably of Malay origin. According to the census of 1881 there were over forty-four thousand Maoris, by far the greater portion of whom live in the North Island. Captain Abel Jansen Tasman visited New Zealand in 1642, and Captain Cook visited it and landed in 1769. Cook strongly recommended the colonization of the country, but nothing practical was done until 1837, when Lord Durham proposed to Government the incorporation of "The New Zealand Land Company" with powers to colonize the country. In 1839 an expedition sailed under the command of Colonel Wakefield, who held instructions to purchase land from the natives and select the site of the first settlement, which was made at

Early Colonization of New Zealand —"The New Zealand Land Company."

[5] The whole Island of Tasmania contains 16,778,000 acres, of which 4,232,870 had been sold or granted to settlers up to the end of 1880, leaving over twelve millions of acres for disposal, of which about two millions are under lease for sheep-runs. The average price realized in 1880 was, for Town and Suburban Land £6 0*s.* 6*d.* per acre, and for Country Land £1 6*s.* 7*d.* per acre.

Wellington in 1840. From the year 1814 New Zealand had been the scene of active missionary labour ; and the natives of the country learned from the missionaries something of the European nation, which was about to occupy and colonize the country. In February 1840, the Native Chiefs executed the Treaty of Waitangi, by which they acknowledged British supremacy and ceded the sovereignty of New Zealand to the Kingdom of Great Britain. Notwithstanding this treaty, there have been repeated outbreaks of the Maories, and much dispute as to the land question. In 1880 a Royal Commission was appointed, which recommended liberal concessions of land to the Maories. A large area of territory has been, in accordance with this recommendation, reserved for the natives so long as they live upon it in peace ; and it is hoped that this arrangement will prevent disturbance in the future. Since 1840 emigration from Great Britain to New Zealand has steadily continued (except in 1844, 1845, and 1846), and some 250,000 emigrants in all have arrived in the country. During the last ten years the emigration to this colony has largely exceeded that to any other of the Australian colonies.

The Treaty of Waitangi.

The Maori Question.

Emigration to New Zealand.

§ 221. Each of the independent provinces into which New Zealand was divided had its own separate regulations for the sale of land. After the abolition of the provincial form of Government these regulations were embodied, with certain alterations adapted to varying local conditions, in "The Land Act" of 1877, which was amended by an Act of 1879. The whole colony is divided into ten land districts, *viz.*, Auckland, Taranaki, Wellington, and Hawkes Bay, in North Island ; and Nelson, Marlborough, Canterbury, Otago, Southland and Westland in South or Middle Island. In the districts of South Island the Crown has extinguished by purchase the native title over all the lands. In the districts of North Island the native title still exists over large tracts, but an Act has been passed to enable the Maories to dispose of their lands to private individuals.[6]

Rules under which Land may be purchased in New Zealand.

[6] Without this legislative permission they could only dispose of their lands to the Crown. According to international law the discovery of a country gives

Classification of Crown Lands.

The Crown lands of the colony are generally divided into (1) Town and Village Lands, (2) Suburban Lands, and (3) Rural Lands. There are also Mineral Lands in Nelson and Marlborough; Pasture or Pastoral Lands in Marlborough and Canterbury; and Forest Land in Canterbury. *Town* and *Suburban* Lands may be acquired by purchase at auction or by application. *Town* sections are usually rectangular acres, divided into quarter acres, the upset price of the quarter acre being £7 10*s.* *Suburban* sections vary from two to fifteen acres, and their upset price is £3 per acre. *Village Lands* are in some cases surveyed in sections of less than one acre, which are intended as village settlements for the houses of country tradesmen, and men who do job-work at fencing, road-making and other country work, each settler being allowed to hold one section only, the price of which is £5. *Village Lands* are also surveyed in sections of more than one, but not more than fifty acres, which are termed "Small Farm Allotments," and are sold at not less than 20*s.* per acre, but may also be had on lease with or without a purchasing clause. *Rural Lands*, agricultural, pastoral or forest, are disposed of under the particular rules applicable to each district, subject to the general condition that no single lot put up to auction shall (except in the case of third class land) contain less than 20 or more than 320 acres, or be offered at a lower upset price than £1 per acre. Land may also be purchased by persons not less than eighteen years of age under a system of deferred payments. In the case of Suburban land, the application to purchase must be accompanied by a deposit of one-tenth of the price; the limit of quantity is twenty acres; the upset price is £4 10*s.* per acre, and the time allowed for payment

Purchase by a System of Deferred Payments.

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the Government, by whose subjects or authority the discovery was made, the sole right of acquiring the soils from the natives and afterwards granting it to individuals; and no private person can acquire title by purchase from the natives without the intervention or permission of his Government. This principle was always acted upon in America (*ante*, page 362); and we have seen that the British Government set aside purchases made by individuals at Melbourne and Geelong—*ante*, page 389.

is five years. In the case of *Rural* land the application must be accompanied by a deposit of one-twentieth of the price. The limit of quantity is 320 acres, in the case of pastoral land 5,000 with a minimum of 500 acres; and the upset price is not less than 20*s.* an acre. Payment for *Rural* lands must be made in ten years, and for *Pastoral* lands in fifteen years, in the case of the former by twenty, and in the case of the latter by thirty, equal half-yearly instalments payable on the 1st January and 1st July in each year. Residence is a necessary condition, for the first four years in the case of Suburban lands, and for the first six years in the case of Rural lands. But where Rural land is covered with bush, residence may be dispensed with for the first four years. The selector must fence, and must make certain improvements within a fixed period. What is called "The Agricultural Lease System" is in force within proclaimed gold fields, and this also affords facilities for purchasing lots not exceeding 320 acres by a system of deferred payments. In the Auckland and Westland districts, there is a 'Homestead System' under which persons of, or more than, eighteen years of age may obtain 50 to 75 acres, and persons under eighteen, 20 to 30 acres, without any payment other than the expense of survey, by residing for five years, erecting a house and bringing one-third of the lot under cultivation.[7]

§ 222. From the preceding account of the settlement of the Australian Colonies, it will appear that the colonists have from the commencement held their lands under free, it may be said, allodial tenure by grants direct from the Crown; that they have shaken off the burden of the English law of real property; that in no country in the world, certainly in no country that has been subject to British rule, is dealing with land more simple, inexpensive

[7] The area of the whole colony is estimated at 67,419,107 acres, of which there have been alienated up to 31st March 1881, some 16,054,529 acres, leaving 13,938,233 acres open for selection, and 19,707,715 acres for future disposal, exclusive of the land in the occupation of the Maories.

and expeditious; that it is within the power of every able-bodied individual to become a landowner without capital other than that of willing labour and industry; and that in little more than half a century[8] a large surplus population[9] from the British Isles have availed themselves of the facility offered by the discovery of a New Continent to become landed proprietors, and to secure comfort, prosperity, and in very many cases wealth for themselves and their children, while the enjoyment of these advantages is enhanced by free institutions and liberal self-government.

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[8] It was not till 1821 that Australia was thrown open to free emigration.

[9] By the returns to the end of 1880, the total number of immigrants was one million two hundred and seventy thousand. The Census returns of 1881 showed the aggregate population of Australia and New Zealand to be 2,798,471; and, as is usual in a new country, the increase will be very rapid. It may be interesting to note that since the beginning of the present century over 8½ millions, or about a fourth of the present population, have emigrated from the United Kingdom. Of these, more than 5¼ millions, including a very large number of Irish, went to the United States, and over 1½ millions to the British possessions in North America. Germany is the only other European nation that has during the same period thrown off by emigration large masses of her surplus population; but the German (unlike the British) emigrants have not founded settlements in which the language and institutions of fatherland have been maintained and re-produced. They have on the contrary been absorbed in the populations of the countries in which they have settled.

CHAPTER XVIII.

Landholding, and the Relation of Landlord and Tenant in India. The Condition of Things under the Native Governments.

§ 223. The Tenure of Land in India is generally considered to be a subject of considerable difficulty. It has on more than one occasion given rise to earnest discussion, conducted not without a degree of asperity by persons holding different, and sometimes contrary opinions, each of whom produced probable arguments in support of the correctness of his particular views. Much of this difference of opinion and much of the difficulty, which has surrounded the whole question, may perhaps be traced to the fact, that sufficient account has not been taken of the diverse circumstances of different parts of the country.[1] Institutions, which in some places were orginally complete in all their parts, and the subsequent development of which became perfect, were in other places originally incomplete, or were afterwards but imperfectly developed. Their growth was hindered at different stages, in different localities, by circumstances of external violence connected with those waves of invasion and conquest, which swept with varying violence over the country. When these disturbing elements had passed away, and, amid the peace of British rule, the relics of former institutions came to be examined, it is not surprising that they suggested various ideas as to the

Supposed Difficulty of the Subject of Land Tenure in India.

[1] Mr. Elphinstone remarks:—"Many of the disputes about the property in the soil have been occasioned by applying to all parts of the country facts which are only true of particular tracts; and by including in conclusions drawn from one sort of tenure other tenures totally dissimilar in their nature." —*History of India*, p. 73.

State of things in the time of Manú.

nature of the perfect original. According to the picture of the Hindu society presented by the Code of Manú drawn up probably in the ninth century before Christ, the Government was vested in an absolute monarch acting under the counsel of Bramins. His revenue consisted of a share of all agricultural produce, varying according to the soil and the labour necessary to cultivate it; of taxes on commerce, petty traders and shopkeepers; and of a forced service of a day in each month by handicraftsmen. The share of the produce was in times of prosperity one-twelfth; in time of distress one-eighth, one-sixth (which is the medium), or in great public adversity even one-fourth. The actual share to be taken was, according to the Commentator, to be determined by the difference of soil and the labour necessary to cultivate it. Taking one-sixth in ordinary times was stigmatized as rapacious.[2] The Code does not distinctly

[2] The Province of Canara was under a Hindu Government until 1763, when it was subdued by Heider Ali. The accounts of the public revenue were written in black books, which upon the transfer of the province to the Company in 1799 were examined by Lieutenant-Colonel Munro. From these books and other information he was able to make an abstract of the land assessment for a period of 400 years, commencing with the era of Hurrihur Roy, a Rájá of the Bijnuggur dynasty between 1334 and 1347, and terminating with the reign of Tippoo Saheb. From this it appeared that the public tax on the land, which was assessed at fixed money rates with reference to a quantity of rice equal to the quantity required for seed, remained fixed for two centuries and a half; and for more than a century after under the Bednore Government the increase of the tax hardly amounted to ten per cent., leaving the cultivators a larger proportion of the produce than was enjoyed under any other native Government in India. According to Lieutenant-Colonel Briggs' account Hurrihur Roy had regard more to the quality of the land than to the quantity. One-half of the grain, including the straw, was given to the cultivator; the other half was divided into three shares, of which one share was given to the sovereign, half a share to the church, and one share and a half to the proprietor. *The landlord thus got twenty-five per cent. of the gross produce.* The principle prescribed for commutation into money was that an extent of ground, requiring two and a half *kantis* of seed to sow it, should pay one *ghetti pagoda.* Seed was calculated to yield twelve-fold, and the money payments were calculated on these data without any attempt at an actual survey. It has also been calculated that Hurrihur got only ten per cent. of the gross produce—See II *Fifth Report*, p. 470. For various shares taken by the ruling power from time to time, see the same volume, pp. 411, 462, 463, 472 and 473.

lay down to whom the absolute property in the soil belonged. It has been argued that it belonged to the King, because he is called the "lord paramount of the soil." The cultivator's proprietary right has, on the other hand, been deduced from the text—"land is the property of him who cut away the wood," or, in the words of the Commentator, "who tilled and cleared it." It has been also said with considerable force that as the King's share was limited to one-sixth or at most one-fourth, there must have been another proprietor for the remaining five-sixths or three-fourths, who had obviously the greater interest of the two in the whole property shared. Few will now be found to doubt that the ownership —that is, such ownership as was within the conception of the people of that time—was with the Community, which doubtless existed before Kings or Sovereigns. The idea of the Sovereign being the great landowner may have been subsequently introduced by the Mahomedans to whom this and other feudal ideas were familiar.[3]

§ 224. The internal administration of the country was conducted by a chain of civil officers consisting of lords of single townships or villages, lords of 10 towns, lords of 100 towns,[4] and lords of 1,000 towns. It was their duty to collect the revenue, and they were remunerated by small fees in kind or by a portion of the King's share of the produce. In later times, and especially after the Mahomedan conquest, many of the links of the system which connected the township or village with the governing power became wanting; and other modes of connection were substituted, as the policy or necessity of rulers dictated. But whatever were the means of connection, the Village Community possessed an inherent vitality[5] in

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[3] See *ante*, page 209.

[4] The lordship of 100 towns corresponded to the *Pargana* which still generally exists. Traces of the other divisions are still to be found, especially in the Dekkan.—Elphinstone's *History of India*, p. 61.

[5] See Sir Charles Metcalfe's Minute, *Report of Select Committee of the House of Commons*, 1832, Vol. III, App. 84, p. 331.

The Village Community.

itself, which preserved it amid the revolutions of power and the changes of dynasties. This community was a little republic, having its own territory and its own municipal government under a Headman, formerly the King's agent and removable at his pleasure, but whose office afterwards became hereditary[6] according to the tendency of all Hindu institutions. He settled with Government the revenue to be paid for the year, and apportioned the amount amongst the villagers. For the payment to Government he was held personally responsible, and was punished in cases of default. The territory was the common property of the original inhabitants, the members of the original Patriarchal Family.[7] In some villages the cultivated lands only were divided, periodical interchanges of the portions being occasionally usual,[8] or the division being once for all final and complete. In both cases, however, the waste land remained common for pasturage, until an increased population necessitated an extension of cultivation. In other villages the division included the waste[9] as well as the cultivated land. A compact portion of land was not given to each individual; but a share of each description of soil, suitable for the production of each different crop, was assigned to every member of the community.[1] All the members were liable for the dues of Government and other public burdens[2] in proportion

Different Modes of Division of the Land.

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[6] It was sometimes elective.—Maine's *Village Communities*, p. 122; Mr. Shore's *Minute of 18th June* 1789, § 245; and Mr. Holt Mackenzie's *Minute of the 1st July* 1819, § 523.

[7] See Maine's *Village Communities in the East and West*, p. 15.

[8] Elphinstone's *History of India*, p. 66; Maine's *Village Communities*, pp. 86, 112.

[9] Sometimes again the waste was partly held in common and partly divided.—Carnegy's *Land Tenures of Upper India*, p. 5.

[1] An individual thus had many plots or patches, some north, some south, and some perhaps east and west of the village. This interlacing of plots is one great source of difficulty, when the land of a village came to be measured.

[2] Such as repairs of the walls and temples, the cost of public sacrifices, charities, ceremonies and amusements at festivals. Each township managed its own internal affairs, police, administration of justice, &c. It has been

to their respective shares. While the Village Community remained in its infancy, this simple state of things presented no conflict of rights, no difficult social problems which could not be solved by the Headman assisted by assessors of his own choice, or by arbitrators named by the parties. But as the Patriarchal Family became further developed, as the original stock became more ramified, as the shares of the original members became divided and subdivided by the operation of a law of inheritance, which did not acknowledge primogeniture,[3] and as the transfer

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thought by some that this principle of self-government can be restored and adapted to modern requirements. In Bengal Proper, the village community early fell into decay where it existed; and in a large portion of the province, especially in the southern portion, there is little doubt that it never had any existence. The success of any attempt at *restoration* must therefore be problematical in this part of the country.

The following is a list of the officers of a complete Village Community:—

1. Headman = Patel, mokaddam, mandal, gaud.
2. Accountant = Karnam, kalkani, tallati, patwari.
3. Watchman = Mhar, tillari, paggi, daurâha, paik, pasban, gorayat, chaukidar.
4. Priest or Bramin.
5. Schoolmaster.
6. Astrologer = Fotishi, Foshi.
7. Smith.
8. Carpenter.
9. Potter.
10. Washerman.
11. Barber.
12. Cowkeeper.
13. Doctor.
14. Musician.
15. Poet, minstrel, and genealogist.

In addition to these the *dancing-girl* is found in Southern India. Properly speaking, the village officers were twelve in number, *Bara Ballawatti* or *Ayangadi*, but the list varies, some that are found in some villages being wanting in others. Each of them was remunerated sometimes by a fee in money, sometimes by a portion of the produce (ayá), a handful or so out of each measure of grain of every member of the community; but perhaps more generally by the allotment of a piece of cultivated land, which generally became the hereditary possession of the family. In some places instead of a single Headman, there was a village Council or *Panchayat* (assemblage of *five* originally, though the word is used when the number exceeds five); but it may be that these were merely the arbitrators appointed to assist the Headman. In *Mr. Shore's Minute of the 18th June* 1789, paras. 242–246, will be found an account of the influence of the Headman, and how it was exerted for his own benefit exclusively in parts of Bengal.

[3] For an account of a "heart-rending intermixed tenure" created by subdivision as a result of inheritance, see Carnegy's *Land Tenures of Upper India*, p. 5.

of shares was first allowed and then became usual—a very much more complex state of affairs arose, new rights sprang into existence, and the idea was created of individual interest at variance with common ownership.[4] Even if the lands had remained in the possession of the descendants of the original members of the Patriarchal Family, considerable complexity would have been brought about by the operation of the law of succession; but the introduction of strangers was the great cause of intricacy. This introduction was effected in two ways: *First*,—a member of the community might sell or mortgage his rights to a stranger.[5] This was not, however, very frequent in the early history of the township, though it became common in later times. *Secondly*,—the original settlers, finding that they had more good land than they themselves could cultivate, would endeavour to make a profit of it through the labours of others. No method came easier than to assign it to a person, who would engage to pay the Government share of the produce with an additional share to the community. While land was plenty and many villages in progress of formation, no man would undertake to clear a spot unless he was to enjoy it for ever; and hence permanent

Introduction of Strangers into the Community.

[4] The first division was called *panc* or *pattl*. This was subdivided into *tholas* or *thoks*; and these again into *bhéris*; but the terms, and even the use of the same terms, varied in different parts of the country.

[5] "When by the process just described" (subdivision by inheritance) "one estate had expanded into several separate properties, it not infrequently happened afterwards that one or more of these properties was overtaken by misfortune, and the proprietors were reduced to every sort of shift to save their land, or to make the most they could in parting with it. One member of the community would seek the protection of a chief of his own clan, and make over his holding in trust to him; another would take his holding to that chief's rival, in view of establishing a balance of power, lest the whole village should be absorbed by the first chief; a third would court the official protection of a *kánungo*; a fourth would crave shelter from a Bramin of note, relying on his sacred calling to secure his possession; a fifth would mortgage to a money-lender; and a sixth might sell to a neighbouring capitalist; and the result of all this would be that people of different tribes and persuasions varying in number from two to ten would gain and did gain a footing in those subdivided villages."—Carnegy's *Land Tenures*, pp. 5, 6.

tenants would be created.[6] When a share of the common rights passed into the hands of females or of persons whose caste prevented them from personally performing the manual labour of cultivation, a similar practice would be adopted as to land already brought under tillage, which would thus be made over to some one who would undertake to cultivate it, to discharge the Government dues, and give a share of the produce to those on whose behalf he cultivated. Temporary tenants would thus come into existence. The love of ease so natural to the native of India, the desire to escape manual labour and to be supported by the labour of an inferior would bring about the same result in respect of other portions of the land.

Khúdkásht Raiyats.

§ 225. The permanent tenants, who settled in the village, were called *Khúdkásht Raiyats—i. e., raiyats* cultivating the land of their *own* village, or the village in which they resided.[7] The rights of this class have often been mistaken; and they have occasionally been confounded with the village zemindars or proprietors whose lands they cultivated. This was no doubt due to the fact that while in some parts of the country, as for example in Bundlekund, the village zemindars were the actual cultivators, in other parts they had acquired a superior status, and the manual labour of agriculture had come to be performed by tenants. Where the original settlers were numerous, or their descendants had increased in numbers so as to be sufficient to cultivate all the culturable land, the cultivators would naturally be found to be the proprietors or Village Zemindars. Where the land of the township was too extensive to be cultivated by the first settlers or their descendants,

[6] Elphinstone's *History of India*, p. 69.

[7] From *khúd* = own and *kásht* = cultivation: sometimes erroneously interpreted "cultivating their *own land*," and so leading to the mistaken notion that they had hereditary proprietary rights.—See Elphinstone's *History of India*, p. 248; Mr. Shore's *Minute of 18th June* 1789, § 225; Mr. Holt Mackenzie's *Minute of 1st July* 1819, §§ 328, 399, 431, &c.; and Carnegy's *Land Tenures*, p. 40, on this and other points connected with their status. They are also called *chhapper-band raiyats*, from which and the antithesis of *paikásht*, the meaning is plain.

strangers would be introduced as tenants. Thus the state of things would naturally vary in different parts of the country. Hereditary rights of occupancy have been claimed for *khúdkásht* raiyats; while, on the other hand, it has been contended that they had no rights whatever, and could be ousted at the will of those whose lands they cultivated. The true state of things seems to have been this. When there was plenty of unoccupied land, and population was sparse, the competition was not amongst tenants for land, but amongst zemindars for raiyats. Tenants once induced to settle in the village were fostered;[8] and where the son was able to step into the father's place, the arrangement suited both parties too well for any doubt to be raised as to the course which would be pursued upon the death of a tenant. Non-fulfilment of the conditions on which the land was cultivated, non-discharge of the Government dues or non-delivery of the proprietor's share of the produce, was the only ground which rendered it necessary to remove a tenant. Some landholders indeed conceived themselves to possess the power of ousting these tenants in favor of other persons who were willing to give a higher rent; but in a state of society in which rents were regulated by custom, not by competition, such new tenants did not often present themselves, and so the practical exercise of the power was not frequent. Thus, notwithstanding occasional instances of ouster, it gradually became usual, in the language of a later stage of development, not to evict *khúdkásht raiyats* so long as they paid their rent. It has been well observed that mankind's notions of right are founded on prescription; and under a Government of absolute discretion, destitute of the modern appliances for legislation, *Custom* was really the sole legislative power.[9]

Their Condition and Growth of their Rights.

[8] See the account of tenants in Epirus, *ante*, pp. 230-231, for a similar condition of things.

[9] At 252 and following pages of *Selections from the Revenue Records of the North-West Provinces*, published in 1866, will be found a number of opinions on this point. The best authorities are pretty well agreed that these

The temporary tenants were generally residents of another or neighbouring village, who could not obtain in their own village as much land as they were able to cultivate; and these were called *Paikásht*[1] *Raiyats* or *raiyats* cultivating land *near* their own village. These have been held by all authorities to have no rights and to be mere tenants-at-will. They generally made more favourable terms, and paid lower rates than the *khúdkásht raiyats.* Not having their habitations in the village, they were not so amenable to pressure, and could at any time abandon the land, to which they had no particular attachment. Amongst both these classes of *raiyats*, there were variations in the rates, due to several causes, one of the most important of which was that more favourable terms were given to high caste (ashraf) cultivators, such as Bramins, Cshatryas, Kaysths. The amount of this consideration varied, and was sometimes sufficient to enable the favoured individual, if above manual labour, to keep a servant to do the work of cultivation.[2] Thus we get a class of labourers, who were sometimes slaves, when servitude was customary and legal.

Paikásht Raiyats.

tenants could not transfer their rights, *i.e.* sell their land—this privilege belonging to the zemindar class alone. The *khúdkásht raiyat's* interest or the right of occupancy, into which modern legislation has turned it, has of late years become not uncommonly saleable in the Lower Provinces. The Courts indeed hold that it is not saleable as of right, though it may become so by custom. The evidence offered in disputed cases very often consists of instances in which the landlord has brought the *raiyat's* interest to sale in execution of a decree for rent. This is a mode of obtaining through the intervention of the Courts a fine which goes in payment of the arrears of rent due from the late tenant. That the *raiyat's* interest finds purchasers is an indication of a change having for its ultimate result the substitution of *competition* for *customary* rents.

[1] From *Pai* (corruption of *pahi* from *pah* = *pas*, near), 'living near,' 'non-resident,' and *kásht* = cultivation. Compare the account given of the Madras 'pyacarry,' or 'payacarry' in Mr. Place's report, Appendix No. 16 to Vol. II, of the *Fifth Report*, which term is said to be derived from 'pay,' the foot, and 'karidun,' to labour, signifying a man who journeys to his work or cultivation. It is possible that the 'pai' in 'paikásht' is also 'pay,' the foot.

[2] Section 20 of the North-Western Provinces Rent Act (XVIII of 1873) now enacts that in determining the rate of rent payable by a tenant, his caste is not to be taken into consideration, unless it is proved that by *local custom* caste is taken into account in determining such rate.

§ 226. Thus four classes in the Village Community have been described :—*viz.* (1) The village zemindars; (2) permanent tenants or *khúdkásht raiyats;* (3) temporary tenants or *paikásht raiyats;* and (4) labourers. It remains to add a fifth whose influence in later times very considerably affected the organization of the little constitution. These were the shopkeepers or dealers in grain and other commodities. The thrift which seems to spring from the pursuit of trade in all countries, and which in India is by no means a prominent natural feature of the great mass of the people, soon made the village shopkeeper the sole capitalist in the community. To him resorted the cultivator whose cattle had been carried off by murrain or who was prevented by sickness from tilling his land; who wanted funds for his own marriage expenses or for the funeral ceremonies of his father or mother or brother; whose store of food had run short, or whose seed grain was deficient. The accommodation afforded was repaid in harvest-time with the produce of the soil, and the traders' store of grain increased. When the former or the latter rain failed, and drought brought famine, it was the grain-dealer's stores which saved the cultivators and their wives and their little ones and their cattle from perishing; and, when they went to him that they might live and not die, he made his bargain with them before he filled their sacks with corn, as Joseph is said to have done with the Egyptians.[3]

The Mahajan, or Money-lender.

[3] "They came . . . . and said unto him . . . . 'Buy us and our land for bread . . . and give us seed that we may live and not die' . . . . And Joseph bought all the land of Egypt for Pharaoh . . . Only the land of the priests bought he not . . . . Then Joseph said unto the people, 'Behold, I have bought you this day and your land for Pharaoh: lo, here is seed for you, and ye shall sow the land. And it shall come to pass in the increase, that ye shall give the fifth part unto Pharaoh, and four parts shall be your own, for seed of the field, and for your food, and for them of your household, and for food for your little ones.' And Joseph made it a law over the land of Egypt unto this day, that Pharaoh should have the fifth part."—*Genesis* XLVII.

When invading armies passed by or marauding free-booters came upon the village, and the Headman and the zemindars were required with severity, it may be with torture, to supply their wants and demands, the grain-dealer with his ready capital of grain or of money could alone afford the wherewithal to assuage their urgency and save the village from indiscriminate pillage. It happened betimes that those, who made right by might, put aside the village zemindars and their Headman, and substituted for them the person who could for the time satisfy their exactions. Or in times of less open disturbance, when supersession was threatened by those who collected the Government dues and limited the royal demands and their own by no rule save the power of endurance in the oppressed, the *zemindars* were driven to satisfy exaction by borrowing from the only one who could lend, and a part of their rights was mortgaged or sold to save a remnant, which on a repetition of oppression and exaction was sure to pass by a similar process to other hands. And so the petty shopkeeper developed into the grain-dealer and capitalist of the community, and became the great man, the *Mahajan* of the village.[4]

§ 227. The system of collecting the revenue in kind from the Headman of each village was feasible only when the domain of the Sovereign was limited in extent. As petty States were amalgamated by conquest or otherwise, and as the country gradually approached the condition of a single government under a single ruler, it became absolutely necessary to change a state of things so primitive and ill-suited to further stages of progress. Money was scarce; and, where it did exist, it was limited in quantity. Powerful sovereigns or chiefs, to the maintenance of whose power armies or armed followers were necessary, were unable to to pay their soldiery in money, for money did not exist in sufficient abundance ; and so they assigned them for

Creation of an Aristocratic Class superior to the Village Communities—Assignments of Revenue.

[4] *Mahajan* means literally 'a great man,' but is now the common term throughout the Presidency of Bengal by which the Village Money-lender or Banker is known.

their support the revenue claimable from specified tracts of territory, not infrequently conquered territory, in which they were quartered with their leaders ; or the assignment was made on a district near which they were already stationed. In course of time, these leaders acquired a local position and importance, and their family taking root in the locality became the source of an aristocracy between the cultivators and the Sovereign. Similar grants were made for the support of civil officers, for the maintenance of temples and of holy men, for the reward of public service ; in fact, generally to meet the cost of the different departments of the Government, and moreover not infrequently in the exercise of royal munificence to favourites. The grants of one ruler were often resumed by his successors, or threatened resumption was avoided by the payment of such an amount of revenue as left the grant still worth possessing by the grantee or his descendants. It must be carefully borne in mind that what was assigned in all these cases was not the land itself, but the right to collect the Government revenue. Misapprehension on this point has led some to suppose that these grantees were originally landed proprietors.[5] Many of the persons to whom these assignments were made, more especially the ministers, the great officers of the household, and personal attendants of the Prince, did not or could not leave the person of the Sovereign to reside upon their grants and themselves engage in the business of collecting the revenue ; and so it became usual to make over this business to some one, who undertook to perform it for a percentage on the collections. More commonly the arrangement was one known as *mustájíri*, or 'farming,' under which the farmer agreed to pay a certain sum, all that he could extract from the cultivators above this sum being his own profit upon the transaction. That portion of the royal domain which was not the

Farmers.

[5] For an account of similar grants or *Jagírs* made by the Mogul Emperors, see *post*. For similar grants in Russia, see *ante*, p. 167.

subject of assignment came to be farmed in the same way: and, as the stock of precious metals increased, and money came more regularly into use, this system of farming the public revenue became very usual, the farmer collecting in kind and making the conversion into specie for transmission to the Government Treasury an additional source of profit.[6] Successful farmers, who could contrive to make themselves useful to Government, were seldom disturbed in their charges; and, as was the propensity with all things Indian, their position became in many instances hereditary: and here was another source of a class standing between the Sovereign and the cultivators.

§ 228. Then there were, in the natural course of things, many petty chiefs who had acquired a local position and influence before they came in contact with a stronger power to which they yielded and in which they were absorbed. Though not strong enough to resist absorption, they were yet able to make terms, and, retaining their former relation to those below them, they ackowledged a sovereign over them by the payment of revenue. The custom of the Rajputs presented some peculiar features. The founder of a State reserved a certain portion of the territory for himself, and divided the rest among his relations according to the Hindu Law of partition. The recipient of each share owed military service and general obedience to the Chief, but exercised unlimited authority within his own lands, which he divided on similar terms between his relations. A chain of vassal chiefs was thus constituted, to whom the civil and military administration was committed.[7] In these and other ways there came to exist between the Sovereign and the Village Zemindars a class of aristocracy variously known as *Rájás* and *Talukdars*, the exact nature of whose rights puzzled the

Petty Chiefs.

[6] The system in the Roman Provinces was similar. The *publicanus* who farmed the Roman taxes had his counterpart in the Indian *Mustájir;* and there was a rare similarity between the practices of both.

[7] Elphinstone's *History of India*, pp. 76, 250. See also Campbell's *Modern India and its Government*, p. 81.

first English administrators of the country in no slight degree.

§ 229. From what has been said it will appear that from early times there prevailed amongst the Hindus a practice, sanctioned and regulated by their greatest Law-giver, under which the Sovereign received a share of the produce of the land. The Mahomedan conquerors had a practice in some respects similar. The produce of land in countries under their dominion was subject to one of two imposts—'Ushr' or tithe, and 'Kheraj' or tribute. *Ushr* was payable only by Múslims or true believers; *Kheraj* was payable by infidels generally, though in some exceptional cases by believers. *Kheraj* was naturally levied from the conquered Hindus; and the conquerors readily utilized for its collection the previous practice and the pre-existing agency. During the long and uninterrupted dominion of the Mahomedan race, the peculiarities of the old Hindu institutions were wholly effaced; and the usages and practices, which the British found in the country, were purely Mahomedan. It is, therefore, not easy to say in what respects the Mahomedan impost differed from the Hindu custom; but one point would appear to be beyond doubt, namely, that the share of the produce which the Mahomedans took, whether in kind or in money, was greater than was taken in times of Hindu Government. *Kheraj* was of two kinds:—(1) 'mukassimah,' payable out of the actual produce only; and (2) 'wuzifa,' payable whether there was any produce or not. Again, *mukassimah* was payable on every crop produced, while *wuzifa* was payable but once a year. As the State became a more extended and complex institution, the collection of the whole of the revenue in kind became excessively inconvenient, and must have been in the end impracticable. It therefore became highly expedient that some effectual means should be devised for at the same time regulating the collections and securing in whole or in part a commutation of produce into money. The first systematic attempt made to effect this object is to be found in the

The Hindu Share of the Produce converted into the Mahomedan Kheraj or Tribute.

Institutes of Tímúr. He directed that of the produce of cultivated lands, made fertile by the water of canals or by perennial springs or rivers, *two-thirds* should go to the cultivator and *one-third* to the royal treasury; that, if the subject consented to pay the tax for the restricted lands in specie, the amount should be fixed according to the current price of grain and paid to the soldiers (to whom no doubt the revenue was assigned for their maintenance); that, if the subject was not satisfied with this mode of collection and division of the produce into three parts, the restricted lands should be divided into first, second and third *Farrib;* that the produce of the *first* class should be estimated at three loads, of the *second* class at two loads, and of the *third* class at one load, half to be estimated as wheat and half as barley, and of the total amount *one-half* should be collected; that, if the subject should be still unwilling to pay the tax in kind, the value of a load of wheat should be fixed at five *miskâls*[8] of silver and a load of barley at two and a half *miskâls*, and that the duty of the *killah*[9] should be exacted over and above; that the rest of the lands, those which produced in the autumn and in the spring, and in the summer and in the winter, and the land which depended on the rain for fertility, should be divided into *Farribs;* and that of the produce of those which were numbered, a third or a fourth should be collected; that the duties on herbs, fruits and other productions of the country, on reservoirs of water, commons and pasture lands should be fixed according to the ancient and established practices, and, if the subject should not be content therewith, the collections should be settled according to the *Hastobúd.*[1] Whoever undertook the cultivation of waste lands, or built an aqueduct, or made a canal, or planted a grove, or restored to culture a deserted dis-

Institutes of Tímúr—Commutations of Share of Produce into Money.

[8] A *Miskâl* is equivalent to 63½ grains Troy.

[9] *Killah* means 'a fort.'

[1] A comparative account showing the present and past produce of an estate —an examination of the value of the crop before it is cut.

trict, from him nothing was to be taken in the first year, and in the second year what he voluntarily offered was to be received. In the third year the duties were to be collected according to the regulation.[2]

§ 230. Shír Sháh (A.D. 1540—1545) made the next attempt to introduce a regular system for the assessment and collection of the land-revenue, but did not live long enough to carry his plans into general effect. He fixed the share of the State at one-fourth of the produce. What he left undone was, however, effectually performed under the auspices of Akbar by Rájá Tódar Mal[3] during the latter half of the sixteenth century. The first step taken towards effecting an accurate assessment was to make a *measurement of the land;* and in order to do this the more effectually, one uniform standard was substituted for the various measures in use throughout the country.[4] The next step was to ascertain the produce of each *bigah* of land and to fix the proportion payable to Government. Lands were divided into four classes,—*viz.* (1) *púlej*, or that which was cultivated for every harvest and never allowed to lie fallow; (2) *perautí*, or that which was allowed to lie fallow[5]

Tódar Mal's Settlement under Akbar A.D. 1582.

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[2] *Tímúr* or Tamerlane (corruption of *Tímúr lenk* or Tímúr the lame, he having been lamed for life by a wound in the thigh) invaded India, sacked and burned Delhi in 1398 A.D. As he left India the following year and never returned, his system could scarcely have had any very extensive operation.

[3] Called likewise, though improperly, Túran Mal or Tooren Mul. He was also distinguished as a military commander.

[4] The *guz*, or measuring yard, was fixed at forty-one fingers. Sixty *guz* made one *tanáb;* and a square of sixty *tanáb*, or 3,600 square yards, made one *bigah*. The standard Bengal *bigah* is now 14,400 square feet, or 1,600 square yards, the English statute acre being 4,840 square yards. There is no more fruitful source of fraud and contention at this moment in Bengal than the different lengths of the measuring rods. The Government standard has not been generally introduced; and, whenever a *zemindar* proceeds to measure the lands of the *raiyats*, there is generally a dispute as to the length of the pole, the *raiyats* claiming the use of a long pole, which makes their land less on being measured; the zemindar claiming a shorter pole, which makes the land more, and therefore enables him to demand more rent.

[5] In many parts of India, but especially in Bengal, no proper rotation of crops is practised, and little or nothing is done in the way of manuring. Land is commonly restored by letting it lie fallow every fourth year.

for a short time in order that the soil might recover its strength ; (3) *checher*, or that which had lain fallow three or four years ; and (4) *banjar*, or that which had been left uncultivated for five or more years. *Púlej* land paid revenue every year. Mr. Baillie thinks that the principle of the *zabtí* was rigorously applied to this class of land. The share taken by the Government was one-third ; but it was calculated in this way. There were three kinds of *púlej*— best, middling, and worst ; the produce of a bigah of each kind was taken, and one-third of the aggregate of the produce of the three bigahs was assumed to be the average produce. One-third of this average was the Government revenue.[6] The following is a calculation for wheat :—

Revenue on Púlej Land.

	Produce.	
	Mds.	srs.
Púlej, best	18	0
Púlej, middling	12	0
Púlej, worst	8	35
Total ...	38	35
One-third of total equal average	12	38¾
One-third of average equal the Government demand ...	4	12¾

The *Ayení Akbarí* contain a table showing this calculation for thirteen crops included in the spring harvest,—*viz.*, wheat, vetches, adess, barley, linseed, madsfer, arzen,

[6] See the *Ayení Akbarí* translated by Mr. Gladwin, Vol. II, p. 355. The country was divided into sections, each yielding a *kror* of *dáms* = Rs. 250,000, the collector of which was called a *krorí*. Farming was not practised, and the collectors were enjoined to deal with individual raiyats. In the *Answers of Gholam Hoseín Khan, Appendix No. 16 to* Mr. Shore's *Minute of 2nd April* 1788, it is stated that in Akbar's time and long after, the rents were paid in kind. In order to preserve the accounts necessary to Todar Mal's system, the office of kanungo (literally 'expounder of the laws,' from *kanún* = laws, and *gú* = to speak) was created ; and in the custody of this officer all the records of the public accounts were kept. The *patwárí* kept similar accounts for the village, and forwarded annual returns to the kanungo. Mr. Shore remarks that the policy of the Mogul administration taxed improvement. This is true, as the assessment might be raised upon a decennial revision. The defect in this policy was that it drew no distinction between improvement effected by the labour or capital of the cultivator, and improvement due to causes unconnected with the individual.

mustard, peas, fenugreek, and shaly kow. For musk melons, ajwain, onions, and other green herbs the revenue was ordered to be paid in ready money at certain fixed rates. There is another table showing the calculation for nineteen crops included in the autumn harvest, *viz.*, sugar-cane, cotton, shaly mushkeen, common rice, mash, mowng, jewar, shamakh, koderem sesame, gall, turyeh, arzen, lehdereh, mendow, lubyeh, kawdery, kelet and berty. The revenue on indigo, kuknar, pan, turmeric, singarhar, hemp, kutchalu, kuddoo, henna, cucumbers, badinjan, radishes, carrots, kerelah, tyndus and katcherah, was ordered to be paid in ready money according to certain fixed rates. Mr. Elphinstone observes that the *Ayení Akbárí* do not tell us how the comparative fertility of fields was ascertained, though it is probable that the three classes were formed for each village in consultation with the inhabitants, and that the process was greatly facilitated by another classification made by the villagers for their own use, which probably subsisted from time immemorial, and in which a classification of soils, something like that adopted in Griffiths' Irish valuation, was an important feature. It also does not appear whether every cultivator had to pay the average rate, even though he did not hold equal portions of each kind of *púlej*, in which case only his assessment would be equable. In this case, however, there would be no object in making an average, as the result would be the same without it. In the case of the average given above for wheat, it will be seen that, while this average rate gives less than a third share of the produce for the middling kind of *púlej*, it gives more than a fourth for the best kind, and nearly half for the worst kind. If the average rate was levied from all cultivators indiscriminately, the cultivator who had most of the best land was very lightly assessed, while he who had most worst land was very heavily assessed, the result in each case being the reverse of what would have been fair and reasonable.

§ 231. The rate at which the Government share of the produce of *púlej* land was to be commuted into money

was ascertained and determined in the following manner. The prices for nineteen years, *i.e.* from the *sixth* to the *twenty-fourth* year of Akbar's reign, were collected after the most diligent investigation. This period was selected, because, nineteen years being a cycle of the moon, the seasons were supposed in this time to undergo a complete revolution. The calculation of the money rates was made upon the average of these nineteen years. It would appear from the *Ayeni Akbari* that the revenue for *púlej* land was required in money according to the rates so calculated. Mr. Elphinstone, however, thinks that these were only maximum rates, and that every cultivator who thought the amount claimed too high might insist on an actual measurement and division of the crop.[7] Be this as

Mode of commuting the Government Share of the Produce of Púlej Land into Money.

[7] Elsewhere in the directions to the *Amilguzar* or Collector of the Revenue, it is said :—"Let him not be covetous of receiving money only, but likewise take grain. The manner of receiving grain is after four ways. *First*,—*Kunkút ; Kun* in the Hindu language signifies grain, and the meaning of *Kút* is 'conjecture' or 'estimate.' The way is this. The land is measured with the crops standing, and which are estimated by inspection. Those who are conversant with the business say that the calculation can be made with the greatest exactness. If any doubt arise, they weigh the produce of a given quantity of land consisting of equal proportions of good, middling, and bad, and form a comparative estimate therefrom. *Second*,—*Buttai*, and which is also called *Bhaoli*, is after the following manner. They reap the harvest, and, collecting the grain into barns, there divide it according to agreement. But both these methods are liable to imposition, if the crops are not carefully watched. *Third*,—*Khet Buttai*, when they divide the field as soon as it is sown. *Fourth*,—*Lang Buttai*, they form the grain into heaps of which they make a division. Whenever it will not be oppressive to the subject, let the value of the grain be taken in ready money at the market price. If an husbandman sows his land with the best kinds of grain, let there be remitted the first year a fourth part of the rate for *púlej* land. If upon making the measurement, the kinds of grain appear to be better, although the quantity of land be less than was agreed for, so that the difference causes no deficiency in the revenue, the Amil shall not express any displeasure : and in every instance he must endeavour to act to the satisfaction of the husbandman . . . . . Whenever there is a plentiful harvest, let him collect the full amount of revenue, and not leave any balances to be realized from future crops. If any one does not cultivate *kheraji* land, but keeps it for pasturage, let there be taken yearly, for a buffalo six dams, and for an ox three dams, but calves shall be permitted to graze without paying any duty. For every plough there shall be allowed four oxen, two cows, and one buffalo, from whom likewise

it may, it is clear from the *Ayení Akbarí* that the Government did not succeed in collecting these rates; that the cultivators exclaimed against them as exorbitant, and that the ten years' settlement, to which I shall presently allude, was the result. *Perauti* land was also divided into three kinds, and an average was made in the same manner as for *púlej;* but the *kheraj* or revenue was paid only when it was under cultivation, and not when it lay fallow. *Checher* was land, which, either from excessive rain, or by reason of inundation, had suffered so much that the husbandman found difficulty in cultivating it. When brought under cultivation, it paid two-fifths of the produce for the first year, three-fifths for the second year, four-fifths for the third and fourth years, and in the fifth year it paid the full demand, as *púlej*. According to the *Ayení Akbarí* the revenue of *Checher* was taken, according to circumstances, either in money or in kind. *Banjar* was land which had been greatly injured by inundation, and it enjoyed still more favourable terms for the first four years, after which it was treated as *púlej*. Further, "it is ordered," say the *Ayení Akbarí*, "that in *banjar* there shall be taken from each bigah the first year only one or two seers; the second year five seers; the third year, the sixth of the produce together with one *dam;* the fourth year, a fourth of the produce; and after that period as *púlej*." But this indulgence differs according to circumstances. The husbandman may always pay his revenue in money or in kind as he may find most convenient. The *banjar* land at the foot of mountains, and that in the pergunnahs of Sembeleh and Beratch, do not continue in that state, for such a quantity of new earth is brought with the inunda-

Revenue on Perauti Land.

Revenue on Checher and Banjar Land.

no duty shall be taken for pasturage." And again:—"Every country has something peculiar to itself. Some soils produce crops almost spontaneously, whilst others require the greatest exertions of labor and skill. Much depends upon the vicinity or distance of water, and the neighbourhood of towns ought also to be a matter of consideration. So that it behoveth the officers of Government, in their respective districts, to attend to every one of those circumstances, that the demands of the State may be fixed accordingly."—Vol. I, p. 347.

tion, that, when the water subsides, the soil is better than most *púlej*. However His Majesty "out of the abundance of his beneficence" reckoned it only as common *banjar*. The husbandman had his choice to pay the revenue either in ready money or by *kunkút* or by *bhaolí*.

§ 232. Akbar's system first dealt with individual cultivators, and the revenue was to be paid at the commuted money rate upon the actual produce year by year. It is said that he adopted this course because he and his ministers were aware that any fixed money assessment of so large a portion of the produce would very soon prove unequal. In less than ten years it was found that this plan would not work, and the result is given in the *Ayení Akbarí*:—

Akbar's Original Plan finally changed into a ten years' Settlement.

"It was found very difficult to procure the current prices of grain from all parts of the kingdom; and the delays that this occasioned in making the settlements were productive of many inconveniences. In order to remedy these evils, His Majesty directed that a settlement should be concluded for ten years. For the above purpose, having found an aggregate of the rates of collection from the commencement of the fifteenth year of his reign to the twenty-fourth inclusive, they took a tenth part of that total as the annual rate for the ensuing ten years. From the twentieth to the twenty-fourth year, the collections were made upon grounds of certainty, but the five former ones were taken from the representations of persons of integrity; and moreover during that period the harvests were uncommonly plentiful." "Thus," says Lieutenant-Colonel Briggs in his work on *The Land-Tax in India*, "it appears that at a very early period the scheme of Akbar to assess the fields was discovered in practice to be full of embarrassment, and before his measurement even was completed, he was reduced to the necessity of assessing whole villages, and leaving it to the people themselves to distribute the portion payable by individuals. This is one of the most instructive lessons we could have of the extreme difficulty of assessing land in any portion which approaches to the full profit of the landlord. The actual measurement and the

nominal assessment of Akbar exist at the present day in the village records of those countries wherein they were introduced; but they may be deemed rather objects of curiosity than of utility." It may be observed that Rájá Tódar Mal and Mozaffar Khan were jointly appointed to the Vizarat in the fifteenth year of Akbar's reign. It was from this year that the calculations for the ten years' settlement were made. In all probability it was this settlement, and not the original attempt to take as revenue the value of a fixed share of the produce, which made the name of Tódar Mal so celebrated, and if Lieutenant-Colonel Briggs' view of this settlement be correct, the original project was either wholly abandoned or materially modified. Mr. Elphinstone, however, takes a view somewhat different. He says that the commutation rates were occasionally reconsidered with reference to actual market prices, and he concludes his account with the following observation: —"The above measurements and classifications were all carefully recorded; the distribution of land and increase or diminution of revenue were all yearly entered into the village registers agreeably to them; and they still continue in use, even in parts of India which had not been conquered in Akbar's time, and where their own merits have since introduced them."[8] Speaking with especial reference to Bengal, Mr. Shore said in his Minute of the 18th June 1789:—"In every district throughout Bengal, where the licence of exaction has not superseded all rule, the rents of the land are regulated by known rates called Nirk, and in some districts each village has its own. These rates are formed with respect to the produce of the land at so much per bigah. Some soil produces two crops in a year of different species, some three. The more profitable articles, such as the mulberry plant, betel leaf, tobacco, sugarcane, and others, render the value of the land proportionally great. *These rates must have been fixed upon a measurement of the land, and the settlement of Tódar Mal*

[8] *History of India*, p. 473.

may have formed the basis of them." It is possible that Tódar Mal succeeded in carrying out the original scheme, although his predecessor, Khajeh Abdul Majeed Asof Khan, failed. Much depended upon the results of an accurate measurement and the collection of actual information as to prices and other matters. We know from the *Ayeni Akbari* that the measurements were systematically carried on, and when the village registers were complete, the assessment based on *actuals* must have been very different from that at first made upon the information supplied by 'respectable persons.' If the merits of any reform are fairly judged by results, the system of Tódar Mal must be held to have proved beneficial to the raiyats and just to the State, seeing that it lasted without material variation for more than a century, during which time the country is said to have been in a high state of cultivation, and the raiyats in a most prosperous condition.[9]

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[9] *Answer to 38th Question by Gholam Hosein Khan, Appendix No. 16 to* Mr. Shore's *Minute of 2nd April 1788*, who says that the institutes of Akbar continued in use until the time of Bahadur Shah (1707—1712 A.D.)

The following observations written in 1807 will show what was then thought of the principles of Akbar's Revenue Administration, and the expediency of adopting the same lines at the commencement of the present century :—" The assessment of Akbar is estimated by Abul Fuzil at one-third, and by other authorities at one-fourth of the gross produce. But it was undoubtedly higher than either of these rates ; for had it not been so, enough would have remained to the *raiyat* after defraying all expenses, to render the land private property ; and as this did not take place, we may be certain that the nominal one-fourth, or one-third, was nearly one-half. This seems to have been the opinion of Aurungzebe, for he directs that not more than one-half of the crop shall be taken from the *raiyat;* that, where the crop has suffered injury, such remission shall be made as may leave him one-half of what the crop might have been ; and that where one raiyat dies and another occupies his land, the rent should be reduced if more than one-half of the produce, and raised if less than a third. It is evident, therefore, that Aurungzebe thought that one-half was, in general, enough for the raiyat, and thought he ought in no case to have above two-thirds. The mode of assessment in the Ceded Districts and the Deccan still limits the share of the *raiyat* to those proportions, but makes it commonly much nearer to one-half than two-thirds of the produce. If, by fixing the Government rent at one-third, he were allowed to enjoy the remainder, and all such future increase as might arise from his industry, he would never relinquish his farm, and all cultivated land

§ 233. Tódar Mal's settlement of the súbah of Bengal was made in or about the year 1582 A.D.: and the annual

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would soon become private landed property. If more than one-third is demanded as rent, there can be no private property, for it is found that, when land which has formerly been *Enam*, is assessed, as long as the rate is not more than one-third of the produce, the land is regarded as a private estate, and can generally be sold; but that whenever the rate exceeds one-third, the land is scarcely ever saleable, is no longer reckoned private property, and is often abandoned. It is also found, by experience, that one-third of the produce is the rate of assessment, at which persons, who are not themselves cultivators, can rent land from Government without loss, for it enables them, after paying the public demand and being re-imbursed for all expenses and stock employed, to obtain a small portion of land rent. As one-third of the produce is therefore the highest point to which assessment can in general be carried, without destroying private landed property, and as it is also the point to which it must be lowered before persons who are not cultivators can occupy Sircar land without loss, it is obvious that, unless the assessment is reduced to this rate, land can neither be occupied by all classes of the inhabitants, nor ever become private property; nor can any permanent settlement be made, calculated to improve the condition of the *raiyats*, or of the public revenue. I am, therefore, of opinion, that in a permanent settlement of the Ceded Districts, the rent of Government should be about one-third of the gross produce. The proportion of a third of the gross produce, however, was assumed as the average only, and it of course varied in different soils, with reference to the quantity of the produce, or the value of the produce left after payment of all charges and expenses. It was, in other words, a mere theoretical calculation, and by no means formed the principle upon which Sir Thomas proceeded in making his settlements. This will more clearly appear by reference to the method adopted by Sir Thomas Munro, as described by himself in fixing the assessment. The business was begun by fixing the sum which was to be the total revenue of the district. This was usually effected by the Collector, in a few days, by comparing the collections under the Native Princes, under the Company's Government from its commencement, the estimates of the ordinary and head assessors, and the opinion of the most intelligent natives; and, after a due consideration of the whole, adopting such a sum as it was thought would be the fair assessment of the district in its present state, or what the inhabitants in similar circumstances under a Native Government would have regarded as somewhat below the usual standard. The amount fixed by the Collector was usually from five to fifteen per cent. lower than the estimates of the assessors, for it is the nature of assessment, proceeding from single fields to whole districts, and taking each field at its supposed average produce, to make the aggregate sum greater than what can be easily realized." [*Extract from the Report of the Principal Collector of the Ceded Districts, dated 15th August* 1807, *quoted in the Governor-General's Minute of the 26th September* 1832.]

amount of revenue assessed by him was Rs. 1,06,93,152. The first increase of this assessment was made seventy-six years afterwards in 1658 by Shujá Khan, who raised the annual revenue to Rs. 1,31,15,907. No further material enhancement was made until the time of Jaffer Khan,[1] otherwise known as Murshed Kúli Khan, who having put aside the zemindars and others who stood between the Government and the cultivators, managed the collection of the revenue entirely by his own officers. By these means, and by supplying the raiyats with implements of husbandry and with advances of seed grain, he increased cultivation, and augmented the revenue to Rs. 1,42,88,186. He imposed the first of the *suhbadarí abwábs*, or imposts, namely, *khas-navísí*, which was then but a trifling fee to the *khalsa*, or treasury officers. He removed the seat of Government in 1707 from Dacca to Múrshedabád, which he called after himself. He used to say that a Mahomedan was a sieve, which retained nothing, and that a Hindu was a sponge, which might be squeezed at pleasure. Accordingly he employed Hindus only in the collection of the revenue, and these he squeezed effectually, when he suspected that the revenue had been absorbed, so that the full amount did not reach the treasury. He divided the *súbah* into thirteen *chaklas*, over each of which he placed a collector. Many of these collectors subsequently developed into zemindars. The former zemindars were put by him in close confinement, in which many of them were detained during the whole of his tenure of office, while his Bengali amils collected the revenue. His exclusive employment of Hindus to some extent accounts for the fact that, when we obtained the Díwání, we found all the zemindars to be Hindus,

Subsequent Assessments of Bengal under Native Rule.

[1] He was born of Bramin parents. Bought while an infant by a Mahomedan, he was carried to Persia, and there reared in the creed of Islam. On the death of his master, he found his way to the Dekhan, and got into the service of Alamgir, who gave him the Díwání of Hyderabad, with the title of *Kar Tallab Khan*. From that he was transferred to the same post in the *súbah* of Bengal, with the title of *Murshed Kúli Khan*.

though the Government was Mahomedan. Jaffer Khan died in 1725, and was succeeded by his son-in-law Sujah-ud-din, whose assessment for 1728 was Rs. 1,42,45,561. He set at liberty the zemindars who had been confined by his predecessor, on condition of their agreeing to pay the amount of revenue which had been assessed upon their zemindarís. He imposed four additional *subahdarí abwábs*. Sujah-ud-din was succeeded in 1740 by Aliverdi Khan, who died in 1756. Three further *abwábs* were imposed in his time, one of which was the famous Maratta Chauth.[2] The highest assessment before the time of British rule was made by Kasim Ali, who in 1763 raised the revenue to Rs. 2,56,24,223. Mr. Shore thought,[3] however, that, notwithstanding the extreme rigour of his proceedings, there is no proof that this amount of revenue was ever actually realized; and that, even if it were realized for a year or two, the country was incapable of bearing this assessment permanently. He calculated that the impositions of Jaffer Khan, Sujah and Aliverdi amounted to an increase of about 33 per cent. upon the assessment of 1658, while the increase of the zemindar's exactions from the raiyats could not be less than 50 per cent.

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[2] *Minute of 18th June* 1789, § 41.

"The chief source of the revenue of all Indian Governments has consisted, from time immemorial, of a portion of the produce of the land." . . . . . "It is obvious that the surplus which remains from the gross produce of the land, after deducting all expenses, is the fair measure of its power to pay an assessment. But as that surplus varies in its relation to the whole produce in different soils, any tax proportioned to the latter only must be unequal to the extent of such variation; and this inequality by creating an artificial monopoly in favour of the soils yielding the greatest proportion of net produce, and abstracting the extension of cultivation to those less favourably circumstanced in that respect, will have a tendency to check production, and to take more from the whole body of the people than is brought into the treasury of the State." [*Minute by the Governor-General, dated Simla the 26th September* 1832.] A land-tax like that which was levied in India is bad for all the reasons for which tithe was condemned; and it is worse inasmuch as it takes so much more than tithe took. Dr. Smith has shown that a land-tax assessed according to a general survey and valuation, however equal it may be at first, must in the course of a very moderate period of time become unequal.

[3] *Idem*, §§ 47, 77.

§ 234. In History, as in Law, contemporary exposition has great value.[4] Those who lived at or near the time when occurrences took place, and systems of administration were in active operation, may reasonably be supposed to be better acquainted than their descendants with facts and results. It will, therefore, be useful to see what the statesmen, who directed the course of affairs in India during the latter half of the eighteenth century, thought of the Mahomedan system and the condition of the people, as the English found it on their accession to the Sovereignty of the country. Mr. (afterwards Sir) J. Macpherson, who acted as Governor-General after the departure of Mr. Hastings,[5] wrote as follows in 1786 :—"Nothing was more complete, more simple, correct, and systematic, than the ancient revenue system of this country. It was formed so as to protect the people who paid it from oppression, and secure to the Sovereign his full and legal rights. The helplessness and the poverty of the native, combined with the force of despotism to the establishment of such system. For, to draw the greatest regular revenue from millions of unarmed cultivators and manufacturers, a system was necessary, that connected the security of every *raiyat* or peasant with the punctuality and equalization of the payments. A thousand checks became necessary, from the accountant and assessor of the village, through many gradations, to the accountant-general of the exchequer. Such was the nature of these checks, that if oppression had been committed, or a default of payment arose in any quarter, the error could be found out by investigation and re-examination of accounts, which were faithfully and regularly recorded in every district of the country, and from thence transferred, through different offices, to the final grand account of the year, in the khalsa or exchequer. This equal, regular, and just system, arose

Contemporaneous Exposition — Observations of Sir John Macpherson on the previous System.

[4] "Contemporanea expositio est optima et fortissima in lege."

[5] Mr. Hastings resigned his office, and embarked for England on the 8th February 1785.

originally, perhaps, from the mild principles of the Gentoo religion, which the ruling, or the Bramin power, found it necessary to accommodate, for the support of the indolent and idle castes, to the equal assessment of the cultivation of the soil and the industry of the manufacturer. When the ruling power devolved upon chiefs not of the Bramin race, and afterwards on the Mahomedan conqueror, both found it necessary to continue the original system. We have reason to suppose that the Mahomedans improved it, by adopting some of the ancient Persian and Arabian revenue regulations. The revenue terms which occur in accounts are mostly of Persic or Arabic etymology; nor is the revenue system of those parts of India, where the Mahomedan conquests have not extended, found so perfect as that where their administration has long prevailed. Conquest must, at first, have disturbed the established regulations of every country. A short time would convince the invaders, that justice and lenity towards the inhabitants could alone give value to the conquest. The tyrant and the conqueror might demand a greater revenue than the regular due of Government, and they might put the individuals, who were called upon to pay it, to the torture for more, and finally to death; but such acts would soon be found to have the same effect as killing the individual bees for their particular portions of honey. A revenue which many millions were to pay in small individual proportions, was only to be collected like the honey of the hive. The whole nation of the industrious was to be cherished and supported in their respective functions of industry, and at this day we find that the raiyats and manufacturers of Bengal quit the field of the oppressor, and punish him by leaving his district a desolate waste. Such is the chief shield which these helpless people have to oppose against oppression; and it is more powerful than can, at first view, be imagined by an European. The raiyat possesses other means of defence, and they are a disposition and great ability, in his little line, to defraud the collector of the revenue. Innumerable, I am

told, are his acts and endeavours in this way: and here comes the first aid of the *regular ancient system of accounts.* The raiyats will not venture to refuse to pay the *established due to the Sircar*, or Government. Custom is a law, whose obligation operates in their own defence, nor have they an idea of disputing it; they consider it as a species of decree from fate. But as the value of money, in proportion to its plenty, must have decreased in India as well as in Europe, so it has been found that the raiyats of a village and of a whole district could pay a greater revenue than that originally settled by custom. Hence arose the oppressive catalogue of *abwábs*,[6] or special additional

[6] *Abwáb* is the plural of *bab* = a head, an item; and means 'items,' or 'miscellaneous items,' *i.e.* of taxation. When the Mogul authorities desired to levy an additional sum, the usual way of accomplishing this object was, not by increasing the *tumár* or original amount of revenue payable by the zemindar or farmer, but by imposing a tax for some particular purpose, which tax was levied in a fixed proportion to the original *jama* or revenue. The purposes or pretexts, for which these miscellaneous taxes or *abwábs* were imposed, were so numerous that it would be difficult to give a complete list of them. A few will suffice as an example: *Chauth Maratta*, in order to pay the tribute of *one-fourth* of the *jama*, levied by the Mahrattas—*abwáb faujdari*, or fees for the support of the chief Police Magistrate and administration of criminal justice—*abwáb rahdari*, for the repair of roads, which never were repaired—*zar mathaut* consisting of four items, *viz.* presents at the Punya or annual settlement of the revenue; charge for *khilats*, or honorary dresses for the members of Government; charge for repairing the banks of the river at Múrshedabád; and fees to the Nazir who commanded the escort which brought the collections to headquarters—*khas navisi*, fees for the Government accountants—*sarf-i-sikka*, an impost to cover the loss on the exchange of coins of different mints. The zemindars in their turn levied from the raiyats all the *abwábs* that they themselves had to pay, generally contriving to make a profit out of the transaction; and they further imposed additional *abwábs* of their own devising and for their own benefit; *e.g. abwáb mehmani*, to defray the expenses of the zemindar on his visiting the village; *haldári*, a tax on marriages. Any unusual occurrence, a Governor's visit or a petty war on some distant frontier was and is made a pretext for imposing a new cess. One ingenious zemindar has within the last few years made the construction of a *line of telegraph* a ground for a fresh contribution, which, the raiyats were taught to believe, went to the maintenance of the posts and wires. In the District of Jessore, before the legislation of 1793, out of fourteen articles imposed upon the zemindars by the Nazim, twelve were levied from the raiyats, and *nineteen other articles in addition.* The cesses levied from the raiyats were variously regulated according to the number of months or by

assessments, by Government. The *abwábs*, or successive additional taxes, make regular heads in the accounts of every village and district; nor are the *abwábs*, established openly by Government, of that oppressive nature which Mr. Francis in his ingenious minutes has supposed. The sources of real oppression are the secret *abwábs*, or unavowed taxes, which the great farmer or zemindar imposes at will on the raiyats, and of which we have such cruel examples in the investigation at Rungpore."[7]

§ 235. The principles of Mogul taxation, however limited in practice, were intended to give the Sovereign a proportion of the advantages arising from extended cul-

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other distinctions, but were generally calculated at so much in the rupee, the first on the original (*asil*) rent, and subsequent ones on the *asil*, plus the previous cesses. The zemindars and other proprietors, being themselves exempted by the Permanent Settlement from the imposition of any new *abwábs* or cesses by Government, were directed in concert with the raiyats to revise the former cesses levied upon the latter, and to consolidate the whole with the *asil* into one specific sum, after which they were strictly forbidden to impose any new *abwábs* upon the raiyats under any pretence whatever. Every such exaction was to be punished by a penalty equal to three times the amount imposed for the entire period of the imposition, and all stipulations for the payment of *arbitrary and indefinite cesses* were declared to be null and void. Notwithstanding these strict prohibitions, cesses have continued to be imposed down to the present day. The subject recently attracted the attention of the Bengal Government, and inquiries were instituted, which showed that these *abwábs* are of general prevalence all over Bengal, and that they certainly have not diminished in numbers since the Permanent Settlement. In the district of the 24-Pergunnahs round about Calcutta, *no less than* 27 *different kinds of cesses* were found to be usually levied a few years ago. (*Report on the Administration of Bengal*, 1872-73, pp. 23, 29.) The fact really is that the imposition of fresh *abwábs* is a mode of enhancing rents, sanctioned by long custom and acquiesced in by both parties. Mr. Harington speaks of cesses as being in fact a considerable part of the neat rents (Analysis, Vol. II, p. 19), and, in the words of the Bengal Administration Report, "at present the people certainly prefer to pay moderate cesses to an enhancement of rent." They regard an enhancement decree as the fixing of a new *asil*, upon which future cesses will be sure to be calculated, and have just the same dislike to it, as their forefathers had to *pattas* in which the former *asil* and *abwábs* were to be consolidated into a fixed sum.

[7] *Minute of the 4th July 1786*—Selection of Papers from the Records of the East India Company published in 1826, Vol. I, p. 454. This compilation will hereafter be referred to as *Revenue Selections*.

tivation and increased population. As the cultivated area of the country was extended, new land being brought under tillage in order to meet the enlarged demand for food created by an increase in the number of consumers, the *tumár* or standard assessment, *i.e.* the total of what Government received in money or in kind, was augmented. In order to carry out these principles, every extension and every diminution of cultivation was to be recorded; and inferior officers[8] were stationed throughout the country to collect the necessary information, to note and register all matters relating to the soil, its rents and produce. It is clear that any increase of revenue obtained in this way did not involve an increase of the demand made upon the cultivators, did not necessitate an enhancement of the rates payable by them; but it was very different with the *suhbadarí abwábs* or imposts. They were a direct raising of the assessment, and involved, *first*, directly, and, *secondly*, indirectly, an enhancement of the rates paid by the *raiyats* or cultivators. These *abwábs* were levied upon the *tumár* or standard assessment in certain proportions to its amount. Thus, for example, the impost known as *sarf-i-sikka*, which was imposed to cover the loss on the exchange of coins of different mints, was nine rupees, six annas per cent., *i.e.* upon the assessment as paid to Government by the farmer or *zemindar*, who was supposed to levy the impost from the *raiyats* in the same proportion or according to the same percentage. It is clear, however, that the farmer or zemindar, in order to pay the full percentage of increase to Government, must take something more from the cultivators in order to cover the expenses of collection. The element of uncertainty thus introduced was abused for the purpose of exaction: and the *raiyats* had to pay *directly* the increase which the Government required, and *indirectly* all that the farmer or zemindar exacted under cover of the Government demand. Where the proportion or percentage was not

Original Principles of Mogul Taxation.

Effect of the levy of Abwábs.

[8] See *ante*, page 433, *note*.

defined, the levy of the impost was at the discretion of the zemindars or farmers; and in many cases, though intended to have a partial operation merely, was extended to situations in which Government had no intention of claiming it. Even before the time of Jafier Khan, the *zemindars*, farmers and officers of Government had been in the habit of levying imposts or cesses upon the principle just explained for their own benefit. Jafier Khan merely adopted and utilized the device for his own benefit and that of the Government. Succeeding Nazims increased the *abwábs*, and thus at once forced the zemindars and farmers to make fresh demands upon the *raiyats*, and gave them a pretext for exacting on their own accounts.[9] During the decay of the Mogul Power, when the Governors of Provinces and Districts were practically independent, and thus able to practise oppression and extortion on their own account, and without restraint or check, the only limit to exaction was the ability of the cultivators to give what was demanded of them.

Condition of the People under Native Rule.

§ 236. Speaking of the condition of things which was the result of these abuses, and which the English found existing in the country, Mr. Shore said:—"At present no uniformity whatever is observed in the demands upon the raiyats. The rates not only vary in the different collectorships, but in the *parganas* composing them, in the villages and in the lands of the same village; and the total exacted far exceeds the rates of Tódar Mal."[1] And again —"We know also that the zemindars continually impose new cesses on their *raiyats*, and having subverted the fundamental rules of collection, measure their exactions by the abilities of the raiyats."[2] In a previous Minute[3] he had observed that "the constitution of the Mogul Empire, despotic in its principle, arbitrary and irregular in its practice, renders it sometimes almost impossible to discriminate between power and principle, fact and right; and if custom

[9] The above is taken mainly from paras. 30 to 43 of Mr. Shore's *Minute of the 18th June* 1789.

[1] Para. 219, *id.* [2] Para. 528, *id.* [3] Of the 2nd April 1788.

be appealed to, precedents in violation of it are produced." On the 3rd November 1772, the President and Council of Fort William wrote thus:—"The Nazims exacted what they could from the zemindars and great farmers of the revenue, whom they left at liberty to plunder all below, reserving to themselves the prerogative of plundering them in their turn, when they were supposed to have enriched themselves with the spoils of the country."[4] In the proceedings of the President and Select Committee, dated 16th August 1769, Supervisors (of whom we shall hear more hereafter) were appointed, and in the Letter of Instructions issued to them there is the following deliberate expression of opinion:—"The truth cannot be doubted, that the poor and industrious tenant is taxed by his zemindar for every extravagance, that avarice, ambition, pride, vanity or intemperance may lead him into, over and above, what is generally deemed the established rent of his lands. If he is to be married, a child born, honours conferred, luxury indulged, and *nazeranas* or fines exacted even for his own misconduct, all must be paid by the *raiyat.* And, what heightens the distressful scene, the more opulent, who can better obtain redress for imposition, escape, while the weaker are obliged to submit."[5]

§ 237. Opinions might be multiplied to show the misery and degradation of the people and the utter absence of law or order in the country;[6] but it will be sufficient,

[4] *Fifth Report* of the Select Committee of the House of Commons, who add:—"The whole system thus resolved itself, on the part of the public officers, into habitual extortion and injustice, which produced, on that of the cultivator, the natural consequences, concealment and evasion, by which Government was defrauded of a considerable part of its just demands." Mr. Shore, in his Minute of the 18th June 1789, similarly observed: "We must reflect that we are governing a people whose habits are implanted by despotism, who in their practice adopt the licentiousness of it, and the evasions and subterfuges which it gives rise to."

[5] *Supplement to Colebrooke's Digest*, pp. 174, 185.

[6] The reader may be reminded that the zemindars and farmers, whose acts required the control of the law, were charged with the administration of justice and the duties of police, just as the holders of fiefs under the feudal system exercised similar functions—See I Hallam's *Middle Ages*, 241.

upon a question, as to the merits of which difference of opinion is scarcely possible, to quote finally the opinion of the statesman who carried the Permanent Settlement into effect in Bengal. "The vague term 'usage,'" observed Lord Cornwallis in his Minute of the 11th February 1793, "was the only rule for deciding upon any question of revenue and the rights of those concerned in the payment of it; and custom, which varied in almost every district, and precedent might be pleaded in justification of every species of exaction and oppression."[7] When modern reformers talk with complacent benevolence on paper about restoring the *raiyats* of the present day to their ancient customary rights and the ancient land-law of their country, it is very desirable that we should understand, by the light of facts, the condition to which this plausible proposition would redeliver them, if it were literally carried into effect.

Opinion of Lord Cornwallis.

[7] And see para. 31 of Revenue Letter to Bengal, dated 15th January 1819—I *Revenue Selections*, 355.

CHAPTER XIX.

Landholding, and the Relation of Landlord and Tenant in India—From the First Settlement of the English to the Grant of the Díwání.

§ 238. The first factory of the English in India was established at Surat under the authority of a *farmán* of *Jehangír* dated 11th January 1613. In 1634 the Emperor, *Sháh Jehán*, granted a *farmán*, permitting the ships of the Company to enter the Ganges or rather to resort to the port of Piplí at the entrance of the western branch of that river; and in 1642 a factory was accordingly established at Balasore. Ten years afterwards in 1652, Mr. Gabriel Boughton, a surgeon of the Company, having procured the imperial favour by curing certain members of the Emperor's family, obtained permission for unlimited trade in Bengal, free of customs, but subject to an annual payment of Rs. 3,000. *Shujá*, the second son of *Sháh Jehán*, having been appointed Súbahdár of Bengal, took up his residence at Rájmahal; and Mr. Boughton, having come to pay his respects to him, was fortunate enough to make another successful cure, in consequence of which he obtained the prince's favour and permission for the English to establish a factory at Húghlí, where the Portuguese had previously erected a well-fortified settlement. *Shujá*, who was favourable to the English, governed Bengal until 1660, when upon the death of *Sháh Jehán* in 1657, having taken up arms with a view to obtain the throne, and being defeated by Aurangzíb's Generals, he fled to Arakán and was there murdered. *Sháista Khan*, maternal uncle of Aurangzíb, was the next *Súbahdár* of Bengal. He treated the English with very much less favour. He exacted a

First Settlements of the English in India.

duty of 3½ per cent. on their merchandize, and his officers extorted considerable sums from their factors. A hostile spirit was thus created; and a quarrel between three English sailors and the native police at Húghlí brought on actual hostilities, in consequence of which, on the 20th December 1686, Job Charnock abandoned Húghlí and dropped down the river of the same name to the little village of *Sútanatí* (*Chuttanutty*), which afterwards became the site of Calcutta. From *Sútanatí* he was forced to retire to *Injellí* at the mouth of the river Húghlí, and the English factories including those at *Kasimbazár* and *Patna* were taken and plundered. Captain Heath now arrived with two ships from England, and having plundered Balasore, and made an unsuccessful attempt upon Chittagong, he took the Company's servants and effects on board and landed them at Madras. Bengal was thus wholly abandoned. The Emperor Aurangzíb had been greatly exasperated at the hostilities of the English and had at one time given orders to expel them entirely from his dominions; but the loss of their commerce was felt by the native Government, and the English ships were able to prevent the pilgrimage of pious Mahomedans by sea to Mecca. He was therefore induced to listen to two commissioners who were sent from Bombay, and a reconciliation was effected, in consequence of which he directed the *Súbahdár* of Bengal to invite Charnock to return to Bengal. After a promise of compensation from the Emperor for the goods that had been plundered, Charnock returned to *Sútanatí* on the 24th August 1690, and laid the foundation of Calcutta.[8]

Calcutta founded A.D. 1690.

§ 239. Eight years after, in 1698 permission was obtained from *Azímus-Sháh*, grandson of *Aurangzíb*, and *Súbahdár* of Bengal, Bahár and Orissa to purchase from

[8] Barrackpúr is called by the natives *Achanuk* after Job Charnock. Calcutta is derived from *Kali ghát*, *i. e.* the landing place, place where people bathe, sacred to the goddess *Kali*, which is near the city on the bank of a creek of the river Húghlí. *Alinagur* is another name by which Calcutta was formerly known.

the *zemindars* the *talukdárí* right of Calcutta and the adjacent villages of *Sútanatí* and *Gobindpúr*, subject to the annual payment of Rs. 1,195. In the year 1717 the Emperor *Farokhsír* out of gratitude at being cured of a disease by Mr. Hamilton, a surgeon of the Company, granted to the English the privilege of free trade, and also permission to purchase the *talukdárí* right of thirty-eight more villages adjacent to the three purchased in 1698. This purchase was not however effected, as the then *Súbahdár* of Bengal, *Jafier Khan* (*Murshed Kuli Khan*) not being favourably disposed to the English would not allow the *zemindars* to make the sale. *Jafier Khan* died in 1725, and was succeeded by his son-in-law *Sujah-ud-din.* On his death, his son, *Serferaj Khan*, took possession of the *subahdárí* or viceroyalty, but was killed in battle with *Aliverdi Khan*, who, having obtained a *sanad* or grant of the *subahdárí* from the Emperor, marched with an army to assert his rights. Aliverdi Khan[9] was *Súbahdár* till his death on the 9th April 1756, when he was succeeded by his grandson *Seráj-ud-daulah*, who being exasperated with the English, because Mr. Drake, the Governor of Calcutta, refused to surrender one Kishan Das, son of Raja Raj Bullubh, Governor of Dacca, marched to attack Calcutta and captured Fort William on the 21st June 1756. One hundred and forty-six persons, of whom about one-third were English, were taken prisoners and, with the exception of twenty-three, all perished miserably in the Black Hole on the night of that day. Colonel Clive and Admiral Watson, being sent from Madras to retrieve these disasters, recovered Calcutta on the 2nd January 1757.[1] On the 9th February 1757 a treaty was concluded with *Seráj-ud-*

Tragedy of the Black Hole.

[9] With his permission, when the Mahrattas invaded Bengal in 1741, the celebrated *Mahratta Ditch* was constructed for the defence of Calcutta.

[1] Some lawyers haved based the right of the English to Calcutta on conquest. In 1782, Hyde, J. (Chambers, J. concurring), said—"We say the inhabitants of this town are all British subjects, because this town was conquered by Admiral Watson and Colonel Clive, but that does not extend to subordinate factories."—*In the Goods of Baksh Ali Gauni*, Morton's Decisions, p. 103.

daulah, by which he confirmed the privileges of the Company, allowed their goods to pass free of duty by land and water, and permitted them to fortify Calcutta and establish a mint. He also stipulated that he would allow the *zemindars* to grant to the Company the villages in the vicinity of Calcutta given by the Emperor's *farmán* "but detained from them by the *Súbah*." Hostilities, however, broke out again immediately, and on the 23rd June of the same year the battle of Plassey was fought, the result of which was that *Mír Jaffier*, *Seráj-ud-daulah's* paymaster and general of the forces, was made *Súbahdár* by the English; and *Seráj-ud-daulah*, being seized at Rájmahal in his flight, was brought back to Múrshedabád and assassinated by order of Míran, son of Mír Jaffier. By the treaty concluded with Mír Jaffier he agreed to grant to the Company the land within the Mahratta Ditch and six hundred yards without the ditch;[2] also that the land lying to the south of Calcutta as far as *Kalpí* should be under the *zemindarí* of the Company, who were to pay the revenue "in the same manner with other zemindars." The revenue of this *zemindarí* was fixed at Rs. 2,22,958; and, as it included twenty-four *parganas* or local divisions, it gave its name to the district around Calcutta which is still known as the district of the *Twenty-four Parganas*.

Battle of Plassey.

Twenty-four Parganas acquired.

§ 240. In 1759 Mahomed Alí Gohur,[3] son of the Em-

[2] The *Sanad* for the free tenure of the town of Calcutta, by which the rents of the Mauzahs Gobindpúr, Chauringhí, &c. amounting to Rs. 8,836 were 'forgiven,' will be found at page 25 of Vol. I of *Aitchison's Treaties*.

[3] Alí Gohur, who took the title of *Sháh Alam the Second* on being recognized as Emperor by Ahmed Sháh Durání after the battle of Pánipat, was the eldest son of *Alamgír the Second*, who was raised to the throne (A.D. 1754) by Ghází-ud-dín, the Commander-in-Chief, after he had deposed and blinded Ahmed Sháh. Alamgír was assassinated under the orders of the same Ghází-ud-dín (November, A.D. 1759) to prevent his combination with Ahmed Sháh Durání, who was then advancing to invade India for the fourth time. Alí Gohur was then absent in Bengal, and Ghází-ud-dín raised to the throne another youth of the royal family, who was never generally acknowledged, as Ghází-ud-dín almost immediately fled from Delhi before the advance of Sedásheo Bháo and the Mahrattas, and took refuge in the Jât country. Ahmed Sháh Durání having destroyed the power of the Mahrattas in the battle of Páni-

peror *Alamgír II*, assisted by the *Súbahdár* of Oudh, invaded Bahár; but, upon Clive's march to Patna, the Súbahdár deserted him, and he was forced to throw himself upon Clive's compassion, who sent him five hundred gold mohurs.[4] In the following year, 1760, his father having been assassinated by *Ghází-ud-dín*, he assumed the title of Emperor and again invaded Bahár, but was defeated by Colonel Calliaud on the 22nd February, after which he marched upon Patna. Miran, Jaffíer's son, upon whose vigour his father's administration principally depended, having been killed by lightning in his tent on the 2nd July, the English now determined to depose the feeble *Mír Jaffier* in favour of his son-in-law *Mír Kasim.* In carrying out this arrangement, it was stipulated by a treaty concluded with *Mír Kasim* on the 27th September 1760, that the three districts of Bardwan, Midnapore and Chittagong, which yielded about one-third of the entire revenue of Bengal, should be assigned to the Company to meet the charges of the army and provisions for the field. Major

Bardwan, Midnapore, and Chittagong assigned to the Company.

pat (7th January 1761) returned to Kabul without attempting to profit by his victory, and did not afterwards interfere in the affairs of India. His recognition of Ali Gohur as Emperor under the title of Sháh Alam may indeed be regarded as an acknowledgment that the Mogul sovereignty was still in existence; but most historians consider this sovereignty to have terminated with the life of Alamgír II—See Elphinstone's *History of India*, p. 665, and Mill's *History of British India*, Vol. II, p. 478. Mr. Mill, speaking of *Sháh Alam the Second*, says, that he "never possessed a sufficient degree of power to consider himself for one moment as master of the throne." He was, in fact till his death, a mere puppet in the hands of whatever power had the ascendency for the time. His eyes were put out by Ghulám Kadir in 1788. He was again restored to his nominal throne by Sindia. After the battle of Delhi in September 1803, he put himself under British protection; and from this date the Mogul sovereignty must certainly be held to have finally terminated.

[4] A gold mohur is equivalent to sixteen rupees. It was on this occasion that Mír Jaffier, who had been terribly alarmed at the Prince's advance, granted, out of gratitude to Clive, as a *jagír* or assignment, the quit-rent which the Company had agreed to pay for the zemindarí of the Twenty-four Parganas. By a subsequent *sanad* of the Nawáb, dated 23rd June 1765, and a *farmán* of the Emperor, dated 30th September 1765, this *jagír* was confirmed to Clive for ten years from the 16th May 1764, after which, or at the death of Clive, if it occurred before the expiry of this term, it was to revert to the English Company as an unconditional jagír and perpetual gift.

Carnac, having again defeated the Emperor's troops early in 1761, made overtures of peace which were gladly accepted, and the Emperor was conducted to Patna, where he invested *Mír Kasim* with the *subahdárí* of Bengal, Bahár and Orissa, on condition of his paying twenty-four lákhs of rupees annual revenue. On this occasion the Emperor offered to the Company the *Díwání* of the three provinces, which was actually granted four years after. Serious disputes having arisen between *Mír Kasim* and the English, war broke out at last. *Mír Kasim* having been defeated, and having murdered the English prisoners who fell into his hands, fled to Oudh ; and *Mír Jaffier* was reinstated in the *subahdárí*. By a treaty concluded with him on the 10th July 1763, the cession of Bardwan, Midnapore and Chittagong was confirmed. On the 23rd October of the following year (1764), the Nawáb Vizier of Oudh, who had invaded Bahár, was decisively defeated at the battle of Buxar. *Mír Jaffier* died in January 1765 and was succeeded by his son *Nadjam-ud-daulah*, who by a treaty dated 25th February 1765 confirmed all previous grants to the Company, and made over to them the military defence of the country, agreeing to maintain such troops only as were immediately necessary for the dignity of his person and government and for the business of the collections throughout the provinces. In less than six months after the date of this treaty, the Emperor granted the Díwání to the Company. The exact position of the English in India at the time of the grant of the Díwání, but before such grant, was as follows :—(1) A Company incorporated under the authority of the British Government had obtained a free tenure of the site of Calcutta ; (2) The same Company had obtained a *zemindarí*[5] of the Twenty-four

Position of the English at the time of the Grant of the Díwání.

[5] The word *zemindar* is derived from '*zemin*' = land, and '*dar*' = a holder or possessor. Its actual meaning varied and varies in different parts of India. In some places it meant properly a 'landholder.' In other places it meant the person who collected the revenue on behalf of the Government. In the former sense it designated in some parts of the country the holder of a small portion of land, generally a share in that belonging to the

Parganas; (3) also a cession from the *Súbahdár* of the revenue of the districts of Bardwan, Midnapore and Chittagong; (4) were entrusted with the military defence of the three Provinces of Bengal, Bahár and Orissa, the cost of which was to be defrayed from the revenue of these three districts; and (5) enjoyed peculiar privileges of trade.

The Grant of the Díwání.

§ 241. The *farmán* or patent by which Sháh Alam, the titular Emperor of Delhi, made a perpetual grant to the East India Company of the Díwání of the three Provinces of Bengal, Bahár and Orissa, is dated the 12th August 1765, and runs as follows:—"We have granted them the Díwání of Bengal, Bahár and Orissa, from the beginning of the Fasl-i-rabí (spring harvest) of the Bengal year 1172, as a free gift and *altamgha*[6] without the association of any other persons, and with an exemption from the payment of the customs of the Díwání, which used to be paid by the Court. It is requisite that the said Company engage to be security for the sum of twenty-six lákhs[7] of rupees a year for our royal revenue, which sum has been appointed from the Nawáb Nadjam-ud-daulah Bahádur, and regularly remit the same to the royal Sarkár (Government); and in

village community; and the *landholder* might even be the actual cultivator. In other parts it was applied to the holder of a large tract, who collected the revenue from the actual cultivators, levied internal duties and customs upon articles of trade, imposed petty taxes, and even administered civil and criminal justice. In times of disturbance and during the decline of the Mogul Empire, the power of these *zemindars* varied according to local circumstances and the propinquity of the Emperor or some powerful Viceroy. The different meanings of the word are to be found in the different phases of the history of the country. '*Zemindarí*' means the office of a zemindar, the tract of land held by him, and for which he was liable, whatever was the nature of his holding, to pay revenue to the Government. Land granted free of revenue was termed *lakheráj*, from *la* = not, and *kheraj* = tribute, revenue.

[6] 'Royal grant,' so called from two Turkish words signifying 'red' and 'seal,' such grants having been formerly sealed with a red seal.

[7] A lákh is one hundred thousand. Assuming the rupee to be worth two shillings, twenty-six lákhs of rupees are equivalent to £260,000. The grant was, therefore, subject to a considerable annual payment by the grantee to the grantor.

this case, as the said Company are obliged to keep up a large army for the protection of the Provinces of Bengal, &c., we have granted to them whatsoever may remain out of the revenues of the said provinces, after remitting the sum of twenty-six lákhs of rupees to the royal Sarkár and providing for the expenses of the Nizámat."[8] The meaning of the term '*Díwání*' has been often misunderstood.[9] '*Díwán*' means literally 'a royal court,' 'a council of state,' 'a tribunal of revenue or justice,' 'a minister,' 'a chief officer of state'; and, under the Mahomedan Government, it was applied especially to the head Financial Minister, whether of the State or of a province, who was charged with the collection of the revenue, and invested with extensive judicial powers in all civil and financial cases. It was the duty of the *Díwán* of a province to remit the revenue when collected to the Imperial Treasury. '*Díwání*' means 'the office, jurisdiction, and emoluments of a Díwán'; and the grant of the Díwání was a grant of the right to collect the revenue of Bengal, Bahár and Orissa, and to exercise judicial powers in all civil and financial causes arising in those provinces.[1] The *farmán*, which granted the Díwání to the East India Company, was however something more than a grant of the right to collect the revenue of the three provinces and to exercise jurisdiction in civil and financial or revenue cases. It was a perpetual grant to the Company of the revenue when collected subject to the payment of twenty-six lákhs to the Emperor and to defraying the expenses of the Nizámat.

Meaning of 'The Díwání.'

§ 242. In order to understand this latter condition, we must understand what is meant by the *Nizámat*. Under

[8] Aitchison's *Treaties*, Vol. I, p. 61.

[9] For example, Lord Mahon (History of England) speaks of "a Díwání or public deed." The *deed* by which the Díwání was granted was called a *farmán*.

[1] See Wilson's *Glossary—Title*, DIWAN. The *Committee of Circuit* in their proceedings of the 20th August 1772 say—"The Díwání may be considered as composed of two branches: 1*st*, the collection of the revenue; 2*nd*, the administration of justice in civil cases." See Harington's *Analysis*, Vol. II, p. 25.

the Mahomedan Government, the *Názim* was the chief officer charged with the administration of Criminal Law and Police, just as the *Díwán* was charged with the administration of Civil Law and the collection of the revenue. The term '*Nizámat*' denoted 'the office, duties of the Názim, the administration of Police and Criminal Law.' In the palmy days of the Mogul Empire, it was usual to conduct the administration of the more distant *Súbahs* or provinces through a Viceroy or Governor called a *Súbahdár*, who was occasionally a relation of the Emperor, and to whom were entrusted not infrequently both the *Díwání* and the *Nizámat*. As *Díwán* he collected and remitted the revenue and administered civil justice. As *Náib* or *Nawáb*[2] *Názim, i.e.* deputy of the Minister for the administration of criminal justice and police, who was near the person of the Emperor, he administered criminal justice and managed the police of his province. The *Súbahdár*[3] of Bengal, Bahár and Orissa formerly exercised these double functions. When the Díwání was granted in perpetuity to the English Company, he still retained the Nizámat, still continued to be the Nawáb Názim, the Deputy of the Emperor's Názim, for the administration of criminal justice and police in the Provinces of Bengal, Bahár and Orissa; and it was for the expenses of this *Nizámat* or office of *Názim* that the Company were required to provide out of the revenue of Bengal, Bahár and Orissa, when the Díwání of these three provinces was granted to them by the Emperor's *farmán* on the 12th August 1765.[4]

Meaning of 'The Nizámat.'

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[2] *Nawáb* is the honorific plural of *Náib*, which means 'a deputy.'

[3] The office of Súbahdár was not hereditary, nor even granted for life; but, in the weakness and decline of the Mogul Empire, the Súbahdárs became in many instances too powerful to be removed; and a son or other relation being on the spot and grasping the reins of power often succeeded with or without investiture by the Emperor.

[4] The *Súbahdár* of Bengal, Bahár and Orissa usually resided at Múrshedabád. When, upon the grant of the Díwání to the Company, the Nizámat was still left in the hands of *Nadjam-ud-daulah*, he was styled with special reference to this office *the Nawáb Názim*, and the same title continued to be given

Military authority conceded by the Farmán.

§ 243. But there is another and a very important point of view in which the Emperor's *farmán* may be considered, and this is with reference to the words "as the said Company are obliged to keep up a large army for the protection of the Provinces of Bengal, &c." These words conceded to the Company authority to undertake the military defence of Bengal, Bahár and Orissa, to exercise military power, and so to assume one of the most important prerogatives of sovereignty. In the agreement of the 30th

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to the members of his family who succeeded him. As the rights of the *Nawáb Názim of Mírshedabád* have been frequently discussed, the following additional facts may be usefully mentioned. In accordance with the condition in the Emperor's *farmán*, that a sufficient allowance should be made out of the revenues of the three provinces to support the expenses of the Nizámat, an agreement was concluded on the 30th September 1765 with the Nawáb Nadjam-ud-daulah (son of Mír Jaffier, who died in January 1765), by which he was to receive the annual sum of Sicca Rs. 5,386,131 as an adequate allowance for the support of the Nizámat. Of this sum, Rs. 1,778,854 was for the Nawáb Názim's household expenses, servants, &c., and Rs. 3,607,277 for the maintenance of horse, sipahís, peons, &c. for the support of his dignity (*Aitchison's Treaties*, Vol. I, p. 65). *Nadjam-ud-daulah* died on the 8th May 1766, and his brother *Syeff-ud-daulah* was elevated by the Company to the vacant office. By an agreement concluded with him on the 19th May 1766, he was to receive the reduced annual sum of Rs. 4,186,131, *viz.* Rs. 1,778,854 for his household, and Rs. 2,407,277 for sipahís, peons, &c. (*Aitchison's Treaties*, Vol. I, p. 67). *Syeff-ud-daulah* died of small-pox on the 10th March 1770, and his brother *Mobarek-ud-daulah*, a minor, was made Nawáb Názim. By an agreement concluded with him on the 21st March of the same year, the allowance was still further reduced to Rs. 3,181,991, *viz.* Rs. 1,581,991 for the household, and Rs. 1,600,000 for sipahís, peons, &c. (*Aitchison's Treaties*, Vol. I, p. 69). The Court of Directors in their general letter of the 10th April 1771 directed the whole allowance to be still further reduced to sixteen lákhs during the minority of the Nawáb. No treaties or agreements were concluded after 1770 with any member of the family; but the stipend of sixteen lákhs has ever since continued to be appropriated to the benefit of the Nawáb Názim and the members of the family. In the Despatch No. 30, dated 17th June 1864, it was intimated that the Secretary of State perceived with satisfaction that the Government of India had no intention of disturbing existing arrangements for the pecuniary provision of the Nawáb Názim and his family, and the maintenance of the titular dignity of His Highness, it being obvious that they could not be interfered with or altered, during good conduct, without a violation of the spirit, at least, of the assurances which had been given to him by the British Government and a departure from the whole tenor of the transactions with him during a long course of years.

September 1765, concluded with *Nadjam-ud-daulah*, provision was made for the maintenance of horse, sipahís, peons, &c. for the support of his dignity only ; but not for military purposes. In the agreement of the 19th May 1765, concluded with *Syeff-ud-daulah*, he agreed that the protection of the Provinces of Bengal, Bahár and Orissa, and the force sufficient for that purpose, should be entirely left to the "discretion and good management" of the Company. A clause exactly similar is to be found in the agreement of the 21st March 1770, concluded with *Mobarek-ud-daulah*. It will thus appear that the grant of the *Díwání* in 1765 was a cession to the East India Company of the military government of the three Provinces of Bengal, Bahár and Orissa, of the right to administer civil justice, and of the complete control of the finances, subject to a payment of twenty-six lákhs to the Emperor and to providing for the expenses of administering criminal justice, and the maintenance of the police. It was in fact, though not in name, a cession of the sovereignty of these provinces, seeing that it was a cession of all the essentials of sovereignty.

CHAPTER XX.

Landholding, and the Relation of Landlord and Tenant in India—From the Grant of the Díwání to the Permanent Settlement.

Situation of the English when they obtained the Díwáni.

§ 244. When, in consequence of the grant of the Díwání in 1765, it became necessary for the Company's servants to undertake the administration of the land and the revenue, they were placed in one of the most extraordinary positions recorded in history. Ten years before the English had been utterly expelled from the country, of which they now assumed the *de facto* government. Having been occupied solely in the pursuit of trade, they had no previous means of acquiring that knowledge and experience, which were necessary in order to enable them to undertake with success the difficult task which now devolved upon them. The system of administration, which had existed in the country, was not a system of written rules and plain principles, which could be learned by careful application. It was a tangled unsystematic mass of chicanery, dishonesty and oppression. Those upon whom they were compelled to rely for instruction were prompted by self-interest to mislead and misinform, and neither morality nor religion withstood the prompting. Much was learned only to be abandoned, because its practice was not consistent with those principles of humane and equitable government, which, professed from the beginning, have been steadfastly adhered to, and notwithstanding many mistakes have been at length firmly established.

§ 245. In the year following the grant of the Díwání Lord Clive took his seat as *Díwán* at the *Punyá* or

annual ceremony of settling and commencing the collection of the revenue held at Motighíl near Múrshedabád. The districts of the Twenty-four Parganas, Bardwan, Midnapore and Chittagong, which had been previously acquired, were at this time under the management of the Company's servants ; but they were not in a position to undertake the administration of the whole of Bengal, Bahár and Orissa. A native *Naib* or Deputy *Diwán* resident at Múrshedabád, and under the supposed control of the European Resident, and a similar officer for Bahár under the control of the European Chief at Patna, conducted the collection of the revenue without any change of the former system until 1769. In this year Supervisors were appointed (16th August) to superintend, in subordination to the Resident, the native officers employed throughout the country in collecting the revenue and administering justice. Their duties were expressly set forth and defined in a letter of instructions issued for their guidance. They were to prepare a "summary history of the Province," giving an account of the ancient constitution, the rulers, the order of succession, the revolutions in their families, and their connections, their peculiar customs and, in short, every transaction, which could serve to trace their origin and progress. They were to examine into the state, produce and capacity of the lands ; the amount of the revenues, the cesses or arbitrary taxes and of all demands whatever made on the *raiyat* either by Government, zemindar or collector, with the manner of collecting them ; and the gradual rise of every new impost. They were to inform themselves fully as to the regulation of commerce and the administration of justice : and while engaged in the performance of these duties, they were to inform the President or the Resident of every material circumstance worthy of remark, and for this purpose were to keep up a close and regular correspondence. The Letter of Instructions contained detailed directions by way of assisting them to fulfil the multifarious duties required

Earliest measures of Administration after the Diwáni.

Appointment of Supervisors—A.D. 1769.

Their Letter of Instructions.

of them; and as the whole document is a remarkable one, I extract a few of these directions by way of example.

§ 246. "An equally important object of your attention is to fix the amount of what the zemindar receives from the *raiyat* as his income or emolument; wherein they generally exceed the bounds of moderation, taking advantage of the personal attachment of their people, and of the inefficacy of the present restrictions upon them; since the presence of the Amíl more frequently produces a scene of collusion than a wariness of conduct. When the sum of the produce of the lands, and of each demand on the tenant, is thus ascertained with certainty, the proportion of what remains to him for the support of his family and encouragement of his industry will clearly appear, and lead us to the reality of his condition. Among the chief effects which are to be hoped for from your residence in that province, and which ought to employ and never wander from your attention, are to convince the *raiyat* that you will stand between him and the hand of oppression; that you will be his refuge and the redresser of his wrongs; that the calamities he has already suffered have sprung from an intermediate cause, and were neither known nor permitted by us; that honest and direct applications to you will never fail of producing speedy and equitable decisions; *that after supplying the legal due of Government he may be secure in the enjoyment of the remainder;* and, finally, to teach him veneration and affection for the humane maxims of our Government." . . . . . "For the raiyat being eased and secured from all burthens and demands but what are imposed by the legal authority of Government itself, and future *pattas* being granted him, specifying that demand; he should be taught that he is to regard the same as a sacred and inviolable pledge to him; that he is liable to no demands beyond their amount. There can, therefore, be no pretence for suits on that account; no

Extracts from the Supervisors' Letter of Instructions.

room for inventive rapacity to practise its usual arts: all will be fair, open, regular. Every man will know what he can call and defend as his own; and the spirit of lawless encroachment, subsiding for want of a field for exercise, will be changed into a spirit of industry; and content and security will take the place of continual alarms and vexations." . . . . . "You are to proceed to a local investigation of the quantity of lands and their rents, which is to be performed by visiting each division yourself, and calling upon the *zemindar* or head collector for the Hastabúd of the division under his management. But you are not to content yourself with this: from hence you are to descend to the subdivisions of the grand district, and to the small cutcherries of each collector, however inconsiderable; and this will procure you a list of the *pattas* as distributed to every *raiyat*, and supposed to contain the quantity of land possessed by each and the amount of rent with which it is charged. Thus you will be enabled to ascertain how far the Hastabúds given in by the collectors of the grand divisions differ from the Hastabúds of the lesser, from the principal down to the smallest subdivision." . . . . . "The *raiyat* should be impressed in the most forcible and convincing manner that the tendency of your measures is to his ease and relief; that every opposition to them is riveting his own chains and confirming his servitude and dependence on his oppressors; that our object is not increase of rents or accumulation of demands, but solely by fixing such as are legal, explaining and abolishing such as are fraudulent and unauthorized, not only to redress his present grievances, but to secure him from all further invasions of *his property.*"

§ 247. . . . . "Having thus obtained sufficient and authentic accounts of the rent-rolls of the districts, by searching into the papers and records of the smallest as well as the largest, comparing their respective Hastabúds, surveying and measuring the lands which appear rated above or below their real value and extent, you are to bring

your investigation home to the *zemindar.* For this purpose the records are to be consulted, and the periods most applicable to the design seem to be these three; the government of Sujah Khan, of Aliverdi Khan, and the present. By collating the Hastabúds given in by the zemindars with those you obtain from the smaller districts, you will distinguish the quantity of land, which they have usurped from the Government and enjoy for their own use and advantage, free of rent. And again by opposing the sum of the *pattas* of any particular place in any subdivision to the sum stated in its Hastabúd, you will also lay open the shares which the petty collectors and their dependents have acquired for themselves, after the example of their principals; for this species of fraud is carried on by general connivance from the heads to the lowest denominations. All lands, which are found to have been thus illegally dismembered, are to be immediately re-annexed, and a resumption set on foot by Government." . . . . . "The *Khamár* lands, having no native tenants, are cultivated by contract. The custom and terms of contract are various in various districts; but, in general, there is one settled rule. An advance in money is made by the *zemindar* to the cultivator, by the help of which he tills and improves the land. When the crops are cut and gathered in, they are generally divided between the cultivator and the *zemindar;* from one-third to one-half to the cultivator, and the remainder to the *zemindar;* when the former accounts with the latter for the amount of the advances, which are often taxed by the *zemindar* with an heavy interest, or fraudulently exceeded by an arbitrary valuation, far below the market price of the goods or products of the lands, in which he is paid. Your object is to inform yourself what the cultivator really receives for his labour, and in what he is injured; and, secondly, what the *zemindar* embezzles and secretes from Government by an undervaluation of the productions of the soil which he thus receives, sinking the amount of the returns, and by other means, which serve to deceive us, and obstruct the progress of cultivation in these

lands." . . . . . "Having thus clearly distinguished the amount measurement of the several lands, and their products of kinds, as also the land revenue, the cesses or arbitrary taxes must engage your attention. On these subjects I have already spoken in part, and shall now consider what is yet to be done by you." . . . . . "To obtain an account of these cesses, or imposts, there cannot be a more certain method than what I have before recommended, of getting from the *raiyat* himself a statement of what he actually pays over and above his established rents, and from this you are to draw a medium amount of the cesses levied upon the whole. This should be set against the amount of the established rents of lands so cessed. . . . . "Having, by these means, obtained an account of all public and private collections and impositions on the *raiyat* and trader, you will have a set of materials in your hands from which you may venture to form a real Hastabúd, to contain the quantity, productions, and rent of all cultivated lands under Government; and likewise the quantity, productions, and value of all *jagírs*, *talúks*, charitable and religious donations; which you will draw up according to the form accompanying, and transmit to me, with such annexed remarks, observations, and proposals of your own, as you may judge important and conducive to the improvement of the lands, the content of the *raiyat*, the extension and relief of trade, the increase and encouragement of any useful manufacture or production of the soil and to the general benefit and happiness of the province in every consideration and point of view." . . . . . "Your commission entrusts you with the superintendence and charge of a province, whose rise and fall must considerably affect the public welfare of the whole. The exploring and eradicating numberless oppressions, which are as grievous to the poor, as they are injurious to the Government; the displaying of those national principles of honour, faith, rectitude, and humanity, which should ever characterize the name of an Englishman; the impressing the lowest individual with these ideas, and raising the heart of

the *raiyat* from oppression and despondency to security and joy, are the valuable benefits which must result to our nation from a prudent and wise behaviour on your part. Versed as you are in the language, depend on none, where you yourself can possibly hear and determine. Let access to you be easy, and be careful of the conduct of your dependents. Aim at no undue influence yourself, and check it in all others. A great share of integrity, disinterestedness, assiduity, and watchfulness is necessary, not only for your own guidance, but as an example to all others, for your activity and advice will be in vain, unless confirmed by example."

§ 248. We may admire the excellence of the principles here inculcated, while we marvel at the simplicity, which, under the circumstances, could have supposed the successful performance of such manifold and difficult duties to lie within the compass of individual ability. If plans of reform and schemes of administration, cunningly devised with specious detail on paper, and elaborated with impressive phraseology in well-rounded periods, could eradicate long-standing evils, correct long-practised abuses, alter long-followed customs, and revolutionize the character of an entire race, India would long since have been the most socially and morally perfect, the best governed, the most progressive, the most prosperous, and the most happy country in the world. The Supervisors did not continue in office long enough to demonstrate the impracticability of the task committed to them. In May 1772 they were styled 'Collectors' instead of Supervisors; and in November of the following year (1773) they were withdrawn, and their districts left to the superintendence of Native Díwáns or Amíls. Further, the Directors positively prohibited[5] the making of minute scrutinies, such

Impracticability of the task committed to the Supervisors.

[5] As I have heard this fact called in question, and I have been unable to discover the original letter, it may be well to give the evidence on which the above statement is based. In the Revenue Letter to Bengal, dated 6th January 1815 (I *Revenue Selections*, p. 281), the Directors say:—"In adverting to the mistakes which were made in forming the Permanent Settlement of

as those indicated in the Letter of Instructions, which had been issued for their guidance. The appointment

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the lands in Bengal, it is important also not to lose sight of the causes from which those mistakes arose: and we are warranted not only by general probability, but by the recorded confession of some of our Revenue servants at the time, in imputing the errors in question to the want of information by the Collectors, *who were positively prohibited from resorting to minute local scrutinies for the purpose of ascertaining the resources of the country.*" In the *Fifth Report* of the Select Committee of the House of Commons, it is said:—"The lights formerly derivable from the Kanungo's office were no longer to be depended upon; and *a minute scrutiny into the value of the lands by measurement and comparison of the village accounts, if sufficient for the purpose, was prohibited by the orders from home;*"—and again:—"The exact adjustment of the revenue on lots of estates exposed to sale would have been by this rule" (*i.e.* the rule contained in Regulation I of 1793) "extremely easy, had the *data* been procurable with sufficient exactness; but the actual produce of the whole, or of the part of an estate, could now be known only to the zemindar and his own servants. The means which the former Governments possessed and might have exercised for this purpose were relinquished on the conclusion of the Permanent Settlement. *The Directors had already prohibited the practice of minute local scrutinies;* the Kanungo's office was now abolished; and the *patwari* or village accountant declared to be no longer a public officer, but the servant of the *zemindar.*" "In fixing the amount of the assessment, the jama of the preceding year, compared with the accounts and information to be supplied by the Collectors, and the recommendation of the Board of Revenue thereon, was to be the standard; *all reference to measurement and to comparative accounts in detail of the assets of former years with the present was positively prohibited.*"—(*Land Tenure by a Civilian*, p. 94, and see pp. 111-112.) The reason for the Directors' prohibition was that they were afraid lest the suspicions of the *zemindars* should be aroused—lest the *zemindars* should distrust the promise of a permanent settlement at a fixed amount of revenue, and should come to think that the English would avail themselves of the information thus obtained to increase the revenue afterwards. See the question discussed in paras. 470, 471, 472, 473, 520 and 544 of Mr. Shore's Minute of the 18th June 1789. In Revenue Letter to Bengal, dated 15th January 1819 (I *Revenue Selections*, p. 355), the Directors said:—"At the time when the discussions took place on the subject of forming the Permanent Settlement in the Lower Provinces, the question was agitated whether the ascertainment of private rights ought not to have been carried into effect before that arrangement was concluded. Zemindari oppressions and abuses during the revolutions that had occurred in the Bengal Provinces at periods not long anterior to the establishment of the British power, and the early measures of our administration had thrown such obscurity over the rights of the cultivators, that it became difficult to define them." Then quoting Lord Cornwallis's observations about *usage* and *custom* which varied in almost every district, and *precedent*,

of Supervisors was followed in 1770 by the institution of two Revenue Councils of Control, one at Múrshedabád and the other at Patna[6]; but this arrangement did not prove very successful. In 1770 there was a great famine, which was said to have destroyed a third of the inhabitants of Bengal. Notwithstanding this mortality and the consequent decrease of cultivation, the revenue collections for the following year, 1771-2, exceeded not only those of 1769-70 but those of 1768-69. This, as explained in a letter from the President in Council,[7] was due to the standard of collection being maintained by violence and oppression. One device was to assess[8] upon the actual inhabitants of a local division the loss sustained in consequence of *raiyats*

Two Revenue Councils appointed in 1770—Great Famine in the same year.

Collections maintained notwithstanding.

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which might be pleaded in justification of every species of exaction and oppression (*ante*, p. 450), they continue:—"The difficulties to be encountered in the pursuit of minute local investigations deterred Lord Cornwallis from a task, to the undertaking of which, it must be confessed, the sentiments and instructions of the Court of Directors had been unfavorable from the time of Mr. Hastings to their first dispatch of the 12th April 1786 on the subject of the decennial settlement." When in 1800 a Regulation was passed for the purpose of preparing a Pargana Register of estates paying revenue or held free of payment of revenue, Collectors were directed by the express provisions of the Regulation to enter in this Register the measurement of the villages whenever "ascertainable by public measurements to settle disputes, or otherwise," and the gross rents of the villages, "which may have been ascertained by a *khas* collection, attachment or otherwise." Further they were expressly directed "not to require from the proprietors or farmers of *malguzari* (revenue-paying) lands, or from their under-tenants, any papers or information respecting the measurements or rents of such lands, nor from the holders of *lakheraj* (revenue free) lands, any papers or information respecting the rents of lands of this descriptions, for the purpose of entering the same in the Pargana Register; it being intended only that the measurement and rents of *malguzari* lands, and the rents of *lakheraj* lands should be entered in the Register, when the same may be ascertained by public measurements, khas collections, attachments, or such other occasional means as may furnish the necessary information for completing these subsidiary heads of the Pargana Register, which are to be left blank until such information may be obtained."—See sections 3 and 7 of Reg. VIII. of 1800.

[6] See II Harington's *Analysis*, p. 6.

[7] Dated 3rd November 1772.

[8] This assessment was termed *Najai*, and was said to be authorized by the ancient and general usage of the country. It was afterwards expressly abolished.

having died or absconded. Such an imposition may not have been seriously felt in ordinary years; but it must have fallen with terrible severity upon the survivors of the famine of 1770. After describing the hardship and wretchedness caused by this mode of keeping up the collections, the President, in the letter just mentioned, proceeds to say:—"Though seven years had elapsed since the Company became possessed of the Díwání, yet no regular process had ever been formed for conducting the business of the revenue. Every *zemindarí*, and every *talúk*, was left to its own peculiar customs. These indeed were not inviolably adhered to; the novelty of the business to those who were appointed to superintend it, the chicanery of the people whom they were obliged to employ as their agents, the accidental exigencies of each district, and not unfrequently the just discernment of the collector, occasioned many changes. Every change added to the confusion which involved the whole, and few were either authorized, or known, by the presiding members of the Government. The articles which composed the revenue, the form of keeping accounts, the computation of time, even the technical terms, which ever form the greatest part of the obscurity of every science, differed as much as the soil and productions of the province. This confusion had its origin in the nature of the former Government. . . . . The *Mutsuddies*, who stood between the Názim and the zemindars, or between them and the people, had each their respective shares of the public wealth. These profits were considered as illegal embezzlements, and therefore were taken with every caution which could ensure secrecy; and being consequently fixed by no rules, depended on the temper, abilities, or power, of each individual for the amount. It therefore became a duty to every man to take the most effectual measures to conceal the value of his property, and elude every enquiry into his conduct, while the *zemindars* and other landholders, who had the advantage of long possession, availed themselves of it, by complex divisions of the lands, and intricate modes of collec-

State of things as described by the President in Council.

tion, to perplex the officers of the Government, and confine the knowledge of the rents to themselves. . . . . The internal arrangement of each district varied no less than that of the whole province. The lands subject to the same collectors, and intermixed with each other, were, some held by farm; some superintended by *shikdars* or agents on the part of the collector; and some left to the *zemindars* or *talúkdars* themselves under various degrees of control. The first were racked without mercy, because the leases were but of a year's standing, and the farmer had no interest, or check, to restrain him from exacting more than the land could bear; the second were equally drained, and the rents embezzled, as it was not possible for the collector, with the greatest degree of attention on his part, to detect or prevent it. The latter, it may be supposed, were not exempted from the general corruption; if they were, the other lands which lay near them would suffer by the migration of their inhabitants, who would naturally seek refuge from oppression in a milder and more equitable Government."

The Company stands forth as Diwán.

§ 249. In 1771 the Court of Directors sent out instructions[9] "to stand forth as *Díwán*, and by the agency of the Company's servants to take upon themselves the entire care and management of the revenues." At the same time they directed the dismissal of Mahomed Reza Khan, the Naib Díwán at Múrshedabád, and of every person employed by him, or in conjunction with him; and they expressed their confidence that the President in Council would adopt such regulations and pursue such measures as should ensure to the Company every possible advantage and free the *raiyats* from oppression. In consequence of these directions Mahomed Reza Khan was dismissed on the 11th May 1772; and the charge of the office of *Díwán* was assumed and the duties performed by the Chief and Council of Revenue at Múrshedabád. In the same way the Naib Díwán for the Province of Bahár

Dismissal of the Naib Diwáns at Múrshedabád and Patna.

[9] *General letter of 28th August* 1771.

at Patna was removed, and the Chief and Council at Patna assumed the duties of his office. On the 14th May 1772, it was directed that "the servants employed in the management of the collections" should be styled 'Collectors' instead of 'Supervisors'; and that "a fixed Díwán should be chosen and nominated by the Board, who" should "be joined with the collector in the superintendency of the revenues." On the 29th August of the same year, it was resolved to remove the management of the Revenue department from Múrshedabád to Calcutta. The Díwání, it was said, might be considered as composed of two branches, (1) the collection of the revenue, and (2) the administration of justice in civil cases. For regulating the latter a separate plan had been framed (with which we are not at present concerned). The revenue, it was observed, was beyond all question the first object of Government; that on which all the rest depended, and to which every other should be made subservient. It was argued that the management of this most important department could not be effectually carried on at Múrshedabád and Patna away from the immediate observation and control of the President and Council. Accordingly it was decided that the whole Council should compose a Board of Revenue, and undertake the direct management of all matters connected with the revenue and its collection. The Khalsa or Exchequer and the Treasury were at the same time removed from Múrshedabád to Calcutta.[1] The system thus established in May 1772[2] was altered in the following November, owing to instructions received from the Court of Directors. The European Collectors were withdrawn, and their districts left in charge of Native Díwáns or Amíls. A *Committee of Revenue* was formed at the Presidency consisting of

The whole Council becomes a Board of Revenue.

[1] One of the expressed objects of this change was that the eyes of the people might be turned to Calcutta as the centre of Government and to the Company as their Sovereign, that Calcutta instead of Múrshedabád might become the capital.

[2] Mr. Hastings was appointed Governor in 1772.

Committee of Revenue and Provincial Councils established

two Members of the Council Board and three Senior Civil Servants below Council. The three Provinces were distributed into six divisions, the Calcutta division being placed under the superintendence of the Committee just mentioned; and the remaining five divisions under the superintendence of Provincial Councils stationed at Bardwán, Patna, Múrshedabád, Dinajpore and Dacca. Each of these Provincial Councils consisted of a Chief and four Senior Civil Servants. These arrangements were declared to be temporary only, and subservient to "a future and perpetual system," it being intended, whenever the accounts and arrangements of any one division were so regulated and completed as to enable the control to be brought down to the Presidency, that the Provincial Council should be withdrawn, and either continue to conduct the business of the division at the Presidency or transfer it at once to the Committee. It was not, however, till February 1781 that the Provincial Councils were dissolved, when a fresh arrangement was made for conducting the business of the Revenue department.

§ 250. On the 1st November 1776 the Governor-General proposed that one or two Covenanted Servants of the Company, assisted by a Díwán and other officers, should be temporarily appointed to collect and compile the accounts of the past collections, to digest the materials furnished by the Provincial Councils and Díwáns, and to obtain special accounts and other materials of information, by deputing native officers on occasional investigations. Besides the performance of these duties, "many other points of inquiry," he observed, "will be also useful to secure to the *raiyats* the perpetual and undisturbed possession of their lands, and to guard them against arbitrary exactions. This is not to be done by proclamations and edicts, nor by indulgences to the *zemindars* and farmers. The former will not be obeyed unless enforced by regulations so framed as to produce their own effect without requiring the hand of Government to interpose its support; and the latter, though it may feed the luxury of the *zemin-*

Deputation of Messrs. Anderson, Croftes, and Bogle.

dars or the rapacity of the farmers, will prove no relief to the cultivator, whose welfare ought to be the immediate and primary care of Government." In accordance with this proposal Messrs. Anderson, Croftes, and Bogle were deputed with an establishment of Amíns to procure the most exact information as to the real value of the lands, the nature of the *raiyats' pattas* in different parts of Bengal and other matters set out in their instructions according to the Governor-General's proposal. After making their inquiries, they submitted, on the 25th March 1778, a report containing much valuable information. On the 20th February 1781, the Provincial Councils were dissolved and their powers and duties transferred to a Committee of Revenue at the Presidency, consisting of four Covenanted Civil Servants,[3] who were entrusted "with the charge and administration of all the public revenues of the provinces, and invested in the fullest manner with all the powers and authority, under the control of the Governor-General and Council, which the Governor-General and Council do themselves possess, and shall not reserve exclusively to themselves." The office of the Khalsa or Exchequer was transferred to the Committee of Revenue, and alterations of detail were made in the manner of conducting business, the general object of all portions of the entire scheme being—"that all the collections of the provinces should be brought down to the Presidency, and be there administered by a Committee of the most able and experienced of the Covenanted Servants of the Company under the immediate inspection of, and with the opportunity of instant reference for instruction to, the Governor-General and Council."

Committee of Revenue of 1781.

§ 251. The plan of managing the whole business of the revenue at the Presidency without the assistance of responsible local agents was soon found to be impracticable, and the withdrawal of the Collectors to have been a mistake. Mr. Shore, writing in 1782, expressed his opinion that the real state of the districts was then less

Collectors reappointed, 1786-7.

[3] Mr. David Anderson, Mr. John Shore, Mr. Samuel Charters, and Mr. Charles Croftes.

known and the revenues less understood than in 1774. The Committee of Revenue were accordingly instructed (7th April 1786), upon proceeding to the ensuing year's settlement, to divide out the *Huzúrí*[4] *Mahals* into Collectorships in such manner that no one Collectorship should exceed in *jama* the sum of eight lakhs of rupees. In pursuance of these instructions, the Provinces of Bengal and Orissa were divided into more than twenty Collectorships, exclusive of those which had been already established in Bahár, making thirty-six in all. In the following year a new division was proposed and approved by the Governor-General and Council (21st March 1787), under which the number was reduced to twenty-three or, including the Salt districts, twenty-four. Immediately afterwards (8th June 1787) rules were made for the conduct of Collectors, and these rules were subsequently re-enacted with amendments in 1793. In accordance with the instructions of the Court of Directors,[5] a Board of Revenue was in 1786 (12th June) substituted for the Committee of Revenue. One of the members of Government was the President of this Board, which, in other respects, "was expressly constituted on the foundation and principle of the Committee." A regular set of rules was made for the guidance of the Board of Revenue in 1788 (25th April), by which the general functions of the Board were declared to be "deliberation, superintendence, and control," and it was made their principal duty to take care that the officers under their authority should perform their assigned duties with regularity, integrity, and assiduity. In order to enable them to carry out this "fundamental principle of their institution," they were invested with power to summon any officer to the Presidency to explain and justify his conduct, to impose a fine upon him not exceeding a month's salary, and to suspend him from office. Every instance of the exercise of these powers

Board of Revenue Established in 1786.

[4] *i.e.* paying their revenue direct into the Government treasury.

[5] Letter of 21st September 1785.

was to be reported to the Governor-General in Council.[6] The rules passed for the guidance of the Board of Revenue were incorporated in a Regulation of 1793, the essential portions of which are still in force in the territories subject to the Government of Bengal.[7] From the history just given of the Revenue department between 1765, when the Company obtained the Dewání, and 1793, when the Permanent Settlement was made, it will appear that many changes of system were made during the short space of twenty-eight years. Let us now see what was done during this period in the administration of the Land Revenue.

§ 252. With the exception of the Twenty-four Parganas, Bardwán, Midnapore and Chittagong, which were managed direct by the Company's servants, the other districts were left under native management from 1765 to 1771. Bahár had been settled for a term of years; but Bengal and Orissa had up to this time been settled from year to year. It was thought that this fluctuating system was impolitic: and it was therefore resolved, on the 14th May 1772, to make a settlement of Bengal and Orissa for a period of five years. In order to make this settlement, a Committee, consisting of the President (Mr. Hastings[8]) and four other members, was appointed to go on circuit

Measures with a view to a Quinquennial Settlement of Bengal.

[6] These powers were not taken away until 1874.

[7] The *personnel* of the Revenue department has been altered since 1793 in two material respects only, *viz.*, by the appointment of Commissioners of Revenue in 1829, and the employment of Deputy Collectors in 1833. It now consists of—I. The *Board of Revenue*, as to which see Regs. II of 1793, III of 1822, and X of 1831. II. *Commissioners of Revenue*, see Reg. I of 1829. III. *Collectors*, see Reg. II of 1793. IV. *Deputy Collectors*, see Reg. IX of 1833. V. *Assistant Collectors*, who are Covenanted Servants employed during the first years of their service in assisting the Collector and so learning the duties of the Revenue department. For the *personnel* of the Revenue department in the North-Western Provinces, see Chapter II (sections 4—35) of Act XIX of 1873. Native Díwáns used formerly to be associated with the European officers in the collection of the revenue. The Provincial Díwáns were abolished in 1786. The Collectors' Díwáns appointed by Reg. II of 1793 were abolished from the 1st January 1814—see s. 2, Reg. XV of 1813.

[8] Mr. Hastings did not, however, go. Only the four junior members went.

through the province.[9] The settlement of Húghlí, Hidgelí, 'Calcutta Parganas,' Bardwán, Midnapore, Birbhúm, Bissenpúr and Pachete was to be determined by the remaining members of the Board. The reasons assigned for this measure were, that "the forms and usages peculiar to each district, and the present and improvable state of the lands, require a local inspection. They cannot be known with any degree of certainty by remote observations, or the interested and superficial scrutinies of the natives. A part of the administration itself being on the spot will run less hazard of being deceived in intelligence, or disappointed in their investigations; they will be better able to hear and redress any grievances, which the inhabitants may prefer to them, and to form such particular regulations as may be necessary for the exigencies of each district; or to superadd others to those which shall be generally and previously resolved on." It was decided "to let the lands in farm"; and the following reasons were given for taking this course:—"There is no doubt that the mode of letting the lands in farm is in every respect the most eligible. It is the most simple, and therefore the best adapted to a Government, constituted like that of the Company, which cannot enter into the detail and minutiæ of the collections. Any mode of agency, by which the rents might be received, is liable to uncertainty; to perplexed and inextricable accounts; to an infinity of little balances; and to embezzlements; in a word, both the interest of the State, and the property of the people, must be at the mercy of the agents. Nor is it an object of trivial consideration, that the business of the Service, already so great that much of it is unavoidably neglected, would be thereby rendered so voluminous, and the attention of the Board so divided, that nothing would be duly attended to; the current affairs would fall into irrecoverable arrears; the

Reasons given for letting the Lands in Farm.

[9] The giving of presents (Nazars and Salamis), usually presented at the first interview as marks of subjection and respect, was at the same time directed to be totally discontinued, as well to the superior servants of the Company and the Collectors, as to the *zemindars*, farmers and other officers.

resolutions upon them be precipitate and desultory; the authority of the Government set at nought; the power which it must necessarily delegate to others would be abused; and the most pernicious consequences ensue, from the impossibility of finding time to examine and correct them. That such would be the case, we with confidence affirm, since we already experience the existence of these evils in part from the great increase of affairs, which has devolved to the charge of this Government; and the want of a reduced system, no less than from a want of immediate inspection and execution."

§ 253. At the same time the President and Council expressed their opinion in favour of long leases. "The farmer," it was observed, "who holds his farm for one year only, having no interest in the next, takes what he can with the hand of rigour; which, even in the execution of legal claims, is often equivalent to violence. He is under the necessity of being rigid, and even cruel; for what is left in arrear after the expiration of his power, is at best a doubtful debt, if ever recoverable. He will be tempted to exceed the bounds of right, and to augment his income by irregular exactions, and by racking the tenants, for which pretences will not be wanting, where the farms pass annually from one hand to another. What should hinder him? He has nothing to lose by the desertion of the inhabitants, or the decay of cultivation. Some of the richest articles of tillage require a length of time to come to perfection. The ground must be manured, banked, watered, ploughed, and sowed, or planted. These operations are begun in one season and cost a heavy expense, which is to be repaid by the crops of the succeeding year. What farmer will either give encouragement or assistance to a culture of which another is to reap the fruits? The discouragements which the tenants feel, from being transferred every year to new landlords, are a great objection to such short leases. They contribute to injure the cultivation, and dispeople the lands." The high assessment imposed by Kásim Ali was found in the accounts, which came into the

Arguments in favour of a Lease or Settlement for some considerable period.

hands of the Company's servants upon the grant of the Díwání. Every endeavour was made to collect the revenue according to this assessment, but it was found impossible to do so, partly because the amount was more than the country could bear, and partly because the coercive means employed by the English Government were very much milder than those habitually resorted to under the previous native administration. The difficulty of realizing the revenue had been greatly increased by the famine of 1770; and the Company's Government were considerably perplexed as to the course to be pursued in order to place the finances in a position satisfactory to their honorable masters. The real object of the Committee of Circuit of 1772 was to ascertain the value of the country by letting it in farm for a term of years to the highest bidder. It was believed that the natives were better informed of the value of the lands than their rulers, and that few would engage to pay what they could not find means to discharge.[1] Accordingly the quinquennial settlement of 1772 was concluded for the most part with farmers. Experience showed this to be a mistake. Ignorant of the real

Quinquennial Settlement of 1772.

[1] Mr. Shore's *Minute of* 18*th June* 1789, § 95. It may be observed that when the English succeeded to the management of the revenues, little trace remained of the *jama* assessed on the *raiyats* by Tódar Mal (*id.*, § 218). There were three modes of realizing the land-revenue:—(1) by employing Government officers to collect it direct from the cultivators; (2) by letting it out to farmers; (3) by settling with zemindars or other middlemen having proprietary rights in the land. The *first* was Akbar's plan and has been tried by the English in the Madras *raiyatwári* system. Its great disadvantage is that for adequate execution, it requires a minuteness of inspection and a detailed superintendence, which are incompatible with the scale of European agency possible with regard to financial considerations; and native agency has been found unsafe where so many opportunities of profit present themselves. The *second* plan was introduced by the Emperor Farokhsír (1713—1719). The objection to it is that the farmer having no permanent interest in the land is in no way restrained in his exactions by the prospect of resulting damage. The *third* plan was tried by the English in the hope that with those possessed of permanent proprietary rights regard for their own future interests would impose a check upon oppression pernicious in its ultimate results—(See in connection with this subject Lord Moira's *Minute of the* 21*st September* 1815, and Mr. Shore's *Minute of the* 18*th June* 1789, §§ 154—197.)

capabilities of the country, and incited by the hopes of the same profit, which was formerly to be reaped under a Government, which was not keen to punish oppression and extortion practised in collecting its own dues, speculators readily agreed for sums which they found themselves utterly unable to pay when the time for payment came.[2]

§ 254. As the quinquennial settlement of 1772 approached its expiration, these results became more apparent, and the course which should be adopted in forming a new settlement became the subject of anxious consideration. Mr. Hastings, as we have seen,[3] was of opinion that further and more exact information was required for the purpose of making an accurate valuation of the lands and more particularly in order to the protection of the *raiyats;* and he proposed that a temporary office be constituted under the conduct of one or two Covenanted Servants, assisted by a native Díwán and other officers, for the purpose of collecting and compiling the necessary information. Mr. Francis opposed the proposal. He did not consider that an accurate valuation of the lands was an attainable object; and, supposing it to be attainable, he considered it useless except for the purpose of levying the greatest possible revenue that could be exacted from the people. Then he argued that the valuation, if made, could be true only at one given point of time, because the proportionate value of land fluctuates in all countries from causes which are not regular in their operation. As to the protection of the *raiyats* he said :—" It is proposed *to secure to the raiyats the perpetual and undisturbed possession of their lands.* This

Francis opposes Hastings' plan for obtaining more accurate information as to the Rights of the Raiyats.

[2] The President and Council were not unmindful of the interest of the *raiyats* when making the quinquennial settlement, for it was provided that " the farmer shall not receive larger rents from the *raiyats* than the stipulated amount of the *pattas* on any pretence whatsoever ; and for every instance of such extortion the farmer on conviction shall be compelled to pay back the sum which he shall have so taken from the *raiyat*, besides a penalty equal to the same amount to the Sirkar ; and for a repetition, or a notorious instance of this oppression on his *raiyats*, the farmer's lease shall be annulled."—*Supplement to Colebrooke's Digest*, p. 191.

[3] *Ante*, p. 474.

language, I know, is popular, and has been often used, without any apparent benefit to the *raiyat*, to countenance and give a colour to acts of violence and injustice against the *zemindars* and other superior ranks of the natives. The real question is not clear, perhaps, to every apprehension ; but it is very material not to mistake it. Before we give perpetual possession, we ought to determine the property. This state does not consist of nothing but the ruler and the *raiyat ;* nor is it true, that the *raiyat* is proprietor of the land. It is not even necessary that he should be so, either for his own benefit or that of Government. The scheme of every regular Government requires that the mass of the people should labour, and that the few should be supported by the labours of the many, who receive their retribution in the peace, protection, and security, which accompany just authority and regular subordination. The supposed luxury of the *zemindars* is, I confess, a new idea to me. The rapacity of the farmers is not to be disputed ; but it does not follow, that because the *raiyat* has no direct permanent property in the lands, he should, therefore, have no right, or that no care should be taken to protect him. Without his assistance the land is useless to the *zemindar*. If they are left to themselves, they will soon come to an agreement, in which each party will find his advantage : the *patta* is the evidence and security of this voluntary agreement. In the present state of the country, the *raiyat* has, in fact, the advantage over the *zemindar*. Where so much land lies waste, and so few hands are left for cultivation, the peasant must be courted to undertake it. At all events, *the interposition of Government between them should have no object but to enforce the execution of their respective engagements.* To dictate the specific terms of every lease, is an invasion of the rights of property, in the first instance. It is a business of detail which no way belongs to Government, which we are in no sense equal to, and which carries a vexatious scrutiny and an arbitrary exertion of power upon the face of it. Government, after assessing the *zemindar*, or landlord, according to his portion of the public

revenue, is supposed to enter into the management of his patrimony, and to prescribe to him the rates at which he shall be obliged to parcel it out to his tenants. The idea of *guarding the raiyats against arbitrary exaction* is just and attainable, though not by the method proposed."[4]

§ 255. Mr. Hastings, in reply to these observations of Mr. Francis, said, amongst other things:—"The ancient *tumár* and *taksím*, or distribution of the land-rent, which was formed about two hundred and twenty years ago, has long since ceased to serve as a rule. Under the old Government, this distribution was annually corrected by the accounts which the *zemindars* and other collectors of the revenue were bound to deliver into the office of the *Kanungoes*, or King's registers, of the increased or diminished rents of their lands and of the amount of their receipts: but the neglect of these institutions, the wars and revolutions which have since happened in Bengal, the inundations of rivers, the increase of cultivation in some parts of the province and the decrease in others, and the unequal depredations of the famine, have totally changed the face of the country, and rendered the *tumár* rent-roll a mere object of curiosity. The land-tax has, therefore, been collected, for these twenty years past, upon a conjectural valuation of the land, formed by the amount of the receipts of former years and the opinions of the officers of revenue; and the assessment has, accordingly, been altered almost every year." . . . . . "An accurate valuation of the lands is to be made, either by an actual survey and measurement, or from the accounts of the land-rents. The first mode is too tedious, expensive, and uncertain, to be adopted. I would propose to make a trial of the second. The accounts of revenue in Bengal are kept with a regularity and precision unknown in Europe. They are drawn out, I understand, nearly on one uniform plan, and are balanced and adjusted at fixed periods. A separate account-current is kept for every *raiyat* or tenant, in which

Mr. Hastings explains the necessity for fuller information as to the Revenue,

And points out the Sources whence this Information may be obtained.

[4] Minute by Mr. Francis, dated 5th November 1776.—I *Revenue Selections*, pp. 437—440.

the different articles which compose his rent for one year are stated on the one side, and the payments which he makes are entered on the other. The whole of these accounts are afterwards annually digested into abstracts, which contain a particular state of the rent, the receipt, and arrears of each village. The abstract of all the villages from the *pargana* accounts and the general state of the rent of the *zemindarí*, or capital division, is composed of the aggregate of the accounts of the *parganas*. In order to convey an idea of the distinct and circumstantial manner in which these accounts are kept, I have annexed translations of the two first, *viz.*, that of a single *raiyat*, and that of a village: it will be unnecessary to produce specimens of the two last. All these are called *mofussil* accounts. The history which I have given of these accounts will serve, I hope, to redeem their character from the imputation of being loose, confused, and intricate, and show that, if we can succeed in procuring them, they will furnish us with ready-formed abstracts of the actual collections, which will require only to be compared. For this purpose, it will not be necessary to examine the accounts of every *raiyat*, nor of every village. The interior accounts are useful only as checks to the greater. From the regular process in which the whole are formed, it will be seen how easily the falsehood of any account may be detected, since it is impossible to falsify the sum total of a *pargana* without falsifying all parts of it, which of course will differ from those of each village; and those again, if forged, will be corrected by the accounts-current of the *raiyats*. Thus the fidelity of the greater accounts, when suspected, may be easily tried by a reference to the subsidiary accounts, which can hardly be falsified, as it is almost impossible to join in one combination so many people as must be concerned in it."[5]

§ 256. "I concur entirely with Mr. Francis in his argu-

[5] We know now that Mr. Hastings was mistaken in the value which he set upon these accounts, the preparation of complete sets of false accounts being very common.

ments against raising the greatest possible revenue from Bengal, by destroying all the intermediate orders of men between the ruler and the cultivator. But as my object, in endeavouring to procure an accurate account of the rents, is only to make an equal distribution, and has no kind of connection with the proposition of raising the largest revenue, nor with that of destroying the intermediate orders of men, I imagine it is unnecessary to follow Mr. Francis through all the abstract reasonings which he has introduced on subjects so remote from my own intentions." . . . . . .

Mr. Hastings disclaims the intention of exacting the highest possible Revenue,

" Besides the intermediate business of the proposed office, I have recommended, as a second object of its researches, the better and more effectual regulation of *pattas* for the security of the *raiyats* in the perpetual and undisturbed possession of their lands, and to guard them against arbitrary taxation. The words 'perpetual possession' and 'their land,' which may be mere inaccuracies of expression, for they were not meant to convey the idea of any positive or exclusive right of possession, have been noticed by Mr. Francis as contradictory to the rights of property which are vested in the *zemindar*. I shall not here attempt to account for the distinctions of property as they are understood in this country: it is sufficient for me to observe, that while the *raiyat* pays his rent, the *zemindar* has no right to dispossess him; nor can the *zemindar*, by any legal right, exact a higher rent from him than his *patta* prescribes." . . . . . .

" Mr. Francis seems to suppose, that there is no necessity for the interposition of Government between the *zemindar* and the *raiyat*. He observes, 'that if they are left to themselves, they will soon come to an agreement, in which each party will find his advantage.' This would be a just conclusion, if the *zemindars* were all capable of distinguishing what was for their advantage: but it is a fact, which will with difficulty obtain credit in England, though the notoriety will justify me in asserting it here, that much the greatest part of the *zemindars*, both of

And maintains the necessity for Government interposition between the Zemindars and the Raiyats.

Bengal and Bahár, are incapable of judging or acting for themselves, being either minors, or men of weak understanding, or absolute idiots. This circumstance, and the consequent oppressions which are exercised by those, who act for them without interest in the prosperity of the *zemindarí*, renders it necessary to provide for the security of the *raiyats* by checks and regulations. It is to be observed, also, that there are two kinds of *raiyats*. The more valuable are those who reside in one fixed spot, where they have built themselves substantial houses or derived them by inheritance from their fathers. These men will suffer much before they abandon their habitations, and therefore they are made to suffer much; but when once forced to quit them, they become vagrant *raiyats*. The vagrant *raiyats* (as Mr. Francis observes) have it in their power, in some measure, to make their own terms with the *zemindars*. They take land at an under-rent, hold it for one season; the *zemindar* then increases their rent, or exacts more from them than their agreement, and the *raiyats* either desert, or if they continue, they hold their land at a rent lower than the established rate of the country. Thus the ancient and industrious tenants are obliged to submit to undue exactions, while the vagrant *raiyats* enjoy lands at half price, which operates as an encouragement to desertion and to the depopulation of the country."[6] Mr. Hastings' proposition was approved by a majority of the Council; and, as has already been stated, Messrs. Anderson, Croftes, and Bogle were deputed to collect more exact information.

Mischief of Farming and Short Settlements.

§ 257. Meanwhile the Governor-General and the Council were strongly impressed with the mischief of farming and short settlements as being injurious to the landholders and their tenants, calculated to produce rigour and exaction towards the cultivators of the soil, discouraging to all improvements of agriculture, and consequently inimical to

[6] Minute by the Governor-General dated 12th November 1776.—I *Revenue Selections*, pp. 448—451.

the general prosperity of the country. All this they represented to the Court of Directors, and in 1776 they submitted a plan for making a life settlement with the zemindars. The Court replied that, "having considered the different circumstances of letting the lands on leases for lives or in perpetuity, they did not, for many weighty reasons, think it at present advisable to adopt either of these modes." In consequence, upon the expiry of the quinquennial settlement in 1777, annual settlements were made for several years, under the orders of the Court of Directors: but a preference was now given to the zemindars, and the settlement was made with them, whenever they were willing to agree to a reasonable assessment. In 1784 was passed the 24 Geo. III, cap. 25, the 39th section of which required the Court of Directors to give orders "for settling and establishing upon principles of moderation and justice, according to the laws and constitution of India, the permanent rules by which the tributes, rents, and services of the rajas, zemindars, polygars, talúkdars and other native landholders should be in future rendered and paid to the United Company." In obedience to these provisions, orders were tansmitted[7] to the Government of India for making inquiry into the condition of the landholders and other inhabitants residing under their authority, and for the establishment of permanent rules for the settlement and collection of the revenue and the administration of justice, founded on the ancient laws and local usages of the country. The Court of Directors at the same time expressed their opinion that it would be most in accordance with the spirit of the Act to fix a permanent revenue on a review of the collections of former years; and that the settlement should, in every practicable instance, be made with the zemindars, rules being at the same time made for maintaining the rights of other classes according to the usages of the country. The settlement was directed to be concluded for ten years. In fixing this period, the

Life Settlement with Zemindars proposed.

24 Geo. III., c. 25, s. 39.

The Directors send orders for a Decennial Settlement.

[7] Separate *General Letter of 12th April* 1786.

Directors expressed their apprehension that "the frequency of change had created such distrust in the minds of the people as to render the idea of some definite term more pleasing to them than a dubious perpetuity."[8] However, when it was completed, all the papers were to be sent to the Directors to enable them "to form a conclusive and satisfactory opinion, so as to preclude the necessity of further reference or future change."[9]

Erroneous Assumption as to sufficiency of Information.

§ 258. The Court of Directors assumed that the assets of the lands were sufficiently known under the various attempts made to ascertain them since 1765, and that no new scrutinies would be necessary. This was, however, an erroneous assumption. In the opinion of Mr. Shore none of the previous settlements had been regulated by an accurate knowledge of the resources of the country. In fact, no such knowledge existed in any individual or any class, Native or European. All had been confusion and disorder under an arbitrary and despotic system, which produced amongst the people a mixture of simplicity, fraud, servility and tyranny. What the resources of the country would be when allowed to run in fixed courses under an orderly and settled Government, no man could prophesy.[1] Accordingly, on receipt of these orders, the most careful local inquiries were made anew to obtain all possible information as to the past and present state of the country. The results of these inquiries were collected and incorpor-

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[8] So Mr. Shore in his Minute of the 18th June 1789 said :— "Our administration has hitherto been fluctuating and uncertain. An idea of improvement has been hastily adopted, unsteadily pursued, and afterwards abandoned from a supposed defect in principle. New measures have been substituted, followed, and relinquished with the same facility; and the natives from these variations, with every succession of men, expect a change of system."

[9] The Marquis Cornwallis, who came out as Governor-General in 1786, was the bearer of these instructions.

[1] It is curious that Mr. Shore himself was of opinion that the revenue assessed at the time of the Permanent Settlement could not be increased (*Minute of 8th December* 1789). In eighteen years, it was found that the difference between the collections from the cultivators and the amount paid to Government had trebled.

ated in Mr. Shore's very able Minute of the 18th June 1789, which the Court of Directors characterized as a "comprehensive and masterly dissertation, which not only exhibited and methodized the most material parts of the reports from the Collectors of the Bengal Province, but afforded new and important communications from himself, supplying in various respects what they wanted—delineating with great clearness the past financial system and history of Bengal—examining with candour those points in it which have been subjects of controversy—investigating with patient judgment the best system for the country, the difficulties which may attend it, the means of obviating them—and in fine proposing from the whole a set of regulations for carrying into execution the orders of the Court respecting the Decennial Settlement, so as to secure justice both to the Government and the subject, and to prevent in future those abuses which either exist, or may be apprehended in the detail of the collections." Strong language of praise, but merited at the time by the earnestness and ability displayed in the discharge of a vastly difficult task, and justified by posterity, who, with the advantage of the greater knowledge given by experience, have proved his reviews to be generally sound, and his foresight to be remarkably accurate.

Fresh Inquiries—Result embodied in Mr. Shore's Minute of 18th June 1789.

§ 259. In this Minute and his subsequent Minutes of the 18th September and the 8th December 1789, Mr. Shore argued that whatever confidence they might then have in the propriety of the proposed measure, they could not pronounce absolutely upon its success without experience, and that before recommending its perpetual confirmation, they ought to have that experience. He was in favour of the rights of the *zemindars*—and on this point he was at one accord with Lord Cornwallis.[2] He strongly advocated the necessity for interposition between the *zemindars* and the *raiyats*, he pointed out

Mr. Shore's arguments against the hasty conclusion of a Permanent Settlement.

[2] Mr. Hastings and Mr. Francis were also agreed as to the hereditary title of the zemindars—see III Harington's *Analysis*, 368.

that the situation of things we found was singularly confused—that the relation of a *zemindar* to Government and of a *raiyat* to a *zemindar* was neither that of a proprietor nor a vassal, but a compound of both—that the former performed acts of authority unconnected with proprietary right, the latter had rights without real property—that the property of the one and the rights of the other were in a great measure held at discretion—that such was the system we found and were under the necessity of adopting for the present—that much time must elapse before a system perfectly consistent in all its parts could be established, and the compound relation of *zemindar* to Government and *raiyat* to *zemindar* be reduced to the *simple principles of landlord and tenant.* He added that he for his part was not ashamed to distrust his own knowledge as he had frequent proofs that new enquiries led to new information. He did not consider the *zemindars* fitted for the responsible rights of property, which it was proposed to confer upon them. He observed that justice, integrity, moderation, humanity, a knowledge of their own rights and those of their tenants, an attention to business and an acquaintance with its details ought to be their characteristics, whereas, if a review of the zemindars of Bengal were made, it would be found that very few of them were duly qualified for the management of landed property[3]—that they were, in general, ill-educated for this duty; ignorant of the common forms of business and of the mode of transacting it; inattentive to the conduct of it, even where their own interests were immediately at stake, and indisposed to undertake it. Their business was in general conducted by their servants; the *raiyats* had seldom access to them; and the sale of justice was not uncommon with them. Finally, their ignorance, and their great inattention to the management of the concerns for which they were responsible, was as deplorable as it was uni-

Unfitness of the Zemindars.

[3] Mr. Hastings entertained the same opinion—see *ante*, page 486.

versal.[4] As to the uncertainty of the *raiyats'* rights and the necessity for Government interposition in order to define those rights and protect the *raiyats*, he said :— "The rent of the land, through whatever channels it passes into the public treasury, is paid originally by the *raiyats* or the immediate cultivators of the soil. Their situation not only on this account, but as being the most helpless and exposed to oppression, ought naturally to attract the attention and engage the interest of the ruling power."[5] . . . . . "It would be endless to attempt the subordinate variations in the tenures or conditions of the *raiyats*. It is evident that in a country where discretion has so long been the measure of exaction, *where the qualities of the soil and the nature of the produce* suggest the rates of the rents, where the standard of measuring the land varies, and where endless and often contradictory customs subsist in the same district and village, the task must be nearly impossible. The Collector of Rajshahye observes upon this subject, that 'the infinitive varieties of soil, and the further variations of value from local circumstances, are absolutely beyond the investigation or almost comprehension not merely of a Collector, but of any man who has not made it the business of his life.'"[6] . . . . . "I do not observe in the correspondence of the Collector any specific rules for the security of the *raiyats*. I well know the difficulty of making them, but some must be established. The great point required is to determine what is, and what is not, oppression, that justice may be impartially administered according to fixed rules."[7] . . . . . "Until the variable rules adopted in adjusting the rent of the *raiyats* are simplified and rendered more definite, no solid improvement can be expected from their labours, upon which the prosperity of the country depends. The difficulties

Necessity for adjusting and defining the Rights of the Raiyats.

[4] Paras. 167—174 of *Minute of 18th June* 1789.
[5] Para. 216, *id.* [6] Para. 231, *id.*
[7] Para. 145 of the *Minute of the 18th September* 1789.

attending this task are allowed by all who have had experience of it; nor is much required to know that, to make an adjustment between two parties, where one fears and each suspects the other, in a country too, where every innovation is received with disgust and apprehension—local information, assiduity and perseverance are indispensable requisites."[8] . . . . . "The necessity of some interposition between the zemindars and their tenants is absolute; and Government interferes by establishing regulations for the conduct of the *zemindars*, which they are to execute, and by delegating authority to the Collectors to enforce their execution. If the assessment of the *zemindaris* were unalterably fixed, and the proprietors were left to make their own arrangements with the *raiyats* without any restrictions, injunctions or limitations which indeed is a result of the fundamental principle, the present confusion would never be adjusted."[9] . . . . . "Notwithstanding repeated prohibitions against the introduction of new taxes, we still find that many have been established of late years. The idea of the imposition of taxes by a landlord upon his tenant implies an inconsistency; and the prohibition in spirit is an encroachment upon proprietary right, for it is saying to the landlord, 'you shall not raise the rents of your estate.'"[1] . . . . . "The necessity of prescribing regulations for simplifying the complicated rentals of the raiyats (which ought, if possible, to be reduced to one sum for a given quantity of land of a determinate quality and produce), of defining and establishing the rights of the *raiyats* and *talúkdars* with precision . . . . are admitted. Under all these circumstances, is it not better to introduce a new principle by degrees, than establish it at once beyond the power of revocation?"[2] As to the assurance proposed to be given to the *zemindars*, that if the settlement were approved by

[8] Para 11 of *Minute of 8th December* 1789.

[9] Para. 13, *id.* How accurate does Mr. Shore's foresight appear in the light of experience!

[1] Para. 16 *id.*

[2] Paras. 19, 20 *id.*

the Court of Directors, it would become permanent, and no further alteration take place at the expiration of the ten years, Mr. Shore observed :—"The intention of making it, is to give fuller confidence to the proprietors of the soil than a ten years' lease will afford. I am not sure that it will have this effect in any material degree. To those who have subsisted upon annual expedients, a period of ten years is a term nearly equal in estimate to perpetuity. The advantages of the last years of this period must depend upon their exertions during the first ; and if these are neglected at the outset, few of these *zemindars* will be in possession of their lands half the prescribed term. Their own security, without the declaration, requires exertions in the beginning of the lease."[3]

Reasons why no assurance should be given that Decennial Settlement would be made permanent.

§ 260. To these arguments Lord Cornwallis replied at considerable length and with much ability :—"The circumstance of the country," said he, "being occasionally liable to drought and inundation, which Mr. Shore adduces as an argument against a permanent assessment, appears to me strongly in favour of it. The losses arising from drought and inundation are partial and temporary ; the crops only are damaged or destroyed ; the land is neither swept away by inundation, nor rendered barren by drought, but, in the ensuing year, produces crops as plentiful as those which it would have yielded, had it not been visited by those calamities. Now, if Mr. Shore's calculation of the proportion which the zemindars in general receive of the produce of their lands be accurate, it is obvious that every temporary loss must fall upon Government ; for so long as we profess to leave the *zemindars* no more than that proportion, and claim a right to appropriate the excess to the public use, from what funds are they to make these losses good ? But when the demand of Government is fixed, an opportunity is afforded to the landholder of increasing his profits, by the improvement of his lands ; and we may reasonably expect that he will

Lord Cornwallis's Reply—Minute of the 3rd February 1790.

Arguments for fixing the Government Demand.

[3] Paras. 68, 69 of the *Minute of the 18th September* 1789.

provide for occasional losses from the profits of favourable seasons.[4] The necessity, therefore, of granting remissions to the landholders for temporary losses will diminish in proportion as the produce of the lands increases, and exceeds the demand of Government." . . . . . "In order to simplify the demand of the landholder upon the *raiyats*, or cultivators of the soil, we must begin with fixing the demand of Government upon the former; this done, I have little doubt but that the landholders will without difficulty be made to grant *pattas* to the *raiyats* upon the principles proposed by Mr. Shore in his propositions for the Bengal settlement. The value of the produce of the land is well known to the proprietor or his officers, and to the *raiyat*, who cultivates it; and is a standard which can always be reverted to by both parties, for fixing equitable rates." . . . . . "It is evident, therefore, that the only mode of remedying these evils, which is likely to be attended with success, is to establish such rules as shall oblige the proprietors of the soil, and their *raiyats*, who alone possess the requisite information for this purpose, to come to a fair adjustment of the rates to be paid for the different kinds of lands or produce in their respective districts. Mr. Shore's proposition that the rents of the *raiyats*, by whatever rule or custom they may be demanded, shall be specific as to their amount, that the landholders shall be obliged, within a certain time, to grant *pattas* or writings to their *raiyats*, in which this amount shall be inserted, and that no *raiyat* shall be liable to pay more than the sum actually specified in his *patta*, if duly enforced by the collectors—will soon *obviate the objection to a fixed assessment, founded upon the undefined state of the demands of the landholders upon the raiyats.* When a spirit of improvement is diffused throughout the country, the *raiyats* will find a further security in the competition of the land-

Lord Cornwallis thinks that the Patta regulations will sufficiently protect the Raiyats.

[4] The use of this argument clearly shows that Lord Cornwallis never contemplated that what the zemindars were to receive was to be fixed and not susceptible of increase.

holders, to add to the number of their tenants.[5] It is no objection to the perpetuation of the *zemindarí* assessment, that it will not at once provide a remedy for those evils: it is sufficient if it operates progressively to that end."

§ 261. "Mr. Shore observes that we have experience of what the *zemindars* are; but the experience of what they are or have been under one system is by no means a proper criterion to determine what they would be under the influence of another founded upon very different principles. We have no experience of what the *zemindars* would be under the system which I recommend to be adopted. I agree with Mr. Shore that some interference on the part of the Government is undoubtedly necessary for effecting an adjustment of the demands of the *zemindars* upon the *raiyats*, nor do I conceive that the former will take alarm at the reservation of this right of interference, when convinced that Government can have no interest in exercising it but for the purposes of public justice. Were the Government itself to be a party in the cause, they might have some grounds for apprehending the result of its decisions. Mr. Shore observes that this interference is inconsistent with proprietary right, and that it is an encroachment upon

Lord Cornwallis admits the necessity of Government interposition for the protection of the Raiyats.

[5] Mr. Francis used the same argument—see *ante*, page 482. Neither Lord Cornwallis nor Mr. Francis contemplated the rapid increase of population, which substituted competition amongst tenants for land, for competition amongst landholders for tenants. At the close of the last century there was abundance of land in Bengal, while population was sparse. The state of things was very like that in Burma at the present day, or would have been, if the same system of Government had existed. In the *Report on the Revenue Administration of the British Burma* for 1881-1882, it is said :—"The land in Burma is the most productive of all the sources of revenue. The revenue derived from it consists of the payments made by the cultivators to the State at certain rates generally fixed per acre. As cultivation spreads, this revenue ordinarily increases ; generally speaking, the land may be said to be free and open to all. A man may get land at present in most districts for the asking, and he may extend or contract his holding as he pleases. Of late years, owing to the high price of paddy in the market, the area of cultivation and the assessed revenue have increased steadily." There is also a capitation-tax in Burma, which in 1881-1882 realized Rs. 2,974,588 paid by 732,988 persons. In some parts of the country a land-rate has been substituted for this tax. Compare the account of Epirus, *ante*, p. 230.

it to prohibit a landlord from imposing taxes on his tenant, for it is saying to him that he shall not raise the rents of his estate, and that if the land is the *zemindar's*, it will only be partially his property, whilst we prescribe the quantum which he is to collect or the mode by which the adjustment is to take place between the parties concerned. If Mr. Shore means that, after having declared the *zemindar* proprietor of the soil, in order to be consistent, we have no right to prevent him imposing new *abwábs* or taxes on the lands in cultivation, I must differ from him in opinion, unless we suppose the *raiyats* to be the absolute slaves of the *zemindars*. Every bigah of land possessed by them must have been cultivated under an express or implied agreement[6] that a certain sum should be paid for each bigah of produce and no more. Every *abwáb* or tax imposed by the *zemindar* over and above that sum is not only a breach of that agreement, but a direct violation of the established laws of the country. The cultivator therefore has, in such a case, an undoubted right to apply to Government for the protection of his property, and Government is at all times bound to afford him redress. I do not hesitate therefore to give it as my opinion that the *zemindars* neither now nor ever could possess a right to impose taxes or *abwábs* upon the *raiyats*; and if, from the confusion which prevailed towards the close of the Mogul Government, or neglect, or want of information, since we have had possession of the country, new *abwábs* have been imposed by the *zemindars* or farmers, that Government has an undoubted right to abolish such as are oppressive and have never been confirmed by a competent authority, and to establish such regulations as may prevent the practice of like abuses in future.

Denies the Zemindar's right to impose Abwábs.

Denies that the prohibition of Abwábs is an interference with Proprietary Right.

§ 262. "Neither is the privilege which the *raiyats* in many parts of Bengal enjoy, of holding possession of the spots of land which they cultivate so long as they pay the

[6] The mistake of supposing that agreement, contract, governed the relations between *zemindars* and *raiyats* was a cardinal one. The same mistake was made in Ireland—see *ante*, pages 292, 311, 323.

revenue assessed upon them, by any means incompatible with the proprietary rights of the zemindars. Whoever cultivates the land, the zemindar can receive no more than the established rent which, in most places, is fully equal to what the cultivator can afford to pay. To permit him to dispossess one cultivator for the sole purpose of giving the land to another, would be vesting him with a power to commit a wanton act of oppression from which he could derive no benefit. The practice that prevailed under the Mogul Government of uniting many districts into one zemindarí, and thereby subjecting a large body of people to the control of one principal zemindar, rendered some restriction of this nature absolutely necessary. *The zemindar, however*, may *sell the land*, and the *cultivators* must pay the rent to the purchaser." . . . . . *Denies the Zemindars' right of Arbitrary eviction in many parts of Bengal.*

" Neither is prohibiting the landholder to impose new *abwábs* or taxes on the lands in cultivation, tantamount to saying to him, that he shall not raise the rents of his estates. The rents of an estate are not to be raised by the imposition of new *abwábs* or taxes on every bigah of land in cultivation ; on the contrary, they will, in the end, be lowered by such impositions ; for when the rate of assessment becomes so oppressive as not to leave the *raiyat* a sufficient share of the produce for the maintenance of his family, and the expenses of cultivation, he must at length desert the land. No zemindar claims a right to impose new taxes on the land in cultivation ; although it is obvious that they have clandestinely levied them, when pressed to answer demands upon themselves ; and that these taxes have, from various causes, been perpetuated to the ultimate detriment of the proprietor who imposed them. The rents of an estate can only be raised,[7] by inducing the raiyats to cultivate the more valuable articles of produce, and to clear the extensive tracts of

Prohibition of Abwábs not, in Lord Cornwallis's opinion, a prohibition of Raising Rents.

Lord Cornwallis's View as to how Rents might be raised.

[7] It may be borne in mind that when Lord Cornwallis wrote the above Minute, the English theory of Rent had not been elaborated—see *ante*, page 42, *note*.

waste land, which are to be found in almost every zemindarí in Bengal. It requires no local knowledge of the revenues of this country, to decide whether fixing the assessment, or leaving it liable to future increase, at the discretion of Government or its officers, will afford the greatest encouragement to the landholder to have recourse to these means for the improvement of his estate."

§ 263. Lord Cornwallis having considered all Mr. Shore's views and arguments did not think that they warranted the postponement of a measure, which he deemed "best calculated to promote the substantial interests of the Company, and of the British nation, as well as the happiness and prosperity of the natives of India." The Decennial Settlement was accordingly made, and it was notified to the zemindars that the assessment fixed by this settlement would be continued and remain unalterable for ever, if the Court of Directors approved. The whole of the papers, including the Minutes of Mr. Shore and Lord Cornwallis, were submitted to the Directors, who observed that the difference of opinion between these two statesmen did not relate so much to general principles as to the local application of them, and that the ground of discussion was thus narrowed. Having recapitulated Mr. Shore's objections, they said:—"No consequences more formidable could be presented to us than a diminution in perpetuity of the Company's revenue, with the still continued subsistence of all or any of those disorders in the mode of imposing and levying it from the great body of the people, which have already done such essential injury to the country, and must ever prove a bar to its prosperity. Very clear and solid arguments were requisite to repel the diffidence which this view of the subject from such an authority had a tendency to create; and to encourage us to persevere in our original idea of giving a fixed constitution to the finance and the land-tenures of the country. But this satisfaction Lord Cornwallis has afforded us in his Minutes of the 18th September 1789, and 3rd February 1790, which we sincerely regard as two very valuable

The Decennial Settlement with promise of perpetuity subject to the approbation of the Directors.

Submission of the Papers and Minutes to the Directors.

Their approbation of Lord Cornwallis's Views.

records, written with enlarged and just views upon the soundest principles of policy, with perfect fairness, great acquaintance with the subject, and the most conclusive reasoning in favour of a permanent assessment. In these documents (the last of which, if Mr. Shore had seen it,[8] might probably have removed his *doubts*, as he candidly styles the objections he left on record) we find it convincingly argued that a permanent assessment, upon the scale of the present ability of the country, must contain in its nature a productive principle; that the possession of property and the sure enjoyment of the benefits derivable from it will awaken and stimulate industry, promote agriculture, extend improvement, establish credit and augment the general wealth and prosperity." The Directors agreed with Lord Cornwallis upon the objections drawn from the disorder and confusion of the land rents, the indefinite rules by which they were levied, the exactions consequent upon this uncertainty, and the ignorance and incapacity of the landholders, all of which they considered justly chargeable upon "a system defective in its principle, and carrying through all the gradations of the people, with multiplied effects, that character of uncertain arbitrary imposition which originated at the head." Admitting the want of information as to the resources of the country and the collections actually made by the landholders and farmers—and this after the long course of opportunities afforded by twenty-five years' possession of the country—they thought it would be too sanguine to expect any future general improvement in this respect—"a conclusion specially fortified by the high principle and energetic character of his Lordship's administration, and the very able assistance it had received in revenue affairs from the distinguished talents of Mr. Shore."

Directors satisfied that no more complete information was obtainable.

§ 264. "No conviction (they observed) is stronger upon our minds than that instability, in the mode of administer-

[8] Mr. Shore had left for Europe before Lord Cornwallis wrote his Minute of the 3rd February 1790.

Directors strongly impressed in favour of a Permanent System.

ing our revenues, has had the most prejudicial effects upon the welfare of the provinces; upon our affairs; and the character of our Government; and of all the generated evils of unsettled principles of administration, none has been more baneful than frequent variation in the assessment. It has reduced everything to temporary expedient; and destroyed all enlarged views of improvement. Impolitic as such a principle must be at all times, it is peculiarly so with respect to a dependent country, paying a large annual tribute, and deprived of many of its ancient supports. Such a country requires especially the aid of a productive principle of management; and it is with solid satisfaction that we look to the great resource which it yet has in its uncultivated though excellent lands. What have all the attempts of nearly thirty years to this end produced? What are we to expect from still leaving room for the principle of fluctuation which has prevailed during that period, though we may profess to place succeeding change at a remoter distance? Long leases, with a view to the equal gradual establishment of a permanent system, though recommended upon the ground of safety, we must think would still continue, in a certain degree, the evils of the former practice. Periodical corrections of the assessment would be, in effect, of the nature of a general increase; and tend to destroy the hope of a permanent system, with the confidence of exertion it is calculated to inspire. Had such a system been adopted twenty years ago, and fairly followed, it is not to be doubted that the produce, manufactures, and commerce, of the country, would at this time have been in a more flourishing state; and the people, sensible of a new order of things, of privileges and prosperity unenjoyed before, would have risen in their character, and felt real attachment to the Government from which those blessings are derived. The Government too, instead of being so much occupied as it has been in all time past, by the degrading struggle perpetually subsisting throughout the country for taxes and rents, would, as our Governor-General has already suggested,

have had leisure to turn its cares to other functions of the ruling power; to the internal regulation of the community; the establishment of wholesome laws; and the due administration of them. The principle, therefore, which would have laid the foundation of all this, appears the only one still to be adopted. It places the security of the Company's revenue on the only basis which we can discover to be a solid one, the growing prosperity of the country; and hopeless alike of better lights than those already attained, and of an administration more fitted effectually to establish a great reform than that of which Lord Cornwallis is the head, we must be of opinion, with His Lordship, that to delay the introduction of it, supposing always the first standard settlement properly formed, would be to postpone the commencement of the prosperity and happiness of the country."

§ 265. The greatest obstacle to the execution of the intended system of permanency and certainty was admitted to be the difficulty of providing for an equitable adjustment and collection of the rents payable by the *raiyats* to the landholders. It was, however, hoped that, under the proposed system, the latter would gradually learn from experience, that their own interests were connected with the security and encouragement of the cultivators of the soil; and that the time would come when the advantage of every class of the community would be best promoted by leaving to every one the care and management of his own property without restriction. "But," said they, "as so great a change in habits and situation can only be gradual, the interference of Government may, for a considerable period, be necessary to prevent the landholders from making use of their own permanent possession for the purpose of exaction and oppression. We therefore wish to have it distinctly understood that, while we confirm to the landholders the possession of the districts which they now hold, and subject only to the revenue now settled, and while we disclaim any interference with respect to the situation of the *raiyats* or the sums paid by them with any

Directors Views as to what should be done for the Raiyats:

view to an addition of revenue to ourselves, we expressly reserve the right which clearly belongs to us as sovereigns of interposing our authority in making from time to time all such regulations as may be necessary to prevent the *raiyats* being improperly disturbed in their possession or loaded with unwarrantable exactions. A power exercised for the purpose we have mentioned, and which has no view to our own interests, except as they are connected with the general industry and prosperity of the country, can be no object of jealousy to the landholders, and, instead of diminishing, will ultimately enhance the value of their proprietary rights. Our interposition, where it is necessary, seems also to be clearly consistent with the practice of the Mogul Government, under which it appeared to be a general maxim that the immediate cultivator of the soil duly paying his rent should not be dispossessed of the land he occupied. This necessarily supposes that there were some measures and limit by which the rent could be defined, and that it was not left to the arbitrary determination of the zemindar, for otherwise such a rule should be nugatory, and in point of fact the original amount seems to have been annually ascertained and fixed by the act of the sovereign."

That the Right to interfere on their behalf, if necessary, should be reserved.

§ 266. The Governor-General and Council were directed to be cautious so to express themselves as to leave no ambiguity as to the right to interfere, from time to time as might be necessary, for the protection of the *raiyats* and subordinate landholders—"it being our intention," wrote the Directors, "in the whole of this measure, effectually to limit our own demands, but not to depart from our inherent right, as sovereigns, of being the guardians and protectors of every class of persons living under our Government." Finally they said :—"We shall be happy that Lord Cornwallis, who has done so much in this arduous work, sees no reason to deny himself the happiness of announcing a new constitution to so many millions of the Asiatic Subjects of Great Britain." [9] Accord-

Decennial Settlement declared Permanent.

[9] See *General Letter of the 19th September* 1792.

ingly, the Decennial Settlement was declared permanent by a Proclamation dated 22nd March 1793, one of the articles of which contained the following passage :—" It being the duty of the ruling power to protect all classes of people, and more particularly those who from their situation are most helpless, the Governor-General in Council will, whenever he may deem it proper, enact such Regulations as he may think necessary for the protection and welfare of the dependent *talúkdars, raiyats* and other cultivators of the soil; and no zemindar, independent talúkdar or other actual proprietor of land shall be entitled on this account to make any objection to the discharge of the fixed assessment which they have respectively agreed to pay."

Reservation of a General Right to interfere for the protection of the Raiyats.

§ 267. From the account which has thus been given of the proceedings which led up to the Permanent Settlement, and from the opinions of those who were concerned in bringing about this measure, it will be clear to any unprejudiced person, that the Directors and those who under their authority conducted the Government of Bengal, were well aware of the indefinite relations which subsisted between *zemindars* and *raiyats*—were well apprized of the uncertain nature of the rights of the cultivators of the soil—that practically nothing effectual had been done between 1765 and 1790 to define or adjust those rights and the payments to be made by the *raiyats* to the *zemindars*—that Mr. Hastings and Mr. Shore were of opinion that these rights and payments should be defined and adjusted before the Government limited its own demand upon the *zemindars* and settled for ever the amount of revenue payable by them—that it was admitted on all hands that up to 1790 there was not sufficient information and there were not sufficient materials for this definition and adjustment—that Lord Cornwallis was sanguine that the combined effect of the limitation and permanent settlement of the State demand and of the *patta* regulations would have the ultimate effect of adjusting the relations between the

Conclusions to be drawn from the Proceedings and Minutes which resulted in the Permanent Settlement.

zemindars and the *raiyats* and obviating all objections to a Permanent Settlement based upon the undefined demands of the former upon the latter—that the Court of Directors adopted Lord Cornwallis's views, and instead of directing the rights of the cultivators of the soil to be ascertained, adjusted, and defined once for all, contented themselves with reserving a general right to interfere afterwards, if their expectations and those of Lord Cornwallis should be disappointed, and such interference should be found necessary for the protection and welfare of the *raiyats*. Any unbiassed individual, who will read the whole of the papers, must be satisfied that both Lord Cornwallis and the Directors acted to the best of their judgment, and entertained a very honest belief that the elimination of the element of uncertainty by the permanent limitation of the Government demand, the mutual interests of the parties, and the enforcement of the rules as to *pattas* would together operate to assure and improve the condition of the *raiyats*—but the fact remains, that the rights of the *then* cultivators of the soil were left as uncertain, as unsettled, as undefined as they were found by the English at the time of the grant of the *Díwání*.[1]

[1] In the time of the Mogul and Mahomedan Governments, (1) the share of the State was uncertain—and (2) the share of the *zemindar* was uncertain. The Permanent Settlement fixed and made certain the former; but the latter remained as uncertain as ever.

CHAPTER XXI.

Landholding, and the Relation of Landlord and Tenant in India—The Permanent Settlement.

§ 268. The Bengal Zemindars, as we found them, were the persons who collected the revenue from the cultivators and other subordinate landholders, and they were responsible for paying it when collected into the Government treasury. Their origin was various and their rights were by no means well defined.[2] They were no doubt in many

Origin of the Bengal Zemindars.

[2] "Most of the considerable Zemindars in Bengal may be traced to an origin within the last century and a half. The extent of their jurisdictions has been considerably augmented during the time of Jafír Khan, and since, by purchases from the original proprietors, by acquisitions in default of legal heirs or in consequence of the confiscation of the lands of other *zemindars*. Instances are even related in which *zemindarís* have been forced upon the incumbents."—Mr. Shore's *Minute of the 2nd April* 1788. "Since the decline of the constitution in the reign of Farokhsír and the introduction of the *farming system* at the recommendation of Rattanchand, when corruption pervaded every department of the State, the unprincipled *zemindars* by ingratiating themselves with the Amíls, or rulers for the time being, distressed the inferior *zemindars* by every possible mode, until they were reduced to the necessity of selling their *zemindarís* to their oppressors, who thenceforward became by virtue of usage, not of right, the acknowledged proprietors of them. Other zemindars, having desolated their lands by mismanagement and dissipation, were obliged by the ruling power to dispose of them to more prudent and opulent zemindars for the liquidation of their balances. The title of the purchasers of such land was considered good and valid. Towards the close of the reign of Mahomed Sháh, during the administration of Ramnarain and Jankiram and other Názims of the Bahár Province, certain *zemindars* by attaching themselves to these officers acquired great influence, and either by force or under different pretences, unjustly possessed themselves of the estates of the inferior landholders, till at length becoming rich and powerful through connivance of the Názim, who permitted these usurpations, they declared themselves the proprietors of the lands thus unfairly acquired. It was by the above modes that many *zemindars* of this province augmented

instances *rajas* or chiefs, or persons otherwise possessed of local importance and influence, which the Mahomedan *Súbahdárs* utilized for the collection of the revenue, and which were increased and extended by being thus recognized by the authority of Government and called into active exercise. Where no such persons existed, the want was supplied by appointing some of the numerous candidates who were ready to give a valuable consideration for a position which afforded great opportunities of profit.[3]

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their possessions. From being proprietors of a *taluk*, they became possessors of a *pargana ;* and from possessors of one *pargana*, they became possessors of many."—*Answers to Questions put to Ghulam Hosen Khan the Historian, son of Fakhar-Ud-daulah, formerly Názim of Bahár.* Mr. Shore in his Minutes of the 2nd April 1788 and 18th June 1789, says that the origin of the proprietary and hereditary rights of the zemindars is uncertain ; that in Akbar's time the zemindars of Bengal were numerous, rich and powerful ; that they were not of his creation and probably existed with some possible variation in their rights and privileges before the Mahomedan conquests in Hindustan, and without any formal acknowledgment acquired stability by prescription. He infers that the new invaders, who claimed the revenues of the country, from motives of policy and humanity employed the ancient possessors of the land as their agents for the collection of the taxes of the State, superadding the jurisdiction exercised by the Collectors of revenue in their own system of finance ; and that for this purpose, they confirmed the former proprietors by *sanads* or grants conferring offices of an inheritable and permanent nature. He does not consider the *sanad* to be the foundation of the tenure. In Appendix No. 15 to Mr. Shore's Minute will be found an account of the origin and descent of the zemindars of Rajshaye, Dinajpore, Bardwán, Nádia, and Lushkerpore, showing that the *zemindarí* descended in these families. "Zemindaris," says the Rairaiyan in his answers, "are of various kinds. Some are obtained by inheritance, some by clearing the country of wood, some by the ejectment of the former possessor for ill-behaviour, some by purchase, and some in trust. . . . Some are large and some small." In dealing with the argument drawn from inheritance, it may be well to remember that under native rule a *zemindarí* did not descend in exact conformity with the Hindu and Mahomedan law, inasmuch as it descended *intact* to one heir and was not subdivided. Reg. XI of 1793 abolished this "custom originating in considerations of financial convenience, established under the native administrations, according to which some of the most extensive zemindaris are not liable to division."

[3] In order to understand exactly what these sources of profit were, it must be borne in mind that the zemindar (or talúkdar in the North-Western Provinces) paid a fixed sum to Government. This sum was revised occasionally, but it was fixed for the time being. All beyond this sum, that

It had always been usual to exact a sum by way of fine or *nazarana* upon every accession to the position, even in the case of the heirs of the *zemindars* of the former class, in whose family their rights had been hereditary before the existence of the Mogul power. Persons who had an undoubted right of succession found it expedient to comply with the demands of those who had it in their power to put their rights aside; while new men and the heirs of those, whose *sanads* or patents were but a generation old, were very willing to pay for succeeding to a position to which they had no other title than the will of the ruler.[4] Those, who regarded chiefly the former

Arguments for and against making them landed proprietors.

could be exacted from the subordinate holders, was clear gain. Improved agriculture, the cultivation of further portions of waste land, the discovery of land held revenue-free without right, the imposition of cesses (*abwáb*), the levy of customary fees, and the possession of *sír* land, as the home-farm or lord's demesne of the zemindar was called, were all sources which, worked with arbitrary and too often lawless discretion, yielded a very considerable income. What the zemindar paid to Government was fixed: what he was to take from the *raiyats* was not fixed. "The institutes of Akbar show," says Mr. Shore, "that the relative proportions of the produce were settled between the cultivator and the Government; yet in Bengal I can find no instances of Government regulating those proportions."

[4] See a *Note on the mode of Investing a Zemindar*, *Appendix No.* 9 *to* Mr. Shore's *Minute of 2nd April* 1788. The zemindars of Nádia, Bardwán, Dinajpore, and formerly of Bishenpúr, Pachete, Birbhúm, and Roshanabad, were instances of the first of the above classes—see the *Rairayan's answers*, *Appendix No.* 17, *id.* The succession of the latter, especially where powerful, was no doubt assisted by the growing weakness of the Mogul power. Exactly the same thing happened in respect of the ancient *benefices* in Europe—see Hallam's *Middle Ages*, Vol. I, pp. 160, 161, and 172. In the last place Mr. Hallam says—"Some writers have accounted for reliefs in the following manner. Benefices, whether depending upon the Crown or its vassals, were not originally granted by way of absolute inheritance, but renewed from time to time upon the death of the possessor, till long custom grew up into right. Hence a sum of money, something between a price and a gratuity, would naturally be offered by the heir on receiving a fresh investiture of the fief, and length of time might as legitimately turn this present into a due to the lord, as it rendered the inheritance of the tenant indefeasible. This is a very specious account of the matter. But those who consider, &c. . . . will perhaps be led rather to look for the origin of reliefs in that rapacity with which the powerful are ever ready to oppress the feeble." The same may be said of the Bengal zemindars, the difficulty of

class of *zemindars*, were satisfied that a *zemindarí* was an hereditary proprietary right in the soil, very similar to, if not identical with, an Englishman's right in his estate. Those who fixed their attention upon the latter class contended that it was nothing but an office; and, when pressed with instances of regular succession, replied that it was the tendency of all offices to become hereditary under the particular system. The holders of the latter opinion argued that the principle of dividing the produce with the cultivators annihilates the idea of a proprietary inheritable right—that the existence of the *sanad* proves investiture essential—that a *zemindarí* is expressly called a *service* in the *sanad*, the terms of which assign *duties* but *convey* no property—that a fine was paid to the sovereign as a preliminary to investiture—and that security was taken for the personal appearance of the zemindar, all which are inconsistent with the notion of a proprietary right in him. Those who maintained the former view replied that the State claimed merely a *share* of the rents or produce, and this was not incompatible with the existence of proprietary right—that a *zemindarí* was inheritable by usage and prescription, the force of which are admitted in all countries, when derived from principles of natural right and conformable to right reason—that the *sanad* was never conferred at discretion upon an alien to the exclusion of the heir and was properly construed as confirming existing rights, not as creating new ones—that it was only the principal *zemindars* who asked or received *sanads*, while the inferior *zemindars* succeeded according to their own laws of inheritance—that the use of the word *service* in the *sanad* proved nothing, when the tenure was found to be hereditary, and property

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arguing as to whose *rights* at all will appear from the already quoted observation of Mr. Shore—"The constitution of the Mogul Empire, despotic in its principle, arbitrary and irregular in its practice, renders it sometimes almost impossible to discriminate between power and principle, fact and right; and, if custom be appealed to, precedents in violation of it are produced."

depending upon service in its inception may have become by usage hereditary—that the *nazarana* paid on investiture was probably an exaction, or ought at any rate to be regarded as a fine for the renewal of an estate—that the *Krorí* and *Amíl*, both holding an office concerned with the collection of the revenue, paid no *nazarana* and did not succeed by inheritance—that in a country subject to frequent revolutions in which the *zemindar* as often took part against the Government as with it, the security for personal appearance was merely a device to keep them to their allegiance—that the *sanad* contained no term, and the obvious inference was that the tenure was to continue so long as the conditions of the grant were observed.[5]

[5] Mr. Shore's *Minute of the 2nd April* 1788. Lord Cornwallis said in his Minute of the 3rd February 1790:—"The question that has been so much agitated in this country, whether the *zemindars* and *talúkdars* are the actual proprietors of the soil, or only officers of Government, has always appeared to me to be very uninteresting to them; whilst their claim to a certain percentage upon the rents of their lands has been admitted, and the right of Government to fix those rents at its own discretion has never been denied or disputed." Another discussion was as to whether the Sovereign, the zemindars or the raiyats were the *owners* of the land. As a matter of fact no one ever did or can *own* land in any country, that is, in the sense of absolute ownership—such ownership as a man may have in movable property, as for example, in a cow or a sheep which may be stolen, killed and eaten, or in a table or chair which may be broken up or burned at the pleasure of its owner. Land is immovable, indestructible. No man, however feloniously inclined, can run away with an acre of it. The Maratta freebooter and the Pindari marauder were alike powerless to carry off a bigah—see Williams *on the Law of Real Property*, pp. 1—20, who, after remarking upon the erroneous notions too generally entertained amongst non-professional persons upon the subject of property in land, goes on to say:—"The thing then the student has to do is to get rid of the idea of absolute ownership. Such an idea is quite unknown to the English law. No man is in law the absolute owner of lands. He can only hold an estate in them." If the laws of our country formed part of a liberal education, these erroneous notions would not prevail. The Author once travelled home from India with an English land-*owner*, who had made the tour of the globe to study the different tenures of land in various countries, but who was absolutely horrified at being told that no man could be the absolute owner of land, and that no man was so in England. There is reason to believe that the first administrators of the Company's territory in India had similar vague notions of the law of real property in their own country. A very strong indication of this is the use of the word '*estate*,' which in legal phraseology means the

§ 269. Mr. Harington gave Lord Cornwallis in 1789 the following definition of a Bengal zemindar as he existed before our rule; and writing twenty-eight years afterwards, he said he saw no reason to alter it—"A landholder of a peculiar description not definable by any single term in our language—a receiver of the territorial revenue of the State from the *raiyats* and other under-tenants of land—allowed to succeed to his *zemindarí* by inheritance, yet in general required to take out a renewal of his title from the sovereign or his representative on payment of a fine on investiture to the Emperor, and a *nazarana* or present to his provincial delegate the Názim—permitted to transfer his *zemindarí* by sale or gift; yet commonly expected to obtain previous special permission—privileged to be generally the annual contractor for the public revenue receivable from his *zemindarí;* yet set aside with a limited provision in land or money, whenever it was the pleasure of Government to collect the rents by separate agency or to assign them temporarily or permanently, by the grant of a *jagír* or *altamgah*—authorized in Bengal since the early part of the eighteenth century to apportion to the parganas, villages, and lesser divisions of land within his *zemindarí* the *abwáb* or cesses, imposed by the *súbahdár,* usually in some proportion to the standard assessment of the zemindarí established by Tódar Mal and others; yet subject to the discretionary interference of public authority either to equalize the amount assessed on particular divisions, or to abolish what appeared oppressive to the *raiyat*—entitled to any contingent emoluments proceed-

Mr. Harington's Definition of a Zemindar before the Permanent Settlement.

interest in reality owned by an individual, the aggregate of the rights over land vested in a particular person. The extent of this interest may vary very considerably, *e.g.* an estate-for-life, an estate-tail, an estate in fee-simple, none of which phrases carries the idea of *owning* the land itself. In popular phraseology the word 'estate' is applied to the land itself, and this is the only way in which it was applied in India by the first administrators, and has continued to be applied down to the present hour—(See the Bengal Regulations *passim*, more especially cl. 2, s. 2, Reg. XLVIII of 1793; cl. 2, s. 2, Reg. XIX of 1795).

ing from his contract during the period of his agreement; yet bound by the terms of his tenure to deliver in a faithful account[6] of his receipts—responsible by the same terms for keeping the peace within his jurisdiction; but apparently allowed to apprehend only and deliver over to a Musalman Magistrate for trial and punishment." Mr. Shore considered the zemindars "as the proprietors of the soil, to the property of which they succeed by right of inheritance"; but he observed that a property in the soil must not be understood to convey the same rights in India as in England; that the difference is as great as between a free constitution and an arbitrary power; that we are not to expect under a despotic Government fixed principles or clear definitions of the rights of the subject, but must admit the general practice of such a Government, when in favour of its subjects as an acknowledgment of their rights.[7] He believed that the zemindars had hereditary rights, although these rights were indefinite; and the question of their future *status* under the English Government be considered to be a mixed one of right and of policy.

Mr. Shore's View of a Zemindar's Rights.

§ 270. The final views of the Court of Directors as to *zemindars* were conveyed in the following terms:—"In former despatches we have, on different occasions, conveyed to you our sentiments, though we have also stated that we felt the materials before us to be insufficient for forming a decisive opinion. On the fullest consideration, we are inclined to think, that whatever doubts may exist with respect to their original character, whether as proprietors

Final views of the Court of Directors as to the Zemindars.

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[6] The account of receipts was not always a very faithful one. The *Jama Wasil Baki* paper prepared at the end of the year from the actual accounts of the year is said to have been invented by Udhmant Singh of Nussipúr in the district of Múrshedabád in order to enable the accounts of receipts to be rendered in the manner most suited to the *zemindar*. Even at the present day the *amlah* or employées of many zemindars prepare two sets of these papers—one correct, for their own use—the other drawn out as may be most suitable for use in Court.

[7] Para. 383 of the *Minute of 18th June* 1789.

of lands or collectors of revenue, or with respect to the changes which may in process of time have taken place in their situation, there can, at least, be little difference of opinion as to the actual condition of the zemindars under the Mogul Government. Custom generally gave them a certain species of hereditary occupancy; but the sovereign nowhere appears to have bound himself by any law or compact, not to deprive them of it: and the rents to be paid by them remained always to be fixed by his arbitrary will and pleasure, which were constantly exercised upon this object. If considered, therefore, as a right of property, it was very imperfect, and very precarious, having not at all, or but in a very small degree, those qualities that confer independence and value upon the landed property of Europe. Though such be our ultimate view of this question, our originating a system of fixed equitable taxation will sufficiently show that our intention has not been to act upon the high tone of Asiatic despotism. We are, on the contrary, for establishing real, permanent, valuable landed rights in our provinces; and for conferring such rights upon the zemindars; but it is just that the nature of this concession should be known, and that our subjects should see they receive from the enlightened principles of a British Government, what they never enjoyed under the happiest of their own." [8]

§ 271. There can be no doubt that there never was in India any property in land exactly similar to that aggregate of rights, the highest known to English law, which is termed a fee-simple,[9] and it was therefore of the

[8] *General Letter of the 19th September* 1792.

[9] "There seems to be the heaviest presumption against the existence in any part of India of a form of ownership conferring the exact rights on the proprietor which are given by the present English ownership in fee-simple."—Maine's *Village Communities*, p. 160. It may be well to observe that the Bengal *Zemindars* were different from the *Village Zemindars* of the Village Community and more nearly resembled the *Talúkdars* of Upper India. In the North-Western Provinces the *talúkdar* was superior, and the *zemindar* inferior. The reverse was the case in Bengal. The *talúkdar* was subordinate to the *zemindar*, where any relation existed between them. Some large

first importance that when the Zemindars of 1793 were declared 'proprietors' of the lands included in their *zemindarís*, the nature of their proprietorship should be defined—that it should at least have been expressly stated, if such was the intention of the Government, that they were not to consider themselves proprietors in the English sense of the term. From what has been said it will be obvious that the rights and powers of the *zemindars*, as the rights and privileges of the *raiyats*, were uncertain and indefinite under the former system; that both alike were left uncertain by the Permanent Settlement Regulations;[1] that there was no uniform and well-defined custom, no settled common law, to which recourse could be had in case of dispute, when the utterance of the Legislature was wanting. The natural and necessary result was, that in all things for which the Legislature did not make provision, the new course of things under British rule created a practice and an usage which adjusted and regulated

The Nature of the Zemindars' Proprietorship left indefinite by the Permanent Settlement—and the Result.

talúkdars indeed paid their revenue direct to Government and were independent of the *zemindar;* but in no case was the *zemindar* subordinate to the *talúkdar*. The word *taluk*, *taluka* is derived from the Arabic word '*alak*,' which signifies 'to hang from,' 'to depend upon' (*alak* also means a leech, which hangs from the body to which it has attached itself and has another quality said to have belonged also to the *talúkdar*) and means 'connexion,' 'dependence.' In Upper India the *taluk* was dependent upon, subordinate to, the sovereign. In Bengal the *taluk* was subordinate to the *zemindarí*, but not always. The larger *talúkdars* were *huzúrí*, i. e. they were immediately under the Supreme Government, to which they paid their revenue direct: while the smaller ones were *mazkúri* or specified, *i. e.* in the *sanad* of the *zemindar*, through whom they paid their revenue. Doubtless all were originally *huzúrí*, but when the revenue came to be collected through the *zemindars*, the smaller *talúkdars* were directed to pay their revenue through this channel in order to avoid the inconvenience of a multiplicity of small payments into the Khalsa or treasury of the State.

[1] "It is said that the zemindar is the proprietor; the raiyat, the occupant. But how undefined are their respective rights! Nobody has clearly defined them yet."—Mr. Thackeray's *Memoir* dated 29th April 1806.—See *Appendix to Fifth Report.* "It was not at that period known, and, I regret much to say, is not now generally admitted, that two rights could under the words 'proprietary right' in the Regulations, exist: that the cultivators could possess one right, and the zemindars another; yet both be distinct rights." Mr. Hodgson's *Report* dated 28th March, 1808 *ib.*

those relations with which Government did not concern itself to interfere ; and a common law came into existence which was largely compounded of the ideas of the ruling race, to which practical operation was given by a strong Executive and by means of the Courts of Justice. Let us now see how far the Legislature of 1793 made provision for the rights of the zemindars and of the other persons having interests in the land, and for regulating the relations of these two classes between themselves. We shall then be in a position to judge how much was left to adjustment and settlement in the other way.

Rights and Duties of the Zemindars, in so far as defined by the Permanent Settlement Regulations.

§ 272. The Decennial Settlement, which after being approved by the Court of Directors was declared permanent, was "concluded with the actual proprietors of the soil, of whatever denomination, whether *zemindars*, *talúkdars*, or *chowdries*."[2] It was declared that no alteration would be made in the assessment which they had engaged to pay, but that "they and their heirs and lawful successors" would "be allowed to hold their estates at such assessment for ever." At the same time the Governor-General in Council *trusted* "that the proprietors of land, sensible of the benefits conferred upon them by the public assessment being fixed for ever," would "exert themselves in the cultivation of their lands under the certainty that they will enjoy exclusively the fruits of their own good management and industry, and that no demand will ever be made upon them or their heirs or successors by the present or any future Government for an augmentation of the public assessment in consequence of the improvement of their respective estates." "To discharge the revenues," continues the Proclamation, "at the stipulated periods without delay or evasion, and to conduct themselves with good faith and moderation towards their dependent *talúkdars* and *raiyats*, are duties at all times indispensably required from the proprietors of land, and a

[2] Reg. VIII of 1800, s. 4. Elsewhere the phrase "*zemindars*, independent *talúkdars*, and other actual proprietors of land" is used.

strict observance of those duties is now more than ever incumbent upon them in return for the benefits which they will themselves derive from the orders now issued. The Governor-General in Council, therefore, *expects* that the proprietors of land will not only act in this manner themselves towards their dependent *talúkdars* and *raiyats*, but also enjoin the strictest adherence to the same principles in the persons whom they may appoint to collect the rents for them. He further expects that without deviating from this line of conduct, they will regularly discharge the revenue in all seasons; and he accordingly notifies to them that in future no claims or applications for suspensions or remissions on account of drought, inundation, or other calamity of season will be attended to, but that in the event of any *zemindar*, independent *talúkdar* or other actual proprietor of land, with or on behalf of whom a settlement has been or may be concluded, or his or her heirs or successors, failing in the punctual discharge of the public revenue, which has been or may be assessed upon their lands . . . . . a sale of the whole of the lands of the defaulter, or such portion of them as may be sufficient to make good the arrear, will positively and invariably take place." Then we have a declaration of the reservation of the right to legislate for the protection and welfare of the dependent *talúkdars*, *raiyats* and other cultivators of the soil, which has already been given[3]; and finally it is notified "to the *zemindars*, independent *talúkdars*, and other actual proprietors of land that they are privileged to transfer to whomsoever they may think proper, by sale, gift, or otherwise, their *proprietary rights* in the whole, or any portion of their respective *estates*, without applying to Government for its sanction to the transfer, and that all such transfers will be held valid, provided that they be conformable to the Mahomedan or the Hindu laws . . . and that they be not repugnant to any Regulations now in force, which have been passed by the

Sale of Estate in case of Non-payment of Revenue.

Right of Zemindars to transfer their Proprietary Rights in their Estates.

[3] *Ante*, page 503.

British administrations, or to any Regulations that they may hereafter enact." This Proclamation, couched in the language of distinct declaration as regards the rights of the zemindars, but in the language of *trust* and *expectation* as regards any definition of their duties towards the *raiyats*, was enacted into a Regulation, which stands first upon the Indian Statute Book.

§ 273. A *zemindarí* may then be said to be an estate held under a qualified right of proprietorship, the exact limits of the qualifications having never yet been defined. It is subject to the payment of a fixed amount of revenue to Government. If this revenue fall into arrears, the estate may be put up to auction and sold to the highest bidder. The purchaser acquires the estate free of all incumbrances created since the time of the Permanent Settlement and obtains a statutory title. A *zemindarí* is inheritable according to the law of succession by which the proprietor is governed. It is assignable in whole or in part; and any holder for the time being may at his own mere pleasure defeat the expectancy of his heir. It may be mortgaged. The zemindar can now grant leases either for a term or in perpetuity. He is entitled to rent for all lands lying within the limits of his *zemindarí*; and the rights of mining, fishing, and other incorporeal rights are included in his proprietorship. Mr. Harington gives the following definition of a *zemindar* as constituted by the Permanent Settlement: "A landholder, possessing a *zemindarí* estate which is hereditable and transferable by sale, gift or bequest; subject under all circumstances to the public assessment fixed upon it; entitled after the payment of such assessment to appropriate any surplus rents and profits which may be lawfully receivable by him from the under-tenants of land in his *zemindarí*, or from the cultivation and improvement of untenanted lands; but subject nevertheless to such rules and restrictions as are already established, or may be hereafter enacted by the British Government for securing the rights and privileges of *raiyats* and other under-tenants, of whatever denomination, in their

Nature of Incidents of a Zemindarí.

respective tenures, and for protecting them against undue exaction or oppression."[4]

§ 274. The rules under which the Decennial Settlement was made were with some modifications and amendments re-enacted in one of the Regulations, which composed the Code of the 1st May 1793[5] and so became the Rules of the Permanent Settlement. In these rules we find the only limitations which the Government thought fit to impose upon the proprietary right conferred upon the zemindars. The 52nd section of this Regulation provides as follows:—"The zemindar or other actual proprietor of land is *to let the remaining lands of his zemindari or estate*, under the prescribed restrictions, in whatever manner he may think proper; but every engagement contracted with under-farmers shall be specific as to the amount and conditions of it; and all sums received by any actual proprietor of land or any farmer of land, of whatever description, over and above what is specified in the engagements of the persons paying the same, shall be considered as extorted and be repaid with a penalty of double the amount. The restrictions prescribed and referred to in this section are the following:" and the Regulation then goes on to lay down these restrictions in the next following sections. Let us first ascertain what is meant by "the remaining lands": let us then examine what were the restrictions under which these remaining lands might be let: and lastly, let us see whether this

Rules for the Permanent Settlement. Zemindars to let "remaining lands" as they thought proper.

The largest estate or collection of rights in land in the Lower Provinces of Bengal is a *Lakheraj* or Revenue-free Tenure. This tenure may be generally described by saying that it possesses all the incidents and advantages of a *Zemindari* tenure, with this additional one that, as it pays no revenue to Government, it is not liable to sale for arrears of such revenue. One important consequence of this non-liability to sale for arrears is that there is no statutory mode of avoiding incumbrances once created by the *Lakherajdar* or holder of a *Lakheraj* tenure.

[5] Regulation VIII, which is entitled "*A Regulation for re-enacting, with Modifications and Amendments, the Rules for the Decennial Settlement of the Public Revenue payable from the lands of the Zemindars, independent Talukdars and other actual Proprietors of Land in Bengal, Bahar and Orissa.*"

'letting' was intended to mean and include letting to *raiyats* for the purpose of cultivation. In order to discover what is meant by "the remaining lands," we must examine the preceding portions of the Regulation. The first forty-seven sections lay down rules as to the persons with whom the settlement should be made, as to the lands included in the settlement, the payment of *malikana*[6] and other matters concerned with the exact relation existing between the Government as receiving revenue and the actual proprietors as paying revenue. In these rules we find *inter alia* directions as to what *talúkdars*, *mukurraridars* and *istemrardars*[7] were to be considered actual proprietors with whom the settlement should be made, and what *talúkdars*, *mukurraridars* and *istemrardars* were to be regarded as leaseholders, holding subordinate to the actual proprietors. Having defined who were the actual proprietors and what were to be the relations between the actual proprietors and Government, the Regulation then proceeds to define the relations between the actual proprietors and the persons holding under them. Accordingly the forty-eighth

What is meant by "the remaining lands."

[6] An allowance made to a *Malik* or proprietor, with whom the settlement of his estate is not made, and who is therefore not allowed to collect the rents.

[7] *Istemrarí* tenures are tenures granted in perpetuity. *Mukurrarí* tenures are those granted at a fixed rent not liable to enhancement. Generally speaking, however, the two conditions are now found combined; and, where the rent is fixed for ever, the term is in perpetuity. These tenures, though not called *taluks*, differ little in their incidents therefrom. They are transferable and inheritable, and may now be protected by registration from the effects of a revenue sale. Many tenures, the incidents of which were not exactly defined when they were created, have become *istemrarí* and *mukurrarí* by custom, assisted by our legislation. Being allowed to descend from father to son without opposition, they have come to be regarded as *istemrarí*, more especially after one or two transfers, and devolution by inheritance upon the heirs of the transferree. The law now declares that, where the rent has not been changed since the Permanent Settlement, it cannot be enhanced, and here also a statutory presumption has been brought in to facilitate the means of proof; and thus many tenures have become *mukurrarí*, which were not so in their inception. I believe that many tenures, which were originally created in favour of cultivating *raiyats*, have, in the course of time, come to be treated as intermediate interests between the proprietors and the *raiyats*, the original grantee or lessee having sublet and converted himself into a middleman without remark or objection from the superior landlord.

section commences thus :—" The settlement having been concluded with the *zemindars*, independent *talúkdars* and other actual proprietors of land, they are to enter into engagements with the several dependent *talúkdars* continued under them respectively, and consequently paying revenue through them, for the same period as the term of their own engagements with Government, provided the *talúkdars* will agree to such revenue, progressive or otherwise, as the *zemindar* or other actual proprietor of land may be entitled to demand from them. Section forty-nine then provides for *mukurraridars* and *istemrardars*, who had (1) held at a fixed rent for more than twelve years, or (2) contracted for payment at a fixed rent with the zemindar or actual proprietor ; and declares that these two classes are not 'liable to be assessed with any increase.'" The meaning of the term 'increase' may be obtained from section 8 of the Regulation, which, speaking of *jangalburi*[8] *taluks*, describes the *patta* given to the grantee as "exempting him from payment of revenue for a certain term, and at the expiration of it subjecting him to a specific *asil jama with all increases*, *abwábs* and *mhatúts* imposed on the pargana generally." Clearly this 'increase' was something different from the *abwábs* and *mhatúts*. It is more clearly spoken of in section 51 as "an increase of jama," *i.e.* an increase of the *asil jama*. Section 50 declares that the second class of *mukurraridars* and *istemrardars* above spoken of, *i.e.* those who have contracted with the actual proprietors for the payment of a fixed rent, are not to be protected against Government if the *zemindarí* be held *khas* or let in farm. Section 51 then lays down rules to prevent undue exactions from dependent *talúkdars*, viz. that no actual proprietor shall demand an increase from the dependent *talúkdars*, except upon proof that he is

[8] *Jangalburi*, i.e. '*jangal*-cutting.' Leases on favourable terms were granted to persons, who undertook to cut and clear the *jangal* and bring the land under cultivation. A considerable portion of Lower Bengal has been cleared and brought under cultivation by grantees of such leases both before and since the Permanent Settlement.

entitled so to do either by the special custom of the district or by the conditions under which the *talúkdar* holds his tenure—*i.e.* by custom or contract—or that the *talúkdar*, by receiving abatements from his jama, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it. Then comes section 52 :—"The zemindar or other actual proprietor is to let the remaining lands of his zemindarí or estate, *under the prescribed restrictions, in whatever manner he may think proper*"—*i.e.* the lands remaining over and above the lands held by the *mukurraridars*, *istemrardars* and dependent *talúkdars*, who are by specific provisions protected from an increase of jama. This is apparently the only possible interpretation that can be put upon the words, seeing that the above are the only persons holding under the actual proprietors, who are mentioned in the Regulation before section 52.

They are the lands other than those held by Mukurraridars, Istemrardars, and Dependent Talúkdars.

§ 275. Let us now see what are "the prescribed restrictions." They are—(1) *Amilnamahs* must be given to persons taking charge of lands or collections on behalf of actual proprietors :[9]—(2) All impositions under the name of *abwábs*, *mhatúts*, &c., having from their number and uncertainty become intricate to adjust and a source of oppression to the *raiyats*, were to be consolidated with the asul into one specific sum :[1]—(3) No new *abwáb* or *mhatút* was to be imposed upon the *raiyats* under any pretence whatever, the object being to prevent the creation of fresh uncertainties and intricacies and to keep the jama or rent represented by a specific sum :[2]—(4) Where it was "the established custom to vary the *patta* for lands according to the articles produced thereon," this was allowed to be done, the Legislature, however, expecting that "the proprietors of land, dependent *talúkdars* and farmers of land" (*i.e.* the landlords on the one side), and the *raiyats* (*i.e.* the tenants on the other side) will find it for ther mutual advantage to enter into agreements in every instance *for a specific sum*

What are "the prescribed restrictions."

[9] Section 53. [1] Section 54. [2] Section 55.

for a certain quantity of land :[3]—(5) The rents payable by the *raiyats* were to be specifically stated in the *patta*, which in every possible case was to contain the exact sum to be paid by them. Where this was not possible, as when rent was paid on a measurement of the lands or a survey of the crop or in kind, the rate and terms of payment, and the proportion of the crop to be delivered, with every condition, were to be clearly specified :[4]—(6) Forms of *pattas* were to be prepared, and, when approved by the Collector, were to be registered in the Civil Court. *Raiyats* were declared entitled to receive corresponding *pattas* :[5]—(7) As soon as the rent was ascertained and settled, a *patta* for the adjusted rent was to be prepared and tendered to each *raiyat* :[6]—(8) Leases to under-farmers and *raiyats* made before the conclusion of the settlement and not contrary to any Regulation were to remain in force until their expiry, unless proved to have been granted through collusion or by persons who had no authority :[7]—(9) No actual proprietor, or farmer, or person acting under their authority was to cancel the *pattas* of the *khudkasht raiyats*, except upon proof of collusion ; or that the rents paid by them within the previous three years had been reduced below *the rate of the nirkbandí of the pargana* ;[8] or that they had obtained collusive deductions ; or upon *a general measurement of the pargana for the purpose of equalizing and correcting the assessment.* This rule had no application to Bahár, where rents in kind were usual :[9]—(10) Time was to be allowed for the preparation and delivery of *pattas* to *raiyats*, and after the expiry of this time claims not supported by *pattas* were to be nonsuited :[1]—(11) Rules were laid down for the maintenance of patwaries and keeping proper *zemindarí* accounts, and it was pointed out to *zemindars* and other actual proprietors that they could have no object in concealing the profits of their estates, as they

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[3] Section 56. [4] Section 57. [5] Section 58. [6] Section 59.
[7] Section 60, cl. 1. [8] *i.e.* the pargana rate.
[9] Section 60, cl. 2. [1] Section 61.

were not to be subjected to any increase of revenue:[2]—(12) All persons receiving rent were to give receipts to dependent talúkdars, under-farmers, raiyats and others for all sums paid by them and a receipt in full on the complete discharge of every obligation:[3]—(13) The rents of raiyats, who absconded on account of inundation, drought or other calamity, were not to be demanded from those who remained:[4]—(14) The instalments of rent payable by the under-renters and raiyats were to be regulated according to the time of reaping and selling the produce.[5]

Pattas not to be granted to Raiyats for a term exceeding ten years.

§ 276. Such are the 'restrictions' 'prescribed' by the Regulation; and to these we must add a further very important restriction prescribed by another Regulation[6] passed on the same day. This restriction was that no proprietor should fix the jama of any taluk for a term exceeding ten years, or let any lands in farm, or grant *pattas* to raiyats or other persons for the cultivation of lands for a term exceeding ten years. Subject to these restrictions, proprietors were authorized in 1793 to let, in whatever manner they thought proper, such lands as were not at that time in the possession of dependent *talúkdars*, *mukurraridars* and *istemrardars*; and that this letting meant and included letting to *raiyats* for the purposes of cultivation, there can be no doubt, as otherwise restrictions (2), (3), (4), (5), (6), (7), (8), (9), (10), (12), (13), and (14) would have had no application.[7] The term 'let' was not

'Letting' included letting to Raiyats for the purposes of Cultivation.

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[2] Section 62. In vain, however, for they had no confidence in our faith or in the stability of our newly created power: and once *abwábs* became common, they dared not show their accounts, which would have convicted them and made them liable to the penalties provided for *abwábs* imposed contrary to law.

[3] Section 63, cl. 1.

[4] Section 63, cl. 2.

[5] Section 64.

[6] Regulation XLIV of 1793.

[7] This was in accordance with Mr. Shore's view as stated in para. 433 of his *Minute of the 18th June* 1789:—"In authorizing the Collectors to grant *pattas* to the *raiyats*, we certainly deviate in some degree from an established principle, which I always assume, that the zemindars are the proprietors of the soil. I have admitted, it is true, on the grounds of precedent, the right of the Government to interfere in regulating the assessment upon the *raiyats*, but *I object to the policy and propriety of this interference without evident necessity.* Where a *zemindar* has refused or evaded the execution of the orders

a very appropriate expression to use in respect of *khudkasht raiyats*, who were already on the land, and to whom it was intended that *pattas* should be given, which specifically stated the amount of rent payable by them :[8] but throughout the whole of the papers the *zemin-*

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prescribed to him for the security of his tenants, or is unable to execute them, the interference of the Collector may be expedient. *The regulation of the rents of the raiyats is properly a transaction between the zemindar or landlord and his tenants, and not of the Government:* and the detail attending it is so minute as to baffle the skill of any man, not well versed in it. Where rates exist, or where the collections are made by any permanent rules, the interference of the Collector would be unnecessary : where the reverse is the case, he would find it difficult to adjust them." Mr. Francis also was of opinion that Government should not interfere between the *zemindars* and *raiyats* except to *enforce the execution of their respective engagements.*—See *ante*, page 482.

[8] It has been gravely argued that the expression "let the remaining lands" was intended to apply only to *contracts of letting by a zemindar to farmers in connection with lands already in possession of raiyats.* In support of this view it is said : (1) that, as section 51 refers to dependent *talúkdars*, section 52 dealing with farmers naturally follows, as its subject-matter naturally falls between land held by *talúkdars* referred to in section 51, and land held *khas* mentioned in section 54 ; (2) that the section itself presupposes existing *raiyats ;* and (3) that the letting is with the proprietor : no inferior tenure-holder could be lessor (see Papers published in the *Special Calcutta Gazette* of 21st July 1880, page 450). As to the *first* of these arguments, the construction of *letting to raiyats* would suit the position of the section as well as—rather better than—letting to farmers. As to the *second* argument, part of the section indeed presupposes existing *raiyats*, but the first sentence does not, and therefore the whole section does not, presuppose existing *raiyats*, unless the very point to be proved is assumed. The *third* argument is manifestly erroneous, for the section says that every engagement contracted with *under-farmers* (it was *under-renters* in the original draft—see Colebrooke's *Supplement*, page 319) shall be specific as to the amount and conditions of it. Now an engagement with an *under*-farmer could only be made by a farmer, who is subordinate to a proprietor. So that it is clear that the section does contemplate letting other than letting by a proprietor. The correctness of the construction which I have placed upon the section has been challenged on the ground that I have, in my edition of the Regulations, adopted an erroneous punctuation, and, if the proper punctuation be retained, it is said, that the restrictions referred to in section 52 are included in, and cease at the end of, section 53. If this is a valid objection, it gets rid of the argument, otherwise irrefragable, based on the contents of restrictions (2) to (10) and (12) to (14) inclusive, which must apply to *raiyats*. There are, however, three reasons why this objection is absolutely valueless. *First*, in the edition of the Regulations printed at the Baptist Mission Press in 1827, the punctuation is the

dars are spoken of as *landlords*, and the *raiyats* as *tenants*; and even Mr. Shore spoke of reducing the compound relation of a *zemindar* to Government and of a *raiyat* to a *zemindar* to the simple principles of landlord and tenant.[9] It is not surprising that Englishmen should think and speak in this way, when it is remembered that England had, at the close of the eighteenth century, been for a long time endeavouring to introduce the same simple relation of landlord and tenant into Ireland; that the idea of forcing this relation as founded on contract upon that country was persevered in up to 1860, and has only been abandoned within the last fifteen years.[1]

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same as that which I have adopted. *Second*, it is a well-settled rule that the construction of a Statute cannot be made to depend upon the punctuation, which is not part of the Statute. *Third*, if we stop at the end of section 53, there is only *one* restriction in this section, and section 52 speaks of restrictions in the plural. There is no suggestion that in any edition of the Regulations the singular 'restriction' is to be found. Then we know that, at the time of the Permanent Settlement, a large portion of Bengal was waste, and letting to farmers could have no application to waste land upon which there were no *raiyats*. Finally, section 2, Reg. XXX of 1803, which makes somewhat similar provisions for the Ceded Provinces, speaks of "the restrictions prescribed by this Regulation, or by any other Regulation published" in the usual manner, showing that the intention of the Legislature was never limited to a single restriction. If we are to interpret the words of the Regulation by matter to be found outside it, in the deliberation of those who passed it into law, the passages which have been quoted leave no room for doubt. But suppose, for argument's sake, that *letting* can be construed in the extraordinary way suggested—what then? There is nothing express in the Code of 1793, and the zemindars were equally left to do as they pleased. Whatever difference of opinion there may be on the point ninety years after the Permanent Settlement, it would appear that the Indian Government had in 1815 no doubt as to what was intended. In that year they wrote to the Court of Directors as follows:—"In like manner, the *zemindar* in this country, in holding his estate subject to certain restrictions with respect to the rights of the resident *raiyats*, does not the less enjoy the power of managing those lands on which no resident *raiyats* are established, in any mode he may judge proper; of collecting the rents of the whole, through what channel he may deem best suited to his convenience; of providing for the cultivation of waste lands; of improving the general condition of the estate; and finally, of enjoying the surplus revenue, whatever it may be, after paying the regulated assessment to Government." [Para. 11 of Revenue Letter from Bengal of 7th October 1815—I *Revenue Selections*, p. 295.]

[9] *Ante*, page 490.

[1] See *ante*, pages 292, 311, 321 and 323.

§ 277. In order to show what was understood more than half a century ago to be the meaning of the provisions which I have quoted and construed, I may cite the following passage from Mr. Mill's History of British India :—" If the aristocracy was provided for, it appears to have been thought, as by English aristocrats it is apt to be thought, that everything else would provide for itself. The rules by which the payments of the *raiyats* were determined varied in various places ; and so intricate did they appear to the Anglo-Indian Government, that no little trouble would be necessary to make an assessment in detail. The *raiyats* were, therefore, handed over to the *Zemindars* in gross. *The zemindars were empowered to make with their raiyats any settlements which they chose*, under a mere general recommendation to be guided by the custom of the place." But it may be said that Mr. Mill's opinion is worth little, as he had no practical experience of the subject. Let me then give the *contemporaneous exposition* of Sir Edward Colebrooke,[2] who (to copy his own words) " on the eve of finally quitting a country in which " he had " resided forty-two years, and a service in which " he had " borne an efficient and reponsible part from the age of eighteen," wrote as follows on the 12th July 1890 :—" The errors of the Permanent Settlement in Bengal were twofold : *first*, in the sacrifice of what may be denominated the yeomanry, by merging all village rights, whether of property or occupancy, in the all-devouring recognition of the *zemindars'* paramount property in the soil ; and *secondly*, in the sacrifice of the peasantry by one sweeping enactment, which *left the zemindar to make his settlement with them on such terms as he might choose to require.* Government, indeed, reserved to itself the power of legislating in favour of the tenants ; but no such legislation has ever taken place : and, on the contrary, every subsequent enactment has been founded on the declared object of strengthening the *zemindars'* hands.[3]

The opinion of Mr. Mill, the Historian, upon the Subject.

Sir Edward Colebrooke's matured opinion.

[2] Edition of 1826—London: Baldwin, Cradock, and Joy, Vol. I, p. 411.

[3] III *Revenue Selections*, p. 167.

CHAPTER XXII.

Landholding, and the Relation of Landlord and Tenant in India—The immediate Effect of the Permanent Settlement.

Different Views recently put forward as to effect of the Permanent Settlement.

§ 278. As to the direct and immediate effect of the Permanent Settlement, there has been some discussion within the last few years, and two radically different views have been put forward with the object of throwing light upon the history of the relations between landlords and tenants in the provinces subject to the administration of the Bengal Government. It has been said by the advocates of one view that before the Permanent Settlement there was a declaration by Government that it was necessary to secure the *raiyats* in the perpetual and undisturbed possession of their lands[4]—that there was a public declara-

[4] This statement gradually waxing stronger has even grown into an allegation that "for twenty years before the Permanent Settlement, we put forth from time to time *public proclamations* declaring our intention to retain the *raiyat* in the perpetual and undisturbed possession of his holding."—(See pages 447 and 466 of the *Special Calcutta Gazette* of the 21st July 1880.) The evidence brought forward to support this allegation is (1) the passage in the *Supervisors' Letter of Instructions*, given *ante*, page 465, about securing the raiyat from further invasions of his property; and (2) the passage in Mr. Hastings' Minute of the 1st November 1776 (*ante*, page 474) about securing to the *raiyats* the perpetual and undisturbed possession of their lands. To call these remarks *proclamations* or even *declarations* is a misuse of language, which involves a serious fallacy. The first passage occurs in a set of impossible directions, which were practically set aside by the Directors. These directions were in their nature private and confidential, and there is nothing to show that they were made public at the time. Even the formal regulations passed by the Government of that period were not all printed or made public. Mr. Harington tells us that during the twelve years before 1793 some only were printed with translations in the country languages, "but others still remained in manuscript; and those printed were for the most part on detached papers, without any prescribed form or order, and consequently not easily referred to,

tion by Government that it did not intend to enhance rents, but to fix such as were legal on a permanent basis, to secure the *raiyats* in the possession of their property against all oppressions by *zemindars* or farmers, and that the residue of the produce, after satisfying the Government demand, should be retained by the *raiyat* for the support of his family[5]—that there was a declaration by Government that there was no foundation of right, no colour of pretence for the ejectment of raiyats[6]—that before the Permanent Settlement there was a well-defined customary law which regulated the relations between landlords and tenants[7]—that the Legislature of 1793, while announcing its intention to prevent extortion and oppression, and to interfere, if necessary, for this purpose, was careful not to alter this customary law—that the Court of Directors justly declared their pride (a pride shared in by Parliament) in having legislated for the people in the spirit of their customs rather than according to abstract theories drawn from other countries or applicable to a different state of things[8]—that

One of these Views.

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even by the officers of Government, much less by the people at large." (I *Analysis*, p. 2.) The second passage occurs in a Minute of Mr. Hastings, and has no further force than the expression of an individual opinion; and Mr. Hastings himself subsequently admitted (see *ante*, page 485) that he might have used inaccurate language.

[5] This statement based on the passage in the *Supervisors' Letter of Instructions*, *ante*, page 465; and the same remarks are applicable.

[6] This statement is supported by an indirect reference to another passage in the *Supervisors' Letter of Instructions*, in which it is said that the *zemindar* was "allowed title to the freehold of some lands," one spot for rice, another for pasture, and other spots for different articles of consumption, but there was just cause for supposing that he had extended his claims, and availed himself of opportunities to *lay his hands on the revenues of the Government* and on the property of the raiyats where he had "no foundation of right, nor colour of pretence."—(Colebrooke's *Supplement*, p. 181.) This was before the Permanent Settlement, and the writer was thinking chiefly of the loss of revenue to Government by reason of *raiyati* land having been converted into *khamár*.

[7] As to this customary law see *ante*, pp. 449, 450.

[8] With this compare Mr. Mill's remark:—"The authorities, which constituted the Indian Government, made it their profession and their boast, that they were not directed by 'abstract theories drawn from other countries, and

the Permanent Settlement Regulations gave the *zemindars* no power to let lands to *raiyats*[1]—that their proprietary right was intended to consist in a mere rent-charge—that there were well-defined customary rates of rent which were applicable, as well to the *raiyats* who were on the land at the time of the Permanent Settlement, as to the *raiyats* who have been since let into possession—that the *patta* after the Permanent Settlement was in no wise founded on a contract[1] with the *raiyat*, but was nothing more or less than written evidence of a common law obligation to pay a certain rent, put in a prescribed form—finally, that if we now legislate in the spirit of the Permanent Settlement, and seek to effectuate the intention of the rulers and statesmen of that time, the real property in the soil will be declared to vest, not in the *zemindars*, but in the *raiyats;* and the *zemindars*, who were never entitled to take from any *raiyat*, old or new, *khudkasht* or *paikasht*, higher rates of rent than those paid in 1793; and who during ninety years have illegally exacted 165 millions from the peasantry should, if not compelled to refund, be at least debarred from increasing or even continuing their exactions. The other view is that there was no well-defined customary law, no known or settled rates of rent in existence in 1793—

The other View.

that the legislation of 1793 left the rights of the cultivators of the soil as indefinite and uncertain as they were before—that the English Government deliberately abstained from the difficult task of attempting to define these rights and contented itself with reserving a general power of future interference in case of oppression—that the same Government erroneously hoped or believed that the *zemindars* and *raiyats* would adjust their relations by

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applicable to a different state of things'; and the fact was, that almost every step which they took was the result of an 'abstract theory,' commonly drawn from something in their own country, and either misdrawn or misapplied."—*History of India*, edition of 1826, Vol. V, p. 413.

[9] On this point let the reader refer to pages 520-523 *ante* and form his own conclusion.

[1] With this statement compare Mr. Francis's opinion, *ante*, p. 482; Lord Cornwallis's opinion, *ante*, p. 494; and Mr. Shore's opinion, *ante*, p. 522, *note*.

mutual agreement, and thus the necessity for any definition of their relative rights would be obviated—that in Bengal, as in Ireland, contract failed to adjust those relations, because one side was not free to deal on equal terms, and the other side was placed in a position of advantage by abnormal legislation—that notwithstanding much oppression by landlords and rent-raising which, especially in some parts of the country, exceeded the bounds of moderation, Government did not exercise its right of interfering for the protection and welfare of the *raiyats* until 1859—that the legislation of that year, like the Irish Act of 1870, was partly insufficient, partly defective, and in some respects exaggerated the very mischiefs, which it was intended to remedy—finally that the whole question of the relations between landlords and tenants in the Lower Provinces of Bengal ought now to be dealt with in the spirit of just reform by a comprehensive measure, which will take reasonable account of existing facts, of the past history of the country, and of the course of dealing with the proprietors and occupants of the soil, upon the faith of which men have invested capital in the reclamation or purchase of land in these provinces.

§ 279. The question as to the right or power of the zemindars to evict or oust the raiyat stands thus. Population was sparse, and the competition, as has repeatedly been said, was not amongst *raiyats* for land, but amongst *zemindars* for *raiyats*.[2] Under these circumstances arbitrary eviction would not occur, and it would be customary for *raiyats* to remain in possession of their holdings as long as they paid their rent. "It is generally understood," wrote Mr. Shore, "that the *raiyats* by long occupancy acquire a right of possession in the soil, and are not subject to be removed, but this right does not authorize them to sell or mortgage it, and it is so far distinct from a right of property. This, like all other rights under a despotic or varying form of Government, is precarious."[3] "On

[2] See *ante*, page 495, *note*.

[3] *Minute of 28th June* 1879, III Harington's *Analysis*, page 434.

The Zemindar's Right or Power to Evict Raiyats,

the whole, therefore," said Mr. Harington, "I do not think the raiyats can claim any right of alienating the lands rented by them, by sale or other mode of transfer, nor any right of holding them at a fixed rent, except in the particular instances of *khudkasht raiyats*, who, from prescription, have a privilege of keeping possession as long as they pay the rent stipulated for by them."[4] Lord Cornwallis observed that to permit the *zemindar* to dispossess one cultivator for the sole purpose of giving the land to another would be vesting him with a power to commit a wanton act of oppression from which he could derive no benefit.[5] The Court of Directors observed that it appeared to be a general maxim under the Mogul Government that the immediate cultivator of the soil, duly paying his rent, should not be dispossessed of the land he occupied.[6] Unfortunately, however, although these opinions were expressed, no direct provision on the subject was inserted in the Code of 1793, and the right of the *zemindars* to evict was left uncertain. If it was intended to give practical effect to these opinions, a very few words would have removed all the doubt which has since prevailed on the subject, and would have obviated all the discussion that has taken place as to the intention on this point of the authors of the Permanent Settlement. That the zemindars' right of eviction was, in 1793, left uncertain I proceed to show.

Left uncertain by the Code of 1793.

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[4] III Harington's *Analysis*, page 460.

[5] *Ante*, page 497. Unfortunately the Legislature, while it did not expressly permit, did not expressly forbid, him to do this.

[6] *Ante*, page 502. II Harington's *Analysis*, page 189. The following opinion is similar:—"Hereditary *raiyats* claim, as the descendants of an original proprietor, whose privileges of administering the revenue affairs of the parish have been lost or forfeited in some former age; sometimes they do not advance such high pretensions, but claim a right to hold by long prescription; they can scarcely be said to be independent of the *zemindar* malguzar, who has the power, and generally the will, to inflict many annoyances on those who act counter to his wishes; and, under the Regulations, this power is unlimited, but under the ancient regime, so long as they paid the prescribed amount of the tax leviable upon the crop they might raise upon the land, they could not be ousted from it.—*Land Tenure by a Civilian*, page 79.

§ 280. On the 15th August 1811 the Collector of Chittagong wrote as follows:—"But in thus protecting the *raiyat*, his landholders should not be precluded from the *inherent privilege of giving him due warning to quit*, either at the expiration of any existing lease, according to the terms of the *patta*, or at such specific period of the year as would be least detrimental to either party in settling their accounts, which, of course, would be about the time of the *punya*.[7] This latter rule is not meant to be stated as necessary to be enacted, but with the view of guarding the *zemindar* against the hardship of his raiyat being fixed upon him for ever by any new edict, leaving no option if his rent be regularly paid, than which there cannot, I conceive, be a more unjust principle. It is no argument at all to say, that the *zemindar's sadr jama* (revenue) is fixed, and that therefore the *raiyat's* should be immutably so. On the contrary, such rule would obviously militate against the tenure upon which the *zemindar* holds his estate on the faith of Government." The view here taken by the Collector of Chittagong, that the *zemindar* had an inherent privilege to give the *raiyat* warning to quit at the expiration of his lease, if erroneous, was not remarkable, when we look at the preamble of a Regulation,[8] which formed part of the Code of 1793, and

View of Collector of Chittagong in 1811.

[7] First collection of rent at the beginning of the year.

[8] Regulation XLIV of 1793.—That the opinion of the Collector of Chittagong was not remarkable will appear also from the following opinions given n 1816 by Collectors in Upper India, where the power of the *zemindars* was never so great as in the Lower Provinces of Bengal:—"I understand that a *zemindar* is considered to have the power of dispossessing a resident or *khudkasht raiyat*, providing there be not in existence at the time any written engagements, which remain unfulfilled, and that supersession of this kind not unfrequently occurs, if another person can be found willing to give a higher rent."—Collector of Etawah, III *Revenue Selections*, p. 189. "According to usage, the *zemindars* consider themselves at liberty to dispossess any *khudkasht raiyat*, who may fail in the punctual payment of his rent, or when higher offers may be made, provided the limited period of their engagements may have expired."—Collector of Furruckabad, *id.* 192. "A *zemindar* cannot dispossess a resident or *khudkasht raiyat* during the time the written engagement may be for, but on its expiration is at liberty so to do."—Collector of Gorruckpore, *id.* 193. "The *zemindar* has the power from established

which prohibited the *zemindars*, independent *talúkdars* and other actual proprietors of land from granting *pattas* to *raiyats* or other persons for the cultivation of lands for a term exceeding ten years. In this preamble we find the following passage:—"It is . . . . essential that proprietors of land should have a discretionary power to fix the revenue payable by their dependent *talúkdars*, and to grant leases or fix the rents of their lands for a term sufficient to induce their dependent *talúkdars*, under-farmers and *raiyats* to extend and improve the cultivation of their lands." If the *raiyats* or any class of *raiyats* were entitled to continued and undisturbed possession, these words would have no meaning as applied to them. I may further quote the conclusion at which the Court of Directors arrived in 1819[9]:—"The inference seems un-

usage to dispossess a resident or *khudkasht raiyat*, who has regularly paid the customary rent for his lands to make way for another person who may be willing to pay more."—Collector of Shajahanpore, *id.* 201. "A *zemindar* appears to have the power to dispossess a resident or *khudkasht raiyat* who has regularly paid the customary rent for his lands to make way for another person, who may be willing to pay more."—Collector of Shekoabad, *id.* 202. Many more opinions to the same effect were given in reply to questions sent to the Collectors; and there are also many opinions to the contrary, showing the utter uncertainty of the custom or right.

[9] Para. 53 of Revenue Letter to Bengal, I *Revenue Selections*, p. 360.—That there was a difference between *khudkasht* and other *raiyats* will appear from the following passage:—"They (the zemindars) are still liable to the interposition of public authority, as far as may be just and necessary to prevent oppressive exactions from their under-tenants, and secure the stipulated or prescriptive rights of the latter in their respective tenures. But consistently with the due maintenance of such rights—the possessors of which, whether dependent *talúkdars*, *istemrardars*, *khudkasht* or other privileged *raiyats*, or generally of whatever denomination, *if they have any right of occupancy to distinguish them from tenants-at-will*, may be considered to hold *talukdari*, *istemrari*, or other dependent or inferior estates within those of *zemindars*, independent *talúkdars* and other superior landholders—the *zemindars* are now allowed to enjoy whatever rents and profits may arise from the improvement of their estates."—III Harington's *Analysis*, pp. 403-404. In the preface to *Land Tenure by a Civilian*, it is asserted that the Legislature delivered over, as *tenants-at-will*, millions of free proprietors to the tender mercies of a race of tax-gatherers; and Mr. Mill, in his evidence before the Select Committee of 1830, said that the *raiyats* were mere tenants-at-will of the *zemindars* in the permanently-settled provinces.

avoidable, that the persons with whom the Permanent Settlement was made, and those who by inheritance or purchase may succeed them, are authorized by the existing law to oust even the hereditary *raiyats* from possession of their lands, when the latter refuse to accede to any terms of rent which may be demanded of them, however exorbitant."

Conclusion of the Court of Directors.

§ 281. The allegation that the *zemindars* possessed no right to enhance the rents of the *raiyats*[1] is based upon the following argument. When before the Permanent Settlement the quinquennial settlement of 1772 was made with farmers, they were directed to collect from the *raiyats* of the cultivated lands the original *jama* or rent of the previous year, and on no account to demand more, where the lands were cultivated without *pattas* by the *raiyats*. This direction to collect according to the previous rent, and this prohibition against taking more or higher rent, was renewed in the written engagements for the subsequent temporary settlements and also in the engagements or *kabuliyats* for the Decennial Settlement; and, when the Decennial Settlement was made permanent, became binding for ever on the zemindars by reason of the following general provision:—"Such of the restrictions on actual proprietors of land and farmers, who hold their farms immediately of Government, as are set forth in their respective kabuliyats and are not repealed by any Regulation printed and published" in the usual way, "are to be considered in full force."[2] In order to test the value of this argument we must first bear in mind that there was a difference between settlements made with farmers, and a settlement made with the *zemindar*, as actual proprietor. Then it would require something more than mere general words to make

Allegation that Zemindars were prohibited by the Permanent Settlement from Enhancing Raiyats' Rents.

[1] *Special Calcutta Gazette of the 21st July* 1880, pp. 454, 457. At page 460, this allegation has grown into an assertion that the *zemindars* were "prohibited from enhancing the rents of their *raiyats*, as long as the Government demand remained unchanged."

[2] Section 67 of Regulation VIII of 1793.

binding for all time a stipulation made for ten years, and made before the zemindars were created proprietors, while Government retained its former interest. In the next place the language of the farmers' *kabuliyat* and the *zemindars' kabuliyat* differed widely. The language of the *kabuliyat* or written engagement of the Permanent Settlement is—"I will not demand any sum *beyond the account* from the *raiyats*," which clearly refers to demanding *abwábs* or cesses over and above what the *raiyat* had agreed to pay, and what was therefore justly payable according to his account. Finally, if such a restriction can be supposed to have existed in the Decennial Settlement *kabuliyats*, it was clearly repealed by the provisions of the Regulations, which authorized the *zemindars* to let the remaining lands of their estates in whatever manner they might think proper,[3] and recited that it was essential that they should have a discretionary power to fix the rents of their lands for a term sufficient to induce their *raiyats* to extend and improve cultivation.[4] Let us then see what contemporaneous exposition says on the subject.

Fallacy of the Argument upon which this allegation is based.

§ 282. On the 31st December 1819, Lord Hastings wrote:—"Never was there any measure conceived in a purer spirit of generous humanity and disinterested justice, than the plan for the Permanent Settlement in the Lower Provinces. It was worthy the soul of a Cornwallis. Yet this truly benevolent purpose, fashioned with great care and deliberation, has to our painful knowledge subjected almost the whole of the lower classes throughout these provinces to most grievous oppression—an oppression, too, so guaranteed by our pledge that we are unable to relieve the sufferers." . . . "Government," . . . . . "giving to the delegated agent of the *raiyats* a right of ownership in the soil absolutely gratuitous, invested the person through whom the payment to the State was to be made with unlimited power to wring from his former coparceners an exorbitant rent for the use of any part of the

Contradiction afforded by Contemporaneous Exposition.

[3] *Ante*, pages 517–522.

[4] *Ante*, page 532.

land."[5] Mr. John Herbert Harington, the Author of the *Analysis of the Bengal Regulations*, before the Permanent Settlement, in 1789, discussed the question whether the permanent *raiyats* should be allowed to hold possession of the lands rented to them on condition of paying a fixed rent. He first considered whether this would be beneficial to the *raiyats* themselves ; and upon this part of the question, he said :—" They would be secured from an increase of payment according to their improvements, which would probably stimulate them to improve the cultivation of their lands ; and in that case, it may be presumed, the surplus produce above the fixed rent would yield them an easy livelihood, as well as enable them to lay by a provision against casualities. On the other hand, they would be subject to greater rigor from the *zemindars* in the adjustment of their rents in the first instance, as well as in the subsequent payment of the amount adjusted, under whatever accidents might occur to create inability. The *zemindars* would be anxious to obtain as high a rent as possible, if aware that it could never be raised thereafter ; and I fear it would be impossible to lay down a rule just to both parties. The *zemindars*, it may be said, are interested in satisfying the *raiyats*, because the lands, if uncultivated, are unproductive to them : but, it may be answered, the *raiyats* are also interested in satisfying the *zemindars ;* because, if they cannot obtain lands to cultivate, they must starve.[6] Both causes probably would operate ; but, as the *zemindars* could more safely risk delay than the *raiyats*, it is to be feared, the latter would in general be obliged to accede ; and, if so, it becomes a question whether it would not be better to let the zemindars make a limited settlement with the *raiyats*, on the moderate terms, which, it is probable, they would then be satisfied with ; than to require a perpetual settlement, on the immoderate terms, which, it seems probable, they would then require."

Question whether the Rents of the Permanent Raiyats should be fixed considered in 1789.

Benefit of such a measure to the Raiyats themselves doubtful.

[5] Minute by the Governor-General, III *Revenue Selections*, p. 153.

[6] This is a good answer, and an answer which has often been given to what Lord Cornwallis said, *ante*, pages 494-495 ; and see *note* on page 495.

§ 283. He then proceeds to consider whether it would be beneficial to the *zemindars* to fix the rent of the *raiyats* in perpetuity, and he says :—"The ease of the raiyats, to be expected if their rents be not too high, would enable them to pay with more punctuality. The certainty of the payment would induce the raiyats to give a higher rent than they would under a fluctuating demand. The ease of the cultivators of the soil would increase the demand for land ; and consequently encourage the greater cultivation of the *zemindars'* waste lands. The ability of the *raiyats* to provide against contingencies would lessen the losses to population hitherto felt from famine, and consequently augment the number of cultivators for the waste lands. On the other hand, the fixed rent would prevent the *zemindars* from reaping any advantage from the improvement of the *raiyats*, or from a rise in the value of any particular articles of produce ; and should the rent be fixed too high in any instance, the stated benefits would not be derived." Finally he considers whether the fixed assessment of the *raiyats* would be beneficial to Government, and on this point he says :—"The demand being fixed, the *raiyats* would be stimulated by self-interest to improve the cultivation to the utmost ; and the general improvement of the cultivation would increase the resources of the country. The *raiyats*, secured from exaction, might lay by the surplus produce of their labours for future contingencies, which would mitigate the dreadful effects of famine, and thereby preserve the population of the country. The ease of the *raiyats* would, by enabling the *zemindars* to collect their rents with punctuality, assist the more punctual payment of their revenues to Government."

Policy of the measure considered as affecting the Zemindars—

And as affecting Government.

§ 284. He then states the opposite arguments, which are—That "the natives of this country are by many supposed so much inclined to indolence, as to be induced to labour from absolute necessity only : and, if this supposition have any foundation, the operation of the principle, in whatever degree, would so far tend to counteract the extension of cultivation ; as, by fixing the rent, such

Arguments against such a measure.

necessity would be diminished—that the operation of this principle would also tend to prevent a provision for futurity—that the impossibility of equalizing the assessment, according to the improved state of the lands, would render the rents of some, in course of time, considerably heavier than those of others, and thereby prevent equality—and finally, that a prohibition to the *zemindars* and *talúkdars* to raise the rents of the *raiyats*, would necessarily forbid any increase of the land assessment on the *zemindars* and *talúkdars*, excepting such as could be derived from new cultivation."[7] Finally he sums up thus :—"On the whole, considering the Act of Parliament ordaining a general preservation of rights, the orders of the Court of Directors for a settlement of ten years, and the foregoing arguments, for and against the *raiyats*, *zemindars*, and Government respectively, I am of opinion, no perpetual right of possession, on condition of paying a fixed rent, should, at present, be conferred on those raiyats who have not already a declared or prescriptive title to such. In order, however, to obtain, as far as possible, the advantages of a fixed assessment of the raiyats, and at the same time to obviate the objections enumerated, it appears expedient to require the *zemindars* and *talúkdars* to adjust, within the three first years of the ensuing decennial settlement, a rent to be paid by their *raiyats* individually, which shall continue unalterable during the remaining seven years." Mr. Harington reproduced these views of 1789 six and twenty years after, in 1815, when he published his *Analysis*,[8] and the context shows that he would not have done so, if they had not been accepted. Certainly he says nothing to lead to the inference that the principles of the Code of 1793 were intended to be different ; and the careful reader of that Code[9] will find that a perpetual right of possession on

Mr. Harington's Conclusion upon the arguments.

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[7] When this remark was written, the land assessment had not been fixed in perpetuity.

[8] III Harington's *Analysis*, pp. 461–463.

[9] See the resumè of Regulation VIII of 1793, *ante*, pages 517 to 523.

condition of paying a fixed rent was conferred on those *raiyats*, and those only, who had already a declared or prescriptive title to such—which was exactly what Mr. Harington recommended—while the almost complete silence of the Legislature as to other *raiyats* carries with it the usual presumption.[1]

Under the System of Abwábs the Demand on the Raiyat was uncertain; and therefore Exaction was possible.

§ 285. Let us for a moment try to look at the relations between *zemindars* and *raiyats*, as they must have been regarded by those who were called upon at the close of the last century to deal with the chaos of rights and duties which we found in the country. Mr. Shore had clearly shown that *abwábs* were a means of raising the assessment on the *raiyats*.[2] That this method of obtaining higher or more rent or revenue from the cultivators of the soil was arbitrary and unjust was admitted by all; and that partly in consequence of these inherent defects, it was the source of much grievous oppression, was beyond doubt. So long as *abwábs* were allowed to be levied, the demand upon the *raiyat* was *uncertain*; and in this *uncertainty* lay the possibility and opportunity for exaction. Englishmen were well aware of the evils that had been brought about in their own country by precarious tenures—by uncertainty of demand, of the Crown upon its subjects, of the Nobles upon their tenants—and that the great remedy there had been to turn all tenures held either of the king or of any

[1] I will add a few opinions expressed in 1832. Mr. Holt Mackenzie said:—"The amount demandable by the latter" (the *zemindars*) "has been left unsettled; the *raiyats* of the Lower Provinces are left just as if the Permanent Settlement had never taken place, if not in a worse condition."—*Appendix to Report of Commons. Answer to question No.* 2670. "The Permanent Settlement, whilst it shut the public treasury against any increased receipt from the land by commuting the zemindars' variable payment, as the hereditary contractor for the land-revenue, into a fixed *jama* determined irrevocably, entirely neglected to fix the amount payable by the cultivator to this hereditary contractor."—Mr. A. D. Campbell, *id.*, p. 16. "In point of law and fact, the *raiyat* can claim under the provisions of Lord Cornwallis's Code no rights at all. For the few privileges he may enjoy, he is indebted entirely to the forbearance or to the fears of his taskmaster, the zemindar."—*Land Tenure by a Civilian*, p. 104.

[2] See *ante*, pages 445-447; and Mr. Shore's Minute of 18th June 1789, para. 33.

other person into free and common socage, the render or rent of which was certain and determinate, instead of being precarious and uncertain.[3] So in India, if uncertainty of demand could be done away with, if the revenue or rent payable by the *raiyats* could be reduced to a specific sum, a fixed amount, the Statesmen of 1789—1793 believed that exaction could be prevented and the ease and security of the *raiyats* secured. The abolition of *abwábs* clearly appeared to be the direct way of doing away with uncertainty of demand and exaction at the same time.[4] Accordingly it was provided[5] as follows :—"The impositions on the *raiyats* under the denomination of *abwáb*, *mhatút* and other appellations, from their number and uncertainty, having become intricate to adjust and a source of oppression to the *raiyats*, all proprietors of land and dependent *talúkdars* shall revise the same in concert with the *raiyats*, and consolidate the whole with the *asil* into *one specific sum*. . . . . No actual proprietor of land or dependent *talúkdar* or farmer of land, of whatever description, shall impose any new *abwáb* or *mhatút* upon the *raiyats* under any pretence whatever:" and then follows the penalty.

The great object of the Statesmen of 1789—1793 was to do away with Uncertainty of Demand.

To this end Rent was directed to be a Specific Sum; and Abwábs were prohibited.

§ 286. In Lord Cornwallis's opinion, as we have seen,[6] the imposition of *abwábs* and the raising of rents were

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[3] See *ante*, pages 17, 18, 29, 30 and 31.

[4] One of the propositions deduced from the arguments in Mr. Shore's *Minute of the 18th June* 1789 (see *Appendix to Fifth Report*) was "that the rents to be paid by the *raiyats*, by whatever rule or customs they may be demanded, shall be specific as to their amount." In his *Minute of the 1st May* 1812, Mr. H. Colebrooke said :—"All that need be required is that the engagements shall be *definite*."—III Harington's *Analysis*, p. 479. In addition to all that has been said as to the *uncertainty*, let me quote one more passage from Mr. Shore's *Minute of the 8th December* 1789 :—"At present" those impositions "are in many places so numerous and complicated that, after having obtained an enumeration of the whole, the amount of the *asil* with the proportionate rate of the several *abwábs*, it requires an accountant of some ability to calculate what a *raiyat* is to pay, and the calculation may be presumed beyond the ability of most tenants. The *patta* rarely expresses the sum total of the rents; and it is difficult to determine what is extortion."

[5] Regulation VIII of 1793, sections 54 and 55.

[6] *Ante*, page 497.

two distinct questions ; and the prohibiting a landholder to impose *abwábs* was not tantamount to saying to him that he should not raise the rents of his estate. The argument that because the zemindars were in 1793 prohibited from imposing *abwábs*, they were therefore forbidden to enhance rents,[7] is therefore absolutely valueless, whether we seek for the intention of the Legislature in the language which it has itself chosen to express that intention, or (as some prefer) in Minutes and other papers, which contain the expression of individual opinions, while the subject was under deliberation, and before a final conclusion and settlement were reached. In Lord Cornwallis's opinion,[8] the rents of an estate could only be raised by inducing the *raiyats* to cultivate the more valuable articles of produce,[9] and to clear the extensive tracts of waste land, which were at that time to be found in almost every *zemindarí* in Bengal. The basis and scope of this opinion become clear when we find him saying in the same context that the rent then established was, in most places, fully equal to what the cultivator could afford to pay.[1] It is, therefore, manifest that Lord Cornwallis thought that rent in Bengal had at that time reached the possible *maximum*, that the idea of the *unearned increment* did not occur to him, and that his great intention was to put an end to exaction and oppression in the shape of *abwábs*. It must be borne in mind that the principle of *Rent* was not at that time understood, and was not elaborated till twenty-five years later.[2] It is not,

Prohibition of Abwábs not a prohibition of Enhancing Rents.

The Unearned Increment not in Lord Cornwallis's mind.

[7] This argument is advanced at the bottom of page 454.—*Special Calcutta Gazette* of 21*st July* 1880.

[8] *Ante*, page 497 at bottom.

[9] This was a well understood ground of enhancing rent. Mr. Shore says that it was prescriptive law that the *raiyats* cannot change the species of cultivation without a forfeiture of the right of occupancy ; but that this was rarely insisted on, as the *zemindars* demanded and exacted the difference of rent—See para. 406 of *Minute of* 18*th June* 1789. Section 567 of Regulation VIII of 1793, recites and recognizes "the established custom to vary the *patta* for lands, according to the articles produced thereon."

[1] *Ante*, page 497, fourth line from top.

[2] See *ante*, page 42, *note*. Mr. Harington did not at the time overlook the advantage that might accrue to the *zemindars* from the improvement of the

therefore, surprizing that Lord Cornwallis or the Directors did not before making the Decennial Settlement permanent consider those nice and difficult questions of enhancement of rent which have during recent years demanded and received so much attention.

§ 287. Although the question of enhancement of rents and the *zemindars'* right to enhance and the limits of that right do not appear to have been considered in 1789-1793 further than what has just been stated—and it was unnecessary to consider them, when the Directors declined the difficult task of defining the rights of the *raiyats*—there are not wanting indications that the raising of the rents of the *raiyats* other than those who were expressly protected from increase was contemplated.[3] One indication is the use of this term *increase*, which has been already observed upon.[4] Another indication is to be found in the Preamble already quoted,[5] which recites that it is essential that proprietors of land should have a discretionary power to *fix the rents of their lands for a term sufficient to induce the raiyats to extend and improve cultivation.* This certainly implies a right of altering, of raising the rent upon the expiry of the term; otherwise the recital has no point.[6] The same Preamble recites that

There are Indications that the Raising of Rents by the Zemindars was contemplated.

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raiyats or from a rise in the value of any particular articles of produce (see *ante*, page 536); but the question does not appear to have been generally considered; and although the possible decrease in the relative value of silver was discussed in connection with the *revenue* payable by the zemindars to Government, it does not appear to have been considered in connection with the *rent* payable by the *raiyats* to the zemindar.

[3] *Ante*, page 519. [4] *Ibidem.*

[5] Preamble to Regulation XLIV of 1793, *ante*, page 532.

[6] In Mr. Hodgson's *Memoir* (*Appendix to Fifth Report*) will be found an observation of Colonel Munro written in or before 1806, in which he argued that before the *zemindars*, with whom the Permanent Settlement was made, had learned to improve their estates, they would have reduced the *raiyats* to a much worse state than that in which they found them. "I make this conclusion," says Colonel Munro, "upon the supposition that *they are to be at liberty to raise their rents, like landowners in other countries;* for, if they are restricted from raising the assessment fixed by Government, and are at the same time liable for all losses, they have not the free management of their estates and hardly deserve the name of *owners.*"

it was to be apprehended that many proprietors either from improvidence, ignorance, or with a view to raise money or from other causes or motives, might be induced to create dependent *taluks* at a reduced and inadequate rent, or to let lands in farm or grant *pattas* for the cultivation of land at a reduced rent for a long term or in perpetuity—that such engagements, if held valid, would leave it in the power of weak, improvident or ill-disposed proprietors to impoverish their heirs; promote vice and injustice; and occasion a permanent diminution of the resources of Government arising from the lands, in the event of the rent or revenue reserved being insufficient for the discharge of the public demand upon their estates: be an abuse of the great and lasting benefit conferred upon the landholders by the possession of their lands being secured to them in perpetuity at a fixed assessment—" and moreover *be repugnant to the ancient and established usages of the country*, according to which the dues of Government from the lands (which consist of a certain proportion of the annual produce of every *bigah* of land, demandable according to the local custom, in money or kind, unless Government has transferred its right to such proportion to individuals for a term[7] or in perpetuity,[8] or *fixed the public demand upon the whole estate of a proprietor of land, leaving him to appropriate to his own use the difference between the value of such proportion of the produce and the sum payable to the public*, so long as he continues to discharge the latter[9]) are unalienable without its express sanction." From these words it is clear that, according to the understanding and intention of those who framed the Code of 1793, Government was entitled to a *certain proportion of the annual produce of every bigah of land* included in a

[7] As, for example, by the grant of a *Jagír*.

[8] That is, by making a grant of *lakheraj* or land to be held free of *kheraj* or revenue.

[9] Which was done by the Permanent Settlement. A recital *verbatim* the same, as that contained in the parenthesis, is to be found in the Preamble to another Regulation (XIX) of the Code of 1793.

proprietor's estate, that by the Permanent Settlement Government *fixed the public demand upon the whole estate*, and left the proprietor to *appropriate to his own use the difference between the value of such proportion of the produce and the sum payable to the public*. Now it is beyond controversy that the value of the certain proportion of the annual produce to which Government was entitled was never fixed, was an unknown and indefinite, an unsettled and variable quantity.[1] Since then this quantity was indefinite, and the public demand was fixed and definite, the difference between the indefinite quantity and the definite demand must have been indefinite, and the authors of the Permanent Settlement must have known this—must have known that what the proprietors were left to appropriate to their own use, was indefinite, variable, subject to increase and decrease. It will probably appear to persons of ordinary intelligence impossible to argue in the face of this consideration, that the authors of the Permanent Settlement intended to fix, or could have thought that they were fixing, the demand upon the cultivator, the rents of the *raiyats*.[2]

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[1] This has been sufficiently shown in the preceding pages, but I may give further evidence. "I have already observed," says Mr. Shore, "that the proportion of the revenues to be left to the zemindars was never, as far as I know, fixed by any established rule"—para. 352 of *Minute of 18th June* 1789. "Tódar Mal is supposed to have fixed the rent payable by the *raiyats*. . . . . The *Asil jama* established by him does not now anywhere exist. At present no uniformity whatever is observed in the demands upon the *raiyats*"—*id.*, paras. 218, 219. And in the Proclamation embodied in Regulation I of 1793, it is said:—"It is well known . . . . . that from the earliest times until the present period, *the public assessment upon the lands has never been fixed*, but that according to established usage and custom, the Rulers of these Provinces have, from time to time, *demanded an increase of assessment*."—(Section 7.)

[2] The idea that Government delegated to the zemindars its right to a proportion of the produce—its right to levy a variable assessment—is constantly met with in Minutes or papers written soon after the Permanent Settlement. For example, Mr. Stuart wrote as follows, on the 18th December 1820:—"He" (*i.e.*, Lord Cornwallis) "had recognized in certain classes attached to the lands a right of property in the soil; and his plan was to make the settlement with these persons, upon *the principle of ceding to them for ever, in*

§ 288. We know that, while limiting the demand of the State upon the land, the Government of 1789—1793 contemplated and expected that the improved condition of all classes would enable the requirements and expenses of Government to be provided for by other forms of taxation. The right of establishing internal duties was expressly reserved by the Code of 1793,[3] and when the privilege of imposing the *Sayer* or internal taxes was taken away from the landholders, it was expressly stated that one of the consequences which Government expected from retaining this privilege in its own hands was a future opportunity of augmenting the public revenue in case the exigencies of Government should render it indispensably necessary without increasing the assessment on the land.[4] In 1811, the Directors wrote out to Bengal as follows:—"It was, indeed, imagined at the period of the establishment of the Bengal Settlement, that in proportion as the effects naturally to be expected from an enlarged and liberal policy were developed, *in proportion as the land was improved*, activity given to commerce, and as the people were enriched, our Government would be able, by means of taxation on the necessaries and luxuries of life, not only to indemnify itself for the sacrifices it had made, and for any contingent loss which it might sustain from the depreciation of money, but that our revenues might be made to advance in equal proportions with the prosperity of the country, and that both would go on flourishing in rapid progression."[5] How the *zemindars* could be justly taxed upon the necessaries and luxuries

Further or other Taxation contemplated at the time of the Permanent Settlement.

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consideration of a fixed annual contribution, the immemorial right of Government to levy from the cultivators a proportion of the whole produce of the land."—(III *Revenue Selections*, p. 218.) Mr. Harington says in his Minute of the 3rd July 1827, that "the rights and interests of the State in the land rents payable by the *raiyats* and other occupants of the soil *were made over by composition and contract in perpetuity to the persons who engaged for the land-revenue.*"

[3] See Clause 2, Section 8 of Regulation I of 1793.

[4] See Preamble to Regulation XXVII of 1793.

[5] Para. 32 of Revenue Letter to Bengal, dated 1st February 1811, I *Revenue Selections*, p. 4.

of life in proportion as the land was improved, if it was intended that they should have no share in the profits of the improvement by receiving higher rents, is not very obvious. It may be said that the additional rent which they would receive for reclaimed waste land was contemplated, and that this would have enabled them to meet the possible taxation anticipated. But this limited explanation does not fairly satisfy the obvious intention; and it is much more reasonable to suppose, regard being had to the other evidence of intention, and to what actually took place, that the zemindars' sharing in the gradual improvement by receiving higher rents was contemplated.

§ 289. It may be accepted as correct that by the ancient law of the country, the Ruling Power is entitled to a certain proportion of the produce of every *bigah* of land demandable in money or kind.[6] We have seen that in Akbar's time the proportion of the produce to be taken by Government was defined; that a careful measurement of the land was made by a uniform standard with a view to determine what Government should receive from each cultivator; and that rules were made for commuting the value of the Government share into a money-payment. Provision was made for correcting from time to time the information derived from the measurement and for revising the money-rates of commutation decennially. In course of time this way of proceeding to estimate the Government demand by regular measurement and assessment fell into desuetude; and was superseded by the arbitrary levy of *abwábs*. Nevertheless it is beyond doubt that the proportion of the produce and its money value at the local market-rate continued to be the ultimate standard of reference to which *zemindars* and *raiyats* looked or appealed, when desirous of pressing or resisting a claim to higher rates, or increased rent. In Bahár and other parts of the country the rent was received in kind at the time

Government entitled to a certain proportion of the Produce.

This was the ultimate Standard for regulating Rent.

[6] This is *verbatim* the language of the Preamble to Regulation XIX of 1793.

of the Permanent Settlement, and has continued to be so received up to the present day. In Bengal Proper money-rents were pretty common in 1772 to 1793; and have since become general with some exceptions. These money-rents consisted, in some places, of rates payable according to the crops cultivated.[7] In other places a fixed sum was paid for a specific quantity of land at so much per bigah without any other distinction; but in these cases Mr. Shore thought that the rate in the first instance might have been settled with a due regard to the quantity of land and its produce.[8] It will be evident that while the *zemindar* continued to receive the Government proportion of the produce in kind, he participated both in the improvement of the land and in the rise of prices: and, where money-rents had become usual, he would enjoy the same advantage, if he could in any way have these money-rents revised from time to time, and have the land occupied by *raiyats* remeasured. The effect of such a revision, when there had been no other change except a rise in prices, would be to give him an enhanced rent on the ground of *the value of the produce having increased*. Then, if the land, having become more fertile, were producing larger or better crops, the zemindar's share was worth more, and he received an *enhancement on the ground of the productive powers of the soil having been increased;* and no exception was made when this increase was altogether due to the agency or expenditure *of the raiyat*. The effect of a measurement would be to give the *zemindar* additional rent for excess land cultivated by the *raiyat*. Then after this measurement of the lands and revi-

Landlord receiving Share of Produce in Kind obtained actual enhancement of Rent.

[7] See *ante*, page 540. This custom was retained, as appears from the following passage:—"Another great source of distress to the *raiyats* is their being compelled to pay as rent, not a specific sum for a certain quantity of ground, but for the cultivation of different articles. This mode again authorizes, or at least enables the *zemindar* to send Amins frequently in the year to measure each species of crop, and the expense of this measurement falls upon the raiyat."—*Letter from Acting Collector of Rajeshaye to Board of Revenue, dated 16th August* 1811.

[8] Para. 224 of *Minute of 18th June* 1789.

sion of the rates of rent, there would be a new *Nirkbandí* or table of rates, according to which all *raiyats* would pay rent; and these rates would be the *Pargana* rates. If the zemindars in those parts of the country in which money-rents had become usual had no course of proceeding like this open to them, it is evident that they might be deprived of all participation in the rise of prices and in the increase in the productive powers of the soil, while those *zemindars*, who continued to receive their rents in kind, would share in these advantages to the fullest.

Probability that Money-Rents were from time to time adjusted to the value of the Government proportion of the Produce.

§ 290. Now it is beyond doubt or controversy that the *zemindars* have always possessed and exercised the right to measure the lands included in their estates; and this right has been recognized and regulated by the Legislature on many occasions. Let us now see if we can find any traces of a right to revise rents or rates of rent in the way just indicated. Having regard to what has been said as to Akbar's system being allowed to fall into desuetude, and the state of confusion in which all rights were when the English obtained the *Díwání*, we naturally could not expect to find this particular right (if it at all existed) more certain or definite than other rights; and all that we could reasonably expect to discover would be irregular vestiges of its existence, desultory instances of its recognition and exercise. That such vestiges and instances are to be found I proceed to show. In a *Firmán* from the Emperor Alamgir to one Rushik Dass,[9] there is the following passage:—"It appears that in all the districts of our Empire the Amíns are in the practice of assessing the greatest part of the villages in a fixed sum at the commencement of the year, forming their calculations upon the estimated produce of the whole year, the quality of the land and the ability of the *raiyats* . . . . ; that in certain places, where the *raiyats* are averse to this system, they fix their assessment by measuring the crops or estimating the amount of the actual produce." In Mr. Shore's

Zemindars' Right of Measurement undoubted.

Firmán of the Emperor Alamgir.

[9] See *Appendix No.* 5 *to* Mr. Shore's *Minute of the 2nd April* 1788.

Instances of Money-Rents calculated on value of the Share of the Produce in Mr. Shore's time.

time the rents in parts of Bengal, as for example, in the northern parts of the Dacca District, were fixed in a similar way. A *Hastabúd* or measurement of the lands was made immediately previous to the harvest, agreeably to which the lands were valued and the rents received.[1] In Chittagong rents were collected according to rates established by a measurement and *jamabandi* formed in the Bengal year 1174.[2] Mr. Shore himself observes thus generally:—"In every district throughout Bengal, where the licence of exaction has not superseded all rule, the rents of the land are regulated by known rates called *nirk;* and in some districts each village has its own. These rates are formed, with respect to the produce of the land, at so much per *bigah.* Some soil produces two crops in a year of different species; some three. The more profitable articles, such as the mulberry plant, betel leaf, tobacco, sugarcane and others, render the value of the land proportionably great. These rates must have been fixed upon a measurement of the land."[3] That Mr. Shore contemplated that the value of the produce should continue to be an ultimate standard of reference appears from the following remark:—"The value of the produce of the land is well-known to the proprietor or his officers, and to the *raiyat* who cultivates it; and *it is a standard which can always be reverted to by both parties for fixing equitable rates.*"[4]

Mr. Shore contemplated that the value of the share of the Produce should be an ultimate Standard of Reference.

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[1] See para. 230 of Minute of 18th June 1789.

[2] Para. 421 *id.* [3] Paras. 391—392 *id.*

[4] In order to obtain light as to what was intended in Bengal, we may look at what was done in other parts of India. In a Regulation (XXVII) passed in 1803 to regulate the settlement of the Ceded Provinces it was provided that, when neither proprietors nor farmers tendered suitable conditions, the settlement was to be made with the *raiyats*, who were to receive the following shares of the produce, *viz*:—in *pulej* lands or such as were in full cultivation, three-eighths, Government receiving five-eighths—in *checher* lands or such as had not been cultivated for two or three years, six-eighths, Government receiving two-eighths—and in *banjar* or waste lands, seven-eighths, Government receiving one-eighth. The *measuring* and *valuation* of the crops was to be defrayed by Government; and in all cases where *crops were valued, it was to be done according to the price current of the day* (clause 14 of section 53: and see for further instances section 12, Reg. IX of 1805, and clauses 1 and 2

§ 291. In the *Letter of Instructions* to the Supervisors already referred to, *surveying* and *measuring* the lands was one of the numerous courses directed for obtaining accurate information. One of the Regulations of 1793 provided for the resumption and assessment of lands held under invalid revenue-free grants. A settlement for the lands included in such grants was to be made, and the revenue thereupon payable to Government was to be equal to one-half of the annual produce of the land. This produce was directed to be ascertained by a *survey* and *measurement*.[5] Then the Regulation, which has been already so often referred to as containing the rules of the Decennial Settlement afterwards made permanent, contains the following provision :—"No actual proprietor of land, or farmer, or persons acting under their authority shall cancel the *pattas* of the khudkasht *raiyats* except upon proof that they have been obtained by collusion ; or that the rents paid by them within the last three years have been reduced below the rate of the *nirkbandí* of the *pargana ;* or that they have obtained collusive deductions ; or upon *a general measurement of the pargana for the purpose of equalizing and correcting the assessment.*"[6] This seems to me to indicate such a measurement and revision of rent rates, as would bring those rates into accord with the value for the time of being of the zemindar's share of the produce.[7]

Traces in the Regulations of the Value of the Produce being the ultimate Standard of Reference for fixing Rent.

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of section 3 and section 5 of Reg. II of 1795). It was only in 1837 that the Court of Directors ordered the discontinuance of the practice "of forming assessments according to the value of the crops produced, and not according to the value or capabilities of the land."—See *para.* 27 *of the Directors' letter, No.* 6 *of* 12*th April* 1837.

[5] See clause 2, section 8 of Reg. XIX of 1793.

[6] Clause 2 of section 60 of Reg. VIII of 1793.

[7] To this construction it has been objected that what is here meant is the distribution of the Government *assessment of revenue* upon the lands of the estate ; and it has been alleged to be a conclusive answer to my argument that the word *assessment* has no reference whatever to *raiyat's* rents—that throughout the papers of the time it refers only to the *sadr jama* or Government demand of revenue (see pages 417—460 of the *Special Calcutta Gazette of the* 21*st July* 1880. As to the use of the term 'assessment,' the criticism will be proved to be absolutely erroneous by a few quotations from *the papers of the time*—

This view is corroborated by a reference to the Regulations relating to Patwaries and Kanungoes.

Lord Cornwallis speaks of "the revenue assessed upon them," *i.e.*, the raiyats.—See *ante*, page 497 top line. Mr. Shore speaks of the right of Government to interfere in *regulating the assessment upon the raiyats:* and the words "regulation of the rents of the *raiyats*," which immediately follow, leave no doubt as to what he meant.—See *ante*, page 522, *note*. When it is intended to use the word 'assessment' of the *Sadr Jama*, the *sadr assessment* is spoken of, as for example in No. 22 of the propositions deduced from Mr. Shore's Minute of the 18th June 1789 (see *Appendix to Fifth Report*): and from proposition No. 24, it will appear that the distribution of the *sadr assessment* upon the Parganas or divisions of the estate had no connection after the Permanent Settlement with the rents payable by the raiyats. This proposition commences thus:—"It is not meant by this distribution," *i.e.*, of the Sadr Assessment, "to prevent the landholders from acquiring a larger rent from the parganas or villages than the sum apportioned, or to demand from them accounts of the actual assessment," *i.e.*, of the rents paid by the *raiyats*. This was part of the deliberate policy already alluded to, by which the Directors forbad minute scrutinies or enquiries into the exact collections of rent made by the zemindars from their *raiyats*.

As to this general Pargana measurement, I may quote the following passage from *Land Tenure* by a *Civilian*:—"The lease afforded no protection against the consequences of a general pargana measurement, when by any manœuvres of the description given, a real or fictitious enhancement of rates had been established, or, after a public sale of the grantee's interest and title, in satisfaction of arrears of revenue"—(page 104). "The system of taxation, under the native system, gave to the State a certain portion of each cultivator's crop in kind or its equivalent in money; the result, therefore, was fluctuating, depending on the value of the crops raised. An annual assessment was indispensable, though the collections were farmed out to contractors, who engaged to pay a specific jama to the Government for a series of years." . . . . . "As the proportion of produce (or the amount in money for which it was commutable) which each individual was liable to be called on to contribute through the malguzar as land-tax to the State, was in all well cultivated districts defined and understood under the native regime, the amount of land and species of crop cultivated being ascertained, the assessment upon each raiyat was easily made by the malguzars: and the only points upon which the parties were likely to be at issue were a failure on the part of the raiyat to cultivate in due proportion those crops which paid the highest rate to the malguzar and the levy of the *siwaee* or abwáb"—(pp. 105-106). "It," *i.e.*, Government, "has legalized an enhancement of the revenue upon the cultivating classes, though the State is precluded from deriving any advantage from the additional burthen imposed upon the most interesting class of its subjects"—(p. 114). "One of the most frequent pretexts for exaction was the allegation of a necessity for making a measurement of the lands; and as the cultivators either held more land than was registered as belonging to them, or feared the frauds

§ 292. One of the duties imposed on proprietors by Regulation VIII of 1793 was the maintenance of patwaries. The patwaries in every estate were directed to keep accounts relating to the lands, *produce*, collections, and charges. It may be said that the object of keeping accounts of *produce* was that they might be produced before the Collector to enable him to make the allotment of the public revenue, in the case of sale or division of estates, according to the principles laid down in Regulation I of 1793, which require the assessment upon each lot to be fixed at an amount which shall bear the same proportion to its *actual produce* as the fixed assessment upon the whole of the lands bears to the whole of the *actual produce.* This was not so, however, for these words 'actual produce' were defined by section 8 of Regulation I of 1801 to mean the net annual rent (*i.e.* where rent was payable in money), or other net produce (*i.e.* where rent was payable in kind) receivable by the proprietor after deducting from the gross rent or other gross produce the expenses of collection and management. Clearly then, so far as concerned those parts of the country where rent was payable in money, there was no use in keeping an account of the produce for the assessment of the revenue; and the natural conclusion is that it was kept for the purpose of assessing the rent. And this view is supported by section 62 of Regulation VIII of 1793, which expressly states that the rules prescribed regarding patwaries were framed solely to *facilitate the decision of suits in the Courts of Judicature between proprietors and farmers of lands and persons paying rent or revenue to them*, and to guard against any diminution of the fixed revenue or injustice to individuals by enabling the Collectors to procure the

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of the persons employed to measure it, who either by elevating the centre of the measuring pole, or by holding back part of the rope, if a rope was used, could show an apparent excess above the actual extent of the area measured, they not infrequently submitted to an additional impost rather than consent to mensuration. Measurements effected since the accession of British dominion show that most raiyats held much more land than was registered as belonging to them in the old village records."—(*Id.*, p. 65.)

necessary information and accounts for allotting the public jama upon estates that may be divided, agreeably to the principles prescribed in Regulation I of 1793. We have here two objects[8] proposed in the appointment of patwaries. If the keeping of accounts of the produce was not necessary for one of these two objects, it must have been intended to effectuate the other. This view is further confirmed by section 16 of Regulation XII of 1817, passed originally for Bahár, Benares, and Cuttack, but extended to all Bengal districts by Regulation I of 1819. The patwari is by this section required to deliver to the kanungo of the pargana at the expiration of every six months a complete copy of *accounts, showing distinctly the produce of the kharíf and rabi harvests.* Then let us examine the duties of the kanungo. He was required by section 7 of Regulation IV of 1808, to compile information regarding . . . *articles of produce, rates of rents,* rules and customs established in each pargana . . . . to assist at all *admeasurements of land,* whether undertaken by the officers of Government in conformity to the Regulations, or *by the landholders or raiyats,* and to record the same. The same provisions are found in Regulation V of 1816, which were extended to the Bengal districts by Regulation I of 1819. These fragments of evidence in the nature of undesigned coincidences show that at the time of the Permanent Settlement the ancient custom of revising money-rents according to the value of the Government share (which after that Settlement became the zemindar's share) of the produce, was still in existence; and this custom, as has been explained, contained in itself most of the modern principles of enhancement.

Regulations relating to Patwaries and Kanungoes show that Value of Produce was a Standard of Reference to regulate Rent.

§ 293. There is one more method of construction by which we may arrive at the intention of the Government

[8] The same two objects are stated in section 1 of Regulation XII of 1817, which speaks of the difficulties and delays experienced in the investigation of summary and other suits for rents in consequence of the Regulations regarding patwaries being defective.

as to the enhancement of the rents of the *raiyats* after the Permanent Settlement. In order to discover the intention of the parties to an instrument, we may properly see what they have done under it. If we find that the *zemindars* immediately after the conclusion of the Permanent Settlement enhanced the rents of the *raiyats*, and that the Indian Government and the Court of Directors, being well aware that this was being done, not only took no steps to prevent it, but practically aided it by the course of subsequent legislation—if we find that Government itself in its own estates and in the estates of private individuals, which by reason of the disqualification of their owners were under the management of its officers, enhanced rents, and enhanced them more determinedly and effectually than private proprietors did or could—we may reasonably conclude that this enhancement was intended at the time of the Permanent Settlement. It may be objected to the latter branch of this proposition that any subsequent Government which conducted or tolerated enhancement proceedings was not the same Government which directed the Permanent Settlement of 1793. But a Government is a corporation, having perpetual continuance, and the objection can only be sustained by showing a deliberate change of policy. That the zemindars after the Permanent Settlement enhanced rents is a fact which is beyond controversy. That the Indian Government and the Court of Directors were aware of this enhancement, and being aware of it not only took no steps to stop or prevent it, but indirectly by legislation facilitated and assisted it—and that Government itself was the most active and successful enhancer of rents—will appear more fully hereafter. Meanwhile I may show that it was regarded as a matter of course, that the Zemindars should have the advantage of a rise of rents. In a letter to their Government in Bengal, the Directors said in 1812 :—" True it is that an arrangement, under which Government would reserve to itself a claim upon a share of the *value of the increased produce of the land*, or rather the right of augmenting the

Intention as to Enhancement discoverable from what Government did and allowed the zemindars to do.

The Zemindars having the advantage of a Rise of Rents taken as a Matter of Course.

land-tax in proportion to the increased power of the land to pay it, does imply a departure from the principle of the Permanent Settlement in Bengal, *which has secured to the proprietors of estates the whole advantage of a rise in their rental.*"[9] Two years afterwards, in acknowledging the receipt of information as to the sale of lands for arrears of revenue, which, bearing a *jama* of Rs. 83,485, were sold for Rs. 2,32,451, they say:—"It follows, therefore, that the Zemindars' allowances must from the beginning have greatly exceeded their nominal amount; or that their emoluments must have subsequently been increased by arbitrary exaction; or that, in the interval, the agricultural prosperity of the country and the value of landed property must have advanced with a rapidity perhaps beyond example."[1]

§ 294. In the following year (1815) the Directors wrote as follows:—"The effect of a permanent settlement of the lands, such as has been established in the Lower Provinces, is to *augment the landlord's rent*, not the profit of the cultivator; and it is from neglecting to make this distinction that an inference has been drawn, in our opinion, very unwarrantably, of the incompatibility of temporary settlements with agricultural improvement. The rent of the landlord may be very large, without any part of it being expended in improvements; and, on the other hand, if the cultivator be well paid for his labour, and at the same time reap a fair profit on the capital employed on his farm, he has every necessary inducement to continue his industry, although there should be no surplus to be paid in the shape of rent to the landlord."[2] Sir Edward Colebrooke in the Minute already referred to[3] further expressed his opinion that the rights of the peasantry in the North-Western Pro-

The Permanent Settlement was understood at the time to involve an Enhancement of Rents.

[9] *Para.* 76 *of Revenue Letter to Bengal, dated* 15*th January* 1812, I *Revenue Selections*, p. 63.

[1] *Para.* 39 *of Revenue Letter to Bengal, dated* 28*th October* 1814, I *Revenue Selections*, p. 166.

[2] *Revenue Letter to Bengal, dated* 9*th June* 1815, I *Revenue Selections*, p. 303.

[3] *Ante*, page 525.

vinces would be sacrificed under any enactments "copied from the Lower Provinces, which vest in the *zemindar the power of fixing his rents in his own discretion*, and arm him with the means of enforcing them by distraint and summary processes." We shall see that a certain small class of *raiyats*, who had held their lands at the same rent for twelve years previous to the Permanent Settlement, were protected from enhancement. That the rights of other *raiyats* were measured by Government itself according to the strict rules of English Political Economy and the English principle of rent will appear from the following Rule prescribed for the management of *Khas Mahals*, or estates held or managed by Government:—"The claims of *khudkasht* and *kadimi raiyats* should be carefully respected. Should cultivators of this class be found holding lands at lower rates than other *raiyats* occupying lands of a similar description, their rents should not be raised without considering their right to continued occupation at the rent heretofore paid. Some of these *raiyats*, being the descendants of those who originally broke up the land, have held at the *jama* now paid since twelve years previous to the Decennial Settlement. They have a lien on the soil *beyond wages of labour and profits of stock*. By prescription they have a proprietary interest. To raise their rents is to deprive them of that proprietary interest. They are entitled to a full investigation of their rights under the resumption laws before being subjected to any enhancement."[4]

English Principle of Rent applied by Government to Raiyats' Rents.

§ 295. It does not appear that the general right of the *zemindars* to enhance rents has ever been seriously disputed in the Courts of Justice, although the published

[4] *Rules for Management of Khas Mahals, dated 19th November* 1850. In a Resolution of the Government of India, quoted in Revenue Circular Order No. 455, of the 17th April 1838, in connection with the encouragement of the growth of sugar, it is observed that the want of capital amongst the cultivating classes is a bar to adjusting the rent of land according to its productive powers, "though in theory the land ought to be valued according to its productive powers, *or at least according to the rate which competition, if the land were let to the highest bidders, would assign to it.*"

Reports abound with cases in which individual tenants have sought to obtain the benefit of certain statutory exceptions to the exercise of this right. On the other hand, the Judicial Committee of the Privy Council, which is the highest Court of Appeal from British India, have repeatedly recognized and affirmed this right in no uncertain language. "A suit to enhance," their Lordships have said, "proceeds on the presumption, that a *zemindar*, holding under the Perpetual Settlement, has the right from time to time to raise the rents of all the rent-paying lands within his *zemindarí* according to the Pargana or current rates, unless either he be precluded from the exercise of that right by a contract binding on him, or the lands in question can be brought within one of the exemptions recognized by Regulation VIII of 1793; and it also assumes that the defendant has some valid tenure or right of occupancy in the lands which are the subject of the suit."[5] And again:—"The right of the zemindar to enhance rent is presumable until the contrary is shown."[6]

Zemindars' Right to Enhance Rents recognized and affirmed by the Judicial Committee of the Privy Council.

§ 296. In order to understand the process of rent-raising which has gone on in the Lower Provinces of Bengal ever since the Permanent Settlement, there are two circumstances which must be grasped and borne in mind. The first of these circumstances is that at the time of the Permanent Settlement a large proportion, estimated by Lord Cornwallis at *one-third*, at *one-half* by others, and by some at *two-thirds* of the land capable of cultivation was waste and probably was never otherwise.[7] The *zemindars* had undoubtedly the right to settle these lands upon their own terms. Population increased enormously during the peaceful times introduced by British rule; and large tracts of land were rapidly reclaimed and brought under cultivation. Mr. Dowdeswell, in his Minute of the 16th October 1811, remarked that vast tracts of land had been

Half the Lower Provinces of Bengal Waste at the time of the Permanent Settlement.

[5] *Radhika Chaudhrain* v. *Bama Sundari Dasi*, 13 Moore's Indian Appeals, p. 248.

[6] *Forbes* v. *Mir Mahamed Hosen*, 12 Bengal Law Reports, p. 215.

[7] Fifth Report, page 16.

reduced to cultivation during the eighteen years that had elapsed since the Permanent Settlement.[8] And Mr. Colebrooke, in his Minute of 1813, says:—"The present landholders (I use this expression, because a considerable revolution of property took place, which was not, however, necessarily connected with the system of permanent assessment) are opulent and prosperous. Increase of agriculture has proceeded with rapidity surpassing expectation, and in the greatest part of the country has already reached its limit, unless it receive new impulse from the introduction of improved modes of husbandry." . . . . . "In many of the districts of the Lower Provinces, and in some of those of the Western, very extensive tracts of forest land were claimed by, or really appertained to, proprietors, who had comparatively small portions of land in tillage. Every district contained some instance of scattered estates, in which the untilled lands much exceeded the arable."[9] It will readily be understood that one consequence of this extensive reclamation and settlement of *raiyats* upon new land was that new rates of rent were created, and the rapid increase of population[1] introduced some element of competition in fixing them.[2]

Rapid and Extensive Reclamation.

New Rates of Rent in consequence.

[8] I *Revenue Selections*, p. 172. [9] *Id.*, 201.

[1] The population of Bengal, Bahár, and Orissa was first estimated at *ten* millions. Sir William Jones, in 1787, calculated it to be *twenty-four* millions, but this included Benares. In 1802, it was computed at *thirty* millions. The Select Committee, in the Fifth Report, took it to be 27 millions. Mr. Adams, in 1835, computed it at 36 millions. In 1844, Mr. Dampier, the Superintendent of Police in Bengal, estimated the population of the Lieutenant-Governorship, at a little over 31 millions. Down to 1870-71, it was officially assumed to be 41 or 42 millions, but the census of 1872 showed it to be 67 millions. According to the census of 1882, the population of Bengal Proper is 35,607,628: that of Bahár, 23,127,104: that of Chota Nagpore, 4,225,989: and that of Orissa, 3,730,735: while the grand total, excluding Assam and including Cooch Behar, Hill Tipperah and the Tributary States of Orissa and Chota Nagpore, is 69,536,861. Every one marries—with the Hindoos marriage is a religious duty—few marriages are unproductive; and a very high birth-rate is not counterbalanced by a high rate of mortality amongst children in a country where cold and its consequences are unknown.

[2] I may be allowed to illustrate still further the effect of this circumstance by quoting a passage from Sir H. Maine's *Early History of Institutions*:—

Effect of Sales of Estates for Arrears of Revenue.

§ 297. The second circumstance is, that when estate were sold by public auction for the realization of arrears of revenue which had accrued in consequence of the proprietors not discharging the Government demand, the auction-purchasers were empowered by law to avoid all incumbrances, and with some small exceptions to enhance the rents at their discretion. The effect of this circumstance will be realized when we learn that during the twenty-two years that followed the Permanent Settlement *one-third* or rather *one-half* of the landed property in the Province of Bengal was transferred by public sale.[3] With reference to this fact the Court of Directors say in their letter of the 15th January 1819[4]:—"We can readily conceive how prodigiously numerous must have been the instances in which engagements between *zemindars* and *raiyats* were

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"You will bear in mind the passage quoted by me from Hunter's Orissa, which shows how a tenantry enjoying hereditary rights is injured, even under a Government which sternly compels peace and order, by a large immigration of cultivators dependent on the landlord or *zemindar*. They narrow the available waste land by their appropriations; and, though they do not compete directly for the anciently cultivated land with the tenants enjoying hereditary rights, they greatly raise in the long run the standard of rent, at the same time that they arm the landlord with those powers of exacting it, which in Ancient Ireland consisted in the strong hand of the Chief himself, and which consist in Modern India, in the money which puts in motion the arm of the law"—p. 184.

[3] "It will, at the same time, be equally necessary, carefully to ascertain whether they may not have subsequently, in some degree, relinquished those rights, or such parts of them as it may now be found expedient to exercise in behalf of the immediate cultivators of the soil; for, subsequently to the period of the decennial settlement, probably *one-third*, or rather *one-half* of the landed property in the Province of Bengal may have been transferred by public sale on account of arrears of revenue. One of the rights in contemplation was their power to have confirmed the validity of *patta* tenures, which have been declared resumable, in case of public sales for the recovery of arrears of revenue from defaulting proprietors, and which became a strong inducement to many to become purchasers. Nor must it be forgot, that Government may have benefited thereby, as the lands, in some instances perhaps, would not have otherwise sold at a price sufficient to realize the arrears due and the proportion of the *jama* assessed upon them."—*Minute of* Mr. Rocke, *the Acting President in* 1815—I *Revenue Selections*, p. 374.

[4] I *Revenue Selections*, p. 358.

annulled." Now if one-half of Bengal was waste in 1793, and could therefore be let by the *zemindars* upon their own terms, and if half of the landed property in Bengal changed hands between 1793 and 1815 under a law which authorized the purchasers to avoid previous engagements, it is easy to see that the majority of the *raiyats* were in the matter of rent subjected to the uncontrolled will of their landlords; and the prevailing rate of rent being thus raised, there was little difficulty in enhancing the rents of the remaining *raiyats* up to the same level.

Combined result of New Rates on Reclaimed Waste, and Enhancement of Rents in Estates sold for Arrears of Revenue.

§ 298. I shall close this chapter with some evidence, that the rights of the *raiyats* were left by the Permanent Settlement as uncertain and undefined as they were when the Company obtained the *Dîwání*. On the 16th August 1811, the Collector of Rajeshaye wrote as follows:—"The assertion, that the rights of the *raiyats* have never been explained, may surprise your Board, but I believe it to be true nevertheless: at least, I am not aware of any Regulations by which these rights are clearly defined. By the eighth Regulation of 1793, there are no *mukarraridars*, but those with whom a settlement was made, in consequence of their having held their lands for twelve years, at a fixed rate, previous to the formation of the decennial settlement. Of those how few there are, must be well known to your Board." . . . . . "Before the *raiyats*, who consider themselves to hold their lands at a fixed rate, and the *khudkasht raiyats*, can be induced to grant *kabuliyats* (unless it be for the rent they have always paid, and with which, I have already stated, the *zemindars* are not satisfied) the rights of these *raiyats* must be clearly defined, and, no doubt, should remain, whether these men have or have not a right to hold possession of their lands, at a fixed rate."

Raiyats' Rights left by the Permanent Settlement uncertain and indefinite.

Opinion of Collector of Rajeshaye in 1811.

§ 299. In 1814, Mr. Cornish, the Fourth Judge of the Patna Court of Circuit, wrote as follows:—"The assertion may appear extraordinary, but it is, nevertheless, certain, that the rights of the *raiyats* remain to this day unexplained and undefined. It is true, that there is something like a provision for preventing the rents of the lands of

Opinion of Mr. Cornish, Judge of the Patna Court of Circuit, in 1814.

the *chapperband* or *khudkasht raiyats* from being raised, unless the *zemindar* can prove that they have paid less for them, for the last three years, than the *nirk* of the *pargana*. But what is this *nirk*, or how to be ascertained? It is a mere name, and of no kind of use in securing the rights of the *raiyats*. The *paikasht raiyats* are altogether left to the mercy of the *zemindars*. Was this intended? If so, what can possibly be the objection to its being declared by Regulation, that the *raiyat* is a mere cultivator and tenant-at-will, and that, if he refuses to take a *patta*, he may be ousted by summary process; and that, further, on the expiration of his engagements, the *zemindar* may demand whatever rent he thinks proper to ask."[4] In the following year Lord Moira expressed himself in the following terms:—"The cause of this is to be traced to the incorrectness of the principle assumed at the time of the perpetual settlement, when those with whom Government entered into engagements were declared the sole proprietors of the soil. The under-proprietors were considered to have no rights, except such as might be conferred by *patta*; and there was no security for their obtaining these on reasonable terms, except an obviously empty injunction on the *zemindar* amicably to adjust and consolidate the amount of his claims." . . . . "In practice, however, it is to be feared, that the assignment on the part of Government is considered to confer a proprietary right, with all the powers and privileges attached to such a right by the Regulations. Thus, as but one proprietor of the soil is recognized, the rights of all those with whom Government had till then engaged are totally annihilated by the assignment. What was heretofore paid as revenue, must now be paid as rent; those, who before held their lands with only the condition of a certain fixed payment to the Government, become tenants, subject to arbitrary exactions, and liable to ejectment, if they resist the demands."[5]

[4] I *Revenue Selections*, p. 366.

[5] Revenue Minute of the 21st September 1815, I *Revenue Selections*, pp. 425, 427.

CHAPTER XXIII.

Landholding, and the Relation of Landlord and Tenant in India—The Zemindars and Raiyats from the Permanent Settlement to 1822 *A.D.*

§ 300. We have seen that, in Lord Cornwallis's opinion, all objection to the Permanent Settlement, founded upon the indefinite state of the demands of the landholders upon the *raiyats*, would be obviated by compelling the *zemindars*, within a certain time, to grant *pattas* or writings to their *raiyats*, in which the amount of rent should be specified, and by enforcing the prohibition that no *raiyat* should be liable to pay more than the sum actually specified in his *patta*.[6] It was accordingly provided[7] in the original rules for the Decennial Settlement that the pre-existing *abwábs* should be consolidated with the *asil* into one specific sum to be entered in the *patta*, and *pattas* were to be delivered to the *raiyats* by the end of the Bengal year 1198 (1791) in the Bengal districts, and of the *Fasli* and *Wilaiti* year 1198 in the Bahár and Orissa districts. It was at the same time expressly stated[8] to be "expected that, in time, the proprietors of land, dependent *talúkdars* and farmers of land, and the *raiyats* will find it for their mutual advantage to enter into agreements, in every instance, for a specific sum for a certain quantity of land, leaving it to the option of the latter to cultivate whatever species of produce may appear to them likely to yield the largest profit." The form of *patta* prepared in accordance with the rules and adapted to the particular estate was to be submitted to the Collector for his appro-

Rules for the delivery to the Raiyats of Pattas specifying the exact amount of Rent payable by them.

[6] See *ante*, page 494. [7] Section 54 of Regulation VIII of 1793.
[8] Section 56 *id.*

val; and when so approved, a copy of it was to be registered in the chief Civil Court, and a copy was to be deposited in each of the principal rent-offices on the estate. Every raiyat was declared entitled to receive a *patta* in this form upon application, and no *pattas* in any other form were to be thereafter held valid.[9] By another Regulation[1] of the same Code it was provided, as already stated, that no zemindar, independent talúkdar or other proprietor should grant *pattas* to *raiyats* or other persons for the cultivation of lands for a term exceeding ten years. All leases to under-farmers and *raiyats* made previous to the conclusion of the Decennial Settlement and not contrary to any Regulation, were to remain in force until the period of their expiration, unless proved to have been obtained by collusion or from persons not authorized to grant them. No proprietor or person acting under his authority was to cancel the *pattas* of the *khudkasht raiyats* except upon proof that they had been obtained by collusion; or that the rents paid by them within the previous three years had been reduced below the rate of the *nirkbandi* of the *Pargana*; or that they had obtained collusive deductions; or upon a general measurement of the Pargana for the purpose of equalizing and correcting the assessment.[2]

Provision for Disputes as to the Rates of Rent to be entered in the Pattas.

§ 301. It does not seem to have occurred to the Government in 1789—1793 that there could be any dispute between the *zemindars* and the *raiyats* as to the rates at which the *pattas* should be granted. Further, no provision was made as to what was to be done when the *pattas* previously granted and allowed to remain in force, or the *pattas* granted for a term of ten years under the Regulations, expired. Both these omissions were supplied in 1794.[3] It was provided that, if a dispute arose between the *raiyats* and the persons from whom they were entitled to demand *pattas*, regarding the rates of *pattas*,

[9] Section 58 of Regulation VIII of 1793.

[1] Regulation XLIV of 1793, see section 2.

[2] Section 60 of Regulation VIII of 1793. See *ante*, page 549.

[3] By Regulation IV of that year.

whether the rent were payable in money or kind, it should be determined in the Civil Court of the district, *according to the rates established in the Pargana for lands of the same description and quality* as those respecting which the dispute had arisen. This rule was to apply not only to the *pattas* which the *raiyats* were entitled to demand in the first instance, but also to the renewal of those *pattas* which expired or became cancelled. Further, in order to remove all doubts regarding the rates at which the *raiyats* were entitled to have their *pattas* renewed, it was declared that no proprietor or farmer of land or other persons should require *raiyats*, whose *pattas* had expired or become cancelled, to take out new *pattas* at higher rates than the established rates of the *pargana* for lands of the same quality and description, but that *raiyats* were entitled to have their *pattas* renewed at the established rates, upon making application for that purpose, in the same manner as they were entitled to demand *pattas* in the first instance. All this, even now, reads very well on paper, but the great difficulty in putting it into practice was, as we shall see, that there were no established or *pargana* rates. The time originally allowed for the delivery of *pattas* to the *raiyats* having expired without the great intention of the Legislature having been effectuated, further time was allowed; and as the *raiyats* had not shown that ardour in receiving or even demanding *pattas*, which was to be expected from a grateful appreciation of the good intentions of the English rulers, it was provided that—as the *raiyats* had frequently omitted or refused to take out or receive *pattas*, although the persons from whom they were entitled to demand them were ready to grant them in the form and on the terms prescribed by the Regulations—if those persons would fix up at the principal rent-offices of their estates notifications in writing under their seals and signatures, specifying that *pattas* according to the form approved by the Collector and at the established rates would be immediately granted to all *raiyats* who might apply for them, such notifications would be considered as a legal tender of *pattas*; and the persons

Provision for the Renewal of Pattas—and the Rates at which they were to be renewed.

Further Time allowed for the Delivery of Pattas.

Notification of readiness to grant Pattas equivalent to Tender and entitling to Distrain for Rent at the Rates claimed.

so tendering would be entitled to recover the rents due to them from such *raiyats* either by the process of distraint or by suit in the Civil Court.[4] Thus the *zemindars* were enabled to claim any rates they pleased, to distrain for rent at these rates, and to put upon the *raiyats* the onus of proving that the rates so claimed were not the established rates.

§ 302. Never did a legislative measure fail more absolutely and completely than the Patta Regulations. Neither *zemindars* nor *raiyats* saw their interest in carrying out the wishes and the intention of the Government of 1793. As Mr. Hastings had previously observed, it was the *zemindar's* interest to exact the greatest rent he could from the *raiyats*, and it was against his interest to fix the deeds, by which the raiyats held their lands and paid their rents, to certain bounds and defences against his own authority.[5] Those *zemindars*, who obeyed the letter of the law by preparing and tendering *pattas*, inserted in them such exorbitant rates that the *raiyats* as a matter of course refused to accept them. Even, if the rates were or could be supposed to be unobjectionable, the *khudkahst* or other *raiyats*, who claimed a prescriptive right of occupancy, would not accept *pattas*, the term of which was limited to ten years, and which therefore suggested the inference that on the expiry of this term, they might be evicted.[6] As to the causes of failure there is abundant contemporaneous exposition. In 1789 Mr. Shore wrote as follows[7]:—"It has been found that the *raiyats* of a district have shown an aversion to receive *pattas*, which ought to secure

Complete Failure of the Patta Regulations.

Causes of Failure.

[4] Section 5 of Regulation IV of 1794.

[5] See para. 36 of Revenue Letter of 15th January 1819, I *Revenue Selections*, p. 356.

[6] Mr. Shore had anticipated this. In his Minute of June 18th, 1789, he said:—"*Pattas* to the *khudkasht raiyats* . . . are generally given without any limitation of period, and express that they are to hold the lands paying the rents from year to year;" and in the same Minute he afterwards added:—"To require that the *pattas* should be given for a definite time. . . . . would diminish the force of that prescription which has established a right of occupancy in favour of the *raiyats*."

[7] Para. 241 of *Minute of the 18th June* 1789.

them against exactions ; and this disinclination has been accounted for in their apprehensions that, the rates of their payments being reduced to a fixed amount, this would become a basis of future imposition. . . . . The Collector of Rajeshaye informs us that he fears the raiyats would hear of the introduction of new *pattas* with an apprehension that no explanation could remove." The Collector of Bahár wrote on the 6th January 1793 :— "My difficulties have originated with the *raiyats*, who in this part of the country have an insuperable aversion to receive *pattas* or execute *kabuliyats* for specific quantities of land. The origin of this aversion is two-fold, —*viz.*, partly an apprehension lest, from the decease or loss of their cattle, kinsmen or servants they should be unable to bring the whole specified quantity into cultivation ; and partly a dread lest, after having brought it into cultivation, the expected crop should be damaged or destroyed by drought, storms or inundation. Of the forty-five *parganas* which compose this district, there is not one in which I have not spoken with the *raiyats* of several villages on this subject, and heard the same objection from all. It is not, therefore, from report, but from personal knowledge, that I state their sentiments."

Report of the Collector of Bahár in 1793.

§ 303. In 1811 the Collector of the Rajeshaye wrote as follows :—" The Regulations have now been printed and published since 1793, a period of eighteen years, and I am convinced, notwithstanding the wish of Government that *pattas* should be granted and *kabuliyats* taken, there are as few now as ever there were. It will naturally be asked, how does this happen ? The only explanation I can offer is, that the rights of the *raiyats* have never been determined ; or if determined not well understood. The consequence is, the zemindar, who pretends to consider his *raiyat* a tenant-at-will, tenders a *patta* at an exorbitant rate ; the *raiyat*, who considers himself (from the circumstance of having held his lands for a very long period) a species of *mukarraridar*, conceives that he is entitled to hold his lands at a fixed rent, and therefore refuses the

Account given by the Collector of Rajeshaye in 1811.

patta. The *zemindar* distrains and the *raiyat* is ruined." . . . . . "By the same Regulation, the *khudkasht raiyats* are not to be disturbed in the possession of their lands, nor to have their rents raised, unless the *zemindar* can prove that they have held their lands for the last three years at a less rate than the *nirk* of the *pargana.* What constitutes the *khudkasht raiyat* is, I believe, little understood. From the best information I can obtain, it may be defined by the residence of the *raiyat* in the village in which he cultivates. He and his forefathers may have cultivated lands in an adjoining village for hundreds of years; still, as far as regards the lands in that village, he can only be considered as a *paikasht raiyat*, and as such, a tenant-at-will."

§ 304. "Before the *raiyats* who consider themselves entitled to hold their lands at a fixed rate, and the *khudkasht raiyats* can be induced to grant *kabuliyats*[8] (unless it be for the rent they have always paid, and with which, I have already stated, the *zemindars* are not satisfied), the rights of these *raiyats* must be clearly defined, and no doubt should remain whether these men have or have not a right to hold possession of their lands at a fixed rate. In the event of its being determined that this description of *raiyat* has the power to hold possession of his lands so long as he continues to pay his rent, it becomes necessary to take into consideration the propriety of continuing in force the . . . section . . . which restricts the term of the *pattas* to ten years; for no *raiyat* who may have a right to hold his lands at a fixed rent will take out a *patta* for any limited period, as this act alone would imply that the *zemindar* at the end of that period had a right to oust his raiyat or to raise his rents. It is true, that . . . . the raiyats have a right to demand a renewal of their *pattas* at the established rates of the *pargana;* but these rates are difficult to ascertain. The lands in one village

Definition of Raiyats' Rights—a Condition Precedent to Pattas and Kabuliyats.

[8] A *Kabuliyat* is the counterpart of a *patta.* The *zemindar* grants a *patta* to the *raiyat*, who executes a corresponding *kabuliyat* in favour of the *zemindar.*

may be worth three rupees per bigah, and in the adjoining villages not worth three annas. Of this the *raiyat* is aware, and the *zemindar* takes advantage; and the *khudkasht raiyat* would only obtain a renewal of his *patta*, but at an exorbitant rate, against which it would be useless for him to contend." . . . . "Whilst the *raiyat* fancies he has a right to retain possession of his lands at a fixed rent, and the *zemindar* will not admit this right, it is evident that no rules can be framed which can put a stop to disputes between the *zemindar* and his *raiyat*; and whilst such doubts exist, it is vain to expect that *pattas* will ever be taken by the *raiyats*, or that the *zemindar* will not enforce the law to collect the rents he demands. The first rule, therefore, must be a declaration of the rights of the *raiyats* (if they have any) as cultivators of the soil, and they should be carefully explained and particularized. If they have none, it should be declared they are tenants-at-will; and then there will be no hesitation on their parts to take out *pattas*, however hard the condition imposed on them may be, because they will at once be able to determine whether they can fulfil the conditions of their engagements, and will be well assured that the engagements once entered into cannot be infringed by the *zemindars*, and that they cannot enforce the payment of more than they have agreed to pay."[9]

§ 305. In 1815 the Indian Government wrote to the Court of Directors as follows:—"With these impressions respecting the rights of the peasantry, such parts of the provisions contained in Regulation XLIV, 1793, as declare that *pattas* shall not be granted to *raiyats* or other persons for the cultivation of lands for a term exceeding ten years, appear to us to be fundamentally erroneous. The natural and obvious tendency of that rule was to limit and restrict those rights, which the peasant possessed in a much more extended sense by virtue of the constitution of the country

Opinions of the Government of India expressed in a letter to the Court of Directors in 1815.

[9] *Letter from Acting Collector of Rajeshaye, dated 16th August* 1811. I *Revenue Selections*, pp. 240—242.

itself. The other restrictions contained in the same provision may have been dictated by a wise and cautious policy. No doubt, the public revenue might have suffered, had the *zemindars* and others possessed an unlimited power to let the lands to farm, or to grant dependent *taluks* for an indefinite term of years, at a reduced rent, but if any restriction of that nature was requisite with respect to the *raiyats*, it should have been to prevent the grant of *pattas* at a rate of rent inferior to the ordinary rates of the *pargana;* and in point of time, the *pattas* should, we think, on the grounds already noticed, have been absolutely unlimited. The restrictions above noticed have, indeed, been modified by two separate Regulations passed in the year 1812,[1] but not in a way altogether consonant with the sentiments which we entertain on the subject. We have already observed, that we thought that a material error had been committed in the Regulations of 1793, by blending together the *pattas* of the *raiyats* and tenures of quite a different character. The same error, if it be one, is observable in the Regulations of 1812, to which we have just adverted. Exclusively of that consideration, the provisions in question are only applicable to those parts of the country in which a permanent settlement has been already formed, while in the Ceded and Conquered Provinces limitations are still established with respect to the tenure of the *raiyats*, quite at variance with those rights which we consider them to possess under the general constitution of all Indian Governments. It will naturally occur to your Honourable Court, that considerable difficulty must be now experienced in putting the rights of the peasantry on their proper footing, and that the utmost circumspection should be observed in the performance of that duty: we therefore propose to communicate the tenor of these remarks to the Board of Commissioners, and to require their sentiments regarding the course which should in their judgment be followed with respect to this question. But whatever rights the raiyats may be

[1] Which will be noticed hereafter.

declared in theory to possess, the practical benefits arising from any measure of that sort will be very limited, "until means shall be devised" (to use the terms of a late letter to the Board of Commissioners) "on the occurrence of disputed claims, of ascertaining with accuracy and facility the rent which they should individually pay, and an authority created for deciding on all such cases with the utmost promptitude." They then proceeded to point out the importance of adopting means "to collect, digest and register the details, which alone" could "afford accurate data for judging of those rights."[2]

Account given by a Member of the Civil Service in 1832.

§ 306. In a work[3] published by a Member of the Civil Service in 1832, we find the following views expressed:— "It had been, in the first instance, declared that Regulations for the protection and welfare of the *raiyats* and other cultivators would be enacted, but none have ever been effectually passed, restoring them to any of their rights; even the single stipulation most in their favour, which was intended to prevent the *zemindars* from raising the rents of *khudkasht raiyats*, was so worded, that it gave every *zemindar* the means of enhancing his demands at pleasure; since, to entitle the *raiyat* to the benefits of the provision set forth in the clause in question, it was necessary, in the first place, that he should have accepted a lease or *patta*, and as, in so doing, he would have acknowledged a feudal over-lord in the person of the *zemindar*, he was naturally averse to become a party to the annihilation of his rights . . . . In the *patta* prescribed by the Code, the *abwáb*, or illegal cesses, were consolidated with the *asl*, or authorized and prescriptive rates. The *raiyats* did not acknowledge the existence of a right to [redacted] anything in addition to the regular established rate

law, as it formerly stood, could not, according to their notions, be enforced by legal means, unless they acquiesced in the demand. Supposing the *raiyat* to have subscribed to the record of his future vassalage, he obtained no permanent benefit by his submission; the rate of *nirkbandí*, or average standard of rents paid in the *pargana* might, at any time, be easily raised, by compelling several of the inferior cultivators to take *khamár*, or waste land, at enhanced rates, and thus to raise the average of the village rates[4] (this was, and is, the common practice of the *zemindar* in Bengal), and after the expiration of three years the oldest *raiyat* might be compelled, by an action-at-law, to pay the same."

Patta Regulations not only failed but aggravated the Mischief they were intended to remedy.

§ 307. Not only then were the Patta Regulations a complete failure for the purpose for which they were intended—namely, the securing of certainty of demand of rent and procuring *zemindars* and *raiyats* to adjust their mutual rights by agreement amongst themselves; but being adroitly utilized to promote and facilitate exaction, they, like many of our legislative enactments devised on paper with the most excellent intentions, increased the very evil which they were intended to remedy.[5] The *zemindars* by

[4] See *ante*, page 557. Mr. A. D. Campbell, in his Summary of the Evidence before the Select Committee of 1831, says:—"In the Lower Provinces of Bengal the Permanent Settlement enabled the *zemindars*, by ousting the hereditary cultivators in favour of the inferior peasantry, to increase the cultivation by a levelling system, which tended to depress the hereditary yeomanry or middle ranks of the community and to amalgamate them with the common labourers and slaves, from whom the highest judicial authorities in Bengal are now unable to distinguish them."

[5] The Rent Commission of 1879-80, in dealing with the suggestion that all contracts of tenancy should be required by law to be in writing, say:—"This is a suggestion which has been repeatedly made, and on more than one occasion supported by high authority. The majority of the tenancies in Bengal and Bahár depend upon custom rather than contract. However suitable a law requiring contracts of tenancy to be made in a particular form may be for a community in which the idea of contract, being early developed, rapidly permeated all classes, we think that it is not equally suited for a community over which custom exercises a powerful influence, whilst more admiration is accorded to the ingenuity with which a contract is broken, than to the honesty which respects its binding force. The Legislature of 1793 directed its efforts to the

putting up notifications in their *kutcherries* or rent-offices, of their readiness to grant *pattas* at rates which the *raiyats* would not accept, were enabled to distrain for the recovery of the rents which they claimed, and the *raiyats*, in order to protect themselves, were driven into the newly created Civil Courts. The consequences of this disturbance of the old relations between *zemindars* and *raiyats* and the general operation of the new system introduced in 1793, are fairly described in the Fifth Report of the Select Committee on the Affairs of the East India Company, dated 28th July 1812 :—"The new system had abolished, under severe penalties, the exercise of the power formerly allowed the landholders over their tenantry and cultivators, and of the collectors of the revenue over the landholders ; and had referred all personal coercion, as well as the adjustment of the disputed claims, to the newly established Courts of Justice. The Regulation, which in pursuance of these principles provided for the liquidation of the dues of Government by the sale of the defaulter's lands, was sufficiently brief and efficient ; but the rules for the distraint of the crop or other property, founded on the practice in Europe and intended to enable the *zemindars* to realize their own rents, by which means alone they could perform their engagements with the Government, were ill-understood, and not found to be of easy practice."

The Consequences and the Operation of the System of 1793 fairly described in the Fifth Report of the Select Committee of the House in 1812.

§ 308. "In the Courts of Civil Judicature, the accumulation of causes undecided had proceeded to such an extent, as almost to put a stop to the course of justice ; or at least, to leave to a zemindar little prospect of the decision of a suit, instituted to recover payment of his rent, before his own land, by the more expeditious mode of procedure, established against him by the Government, was

Civil Courts unable to cope with the mass of resulting Litigation.

introduction of written engagements between landlord and tenant, and the Regulations of that time contain more than one homily upon the advantages that would surely accrue to both parties from the use of such written engagements ; but neither party was in the least persuaded or converted : and finally a law was rescinded in which neither party saw sufficient benefit to himself to induce him to enforce it against the other."—*Report of the Commission*, p. 3.

liable to be brought to sale in liquidation of an outstanding balance. These circumstances were brought under the notice of Government so early as the year 1795, by the Board of Revenue, in consequence of representations which had been made to them from different parts of the country; and particularly from the extensive and populous district of Bardwán, where the number of civil suits pending before the Judge was stated to *exceed thirty thousand;* and where by computation it was shown, that in the established course of proceeding the determination of a cause could not, from the period of its institution, be expected to be obtained in the ordinary course of the plaintiff's life. It appears, however, that the evils complained of did not affect the cultivators, but the *zemindars;* who now in their turn suffered oppression from the malpractices of the former, and from the incompetence of the Courts of Justice to afford them redress; and as a further progress of them was likely to affect the interests of the Government, by exposing portions of the land sold to the hazard of a reduction in the rates of the assessment, as well as the property of the *zemindars*, it became indispensable that a remedy should be applied. The Government accordingly proceeded first to modify the rules for distraint, the object of which, as far as they were meant to afford the landholders the means of enforcing payment from the tenantry and cultivators, were found to be counteracted by some of the restrictions under which they were to operate. The objectionable clauses were therefore repealed and a new Regulation introduced for remedying those defects. Additional Courts were established; and the number and powers of the natives entrusted with the decision of suits of small amount were immediately increased and enlarged: but with respect to the delay which had been ascribed to the established forms of proceeding, the Government did not think any alteration necessary, observing that 'forms were equally essential to the due administration of justice, and to the quick decision of causes.'"

The Government Revenue endangered in consequence.

Remedies in 1799 for this state of things. More stringent powers of compelling payment of Rents given to the Zemindars. Judiciary increased.

§ 309. "The experience of the four following years did

not justify the expectations formed with regard to the efficacy of the remedies applied; but showed, that the inconveniences and grievances complained of, still prevailed. The revenue was not realized with punctuality; and lands to a considerable extent were periodically exposed to sale by auction, for the recovery of outstanding balances. In the native year 1203, corresponding with 1796-7, the land advertized for sale comprehended a *jama* or assessment of sicca rupees 28,70,061 (£332,927), the extent of land actually sold bore a jama or assessment of sicca rupees 14,18,756 (£164,576), and the total amount of the purchase-money sicca rupees 17,90,416 (£207,688). In 1204, corresponding with 1797-8, the land advertized was for sicca rupees 26,66,191, the quantity sold was for sicca rupees 22,74,076, and the purchase-money sicca rupees 21,47,580. Among the defaulters were some of the oldest and most respectable families in the country. Such were the Rajahs of Nuddea, Rajeshaye, Bishenpúr, Cossijurah, and others; the dismemberment of whose estates, at the end of each succeeding year, threatened them with poverty and ruin, and in some instances, presented difficulties to the revenue officers, in their endeavour to preserve undiminished the amount of the public assessment." Notwithstanding these results the Government of India found satisfaction in the reflection that, although the revenue had not been realized with the punctuality which might have been expected, yet neither the assets nor the amount realized had fallen below the amount of former periods, but had even exceeded that standard of comparison: and they observed that this had been effected, though the personal coercion formerly practised had been abandoned and the most scrupulous punctuality observed in maintaining inviolable the public engagements; that whenever a deviation had taken place, it had never been made with a view to augment the resources of the Government, but on the contrary to relieve the individual by a sacrifice of the public interest.

These Remedies not effectual so far as the Zemindars were concerned.

Sanguine View of the Government of India.

§ 310. "These observations," say the Select Committee, "were probably made, with a view to reconcile the

Directors to what might otherwise appear an unfavourable state of affairs in the Revenue department; for, besides the distresses which, as before mentioned, had befallen a large portion of the principal *zemindars*, and the continual advertisements, which were made in the public newspapers, of land on sale for the recovery of arrears, the territorial revenue was so far from being realized with the facility and punctuality deemed necessary, that some of the members of the Board of Revenue, in consequence of the heavy balances which at this time occurred, went so far as to recommend and strongly to urge a recurrence to the former practice of confining the landholders, for enforcing the payment of arrears. This the Government declined adopting, on the ground that it would have a tendency to degrade the characters, and weaken the authority and respectability of the landholders, and thereby deprive them of the influence derivable from personal exertion, at a moment when the state of their affairs rendered personal exertion most necessary for their relief. The Government was of opinion, that the fear of losing their estates which were liable to sale to liquidate the balance of revenue, would operate more powerfully with the *zemindars* than any considerations of personal disgrace, and they deemed it essential to *strengthen, rather than adopt any measure which might reduce, the power of the zemindars over their under-tenantry*, who, it appeared, had, under the general protection afforded by the Courts of Justice, entered into combinations; which enabled them to embarrass the landholders in a very injurious manner by withholding their just dues, and compelling them to have recourse to a tedious and expensive process to enforce claims which ought not to have admitted of dispute."

Continued difficulty of realizing the Government Revenue.

Return to former plan of confining the Zemindars suggested,

but rejected— and policy of strengthening the Zemindars' powers over their tenants preferred.

§ 311. In explaining to the Court of Directors this state of affairs, it was observed that the licentiousness of the tenantry, although its effects involving the zemindars in ruin were in particular cases to be regretted, indicated nevertheless a change of circumstances which ought to be received with satisfaction, inasmuch as it evinced the

protection intended to be afforded by an equal administration of justice to be real and efficient ; and showed that the care and attention which the Directors, with so much solicitude, had urged the Government to observe for preventing the oppression formerly practised by the more powerful landholders, had not been exerted in vain ; and that in the success of those exertions a foundation had been laid for the happiness of the great body of the people and in the increase of population, agriculture and commerce for the general prosperity of the country. On a Minute entered by a Member of the Board of Revenue respecting the ruin of some of the principal *zemindars*, and a great proportion of the landholders, the Government observed, that it was unnecessary to refer to any other than the ordinary causes of extravagance and mismanagement to account for what had happened in the instances in question which were not such as in a series of years should excite any surprise ; that "it had been foreseen that the management of the large *zemindaris* would be extremely difficult, and that those immense estates were likely, in the course of time, to fall into other hands by becoming gradually subdivided—an event which however much to be regretted as affecting the individual proprietor, would probably be beneficial to the country at large, from the estate falling into the possession of more able and economical managers."

Government of India still Sanguine—Licentiousness of the tenantry a subject of Congratulation,

And the Ruin of the great Zemindars a public benefit.

§ 312. "It was thus," the Select Committee observe, that, "in explaining to the authorities at home the effects and tendency of the new system, the Government generally found something to commend. When the operation of the Regulations proved adverse to their expectations in one respect, in another something had occurred to console them for the disappointment, by showing that some different, but equally desirable, end had been attained. Thus, though the rules for distraint of property, instead of supplying the exercise of power formerly allowed the zemindars, had enabled the tenantry and cultivators to combine (as it is asserted) and ruin their landlords ; yet this circumstance, it was observed, evinced

Complacent Views of the Government of India observed upon by the Select Committee.

that the great body of the people experienced ample protection from the laws, and were no longer subject to arbitrary exactions. Thus, too, when the sale of estates and the dispossession of the great *zemindars* were to be announced, it was remarked that however much the ruin of these defaulters was to be regretted, the Directors would perceive with satisfaction that the great ends were obtained by it, of dividing their estates, and of transferring the lands, which composed them, into the hands of better managers." Let us turn from these complacent views of the Government of India to an examination of the measures which were taken to strengthen the Zemindars' powers over their tenants, and the consequences of those measures.

The Huftum or Seventh Regulation of 1799—Preamble.

§ 313. On the 29th August 1799 there was passed a Regulation "for enabling proprietors and farmers of land to realize their rents with greater punctuality; for providing against unnecessary delay in the payment of the public revenue assessed upon the lands; and for securing the ultimate recovery of arrears of revenue by a sale of the landed property, from which it may be due, at the close of the year." The preamble to this Regulation[6] recited that the powers, which the landholders and farmers of land paying revenue to Government had been allowed to exercise for enforcing payment of the rents due to them from their under-tenants, had in some cases been found insufficient, particularly where the crop not being in the immediate possession of the under-tenant in arrear could not be distrained and sold; that a considerable delay had occurred in the payment of the public revenue due from many of the landholders, which, though ascribable in some instances to the cause above-mentioned, could in others be imputed only to want of good faith on the part of certain of the zemindars and other landholders, who taking advantage

[6] Regulation VII of 1799, which was known by the peasantry as the *Huftum* or Seventh Regulation. Another Regulation passed in 1812, and being No. V of that year, was known as the *Punjum* or Fifth Regulation. The peasantry of Bengal attributed all their miseries to the *Huftum* and *Punjum*, which are remembered amongst them to this day.

of the delay with which the process for disposing of their lands was unavoidably attended had withheld payment of their instalments until the day appointed for the sale, and in many instances, there was reason to believe, had bought in their lands, when sold, in fictitious names or the names of irresponsible dependants.[7] The Regulation then first empowered all landholders and farmers to delegate their power of distraint to all agents employed in the collection of rent; and provided that neither the landholders and farmers, nor their agents should be liable to the penalties prescribed for a deviation from the rules relating to distraint, unless such deviation clearly appeared to have been wilful and intentional, or to have proceeded from gross neglect and inattention to the rules. Under the distraint rules landholders were empowered "to distrain, without sending notice to any Court of Justice or any public officer, the crops and products of the earth of every description, the grain, cattle, and all other personal property, whether found in the house or on the premises of the defaulter, or in the house or on the premises of any other person." The tools of tradesmen or labourers were absolutely exempt from distraint; but the ploughs and implements of husbandry, the cattle actually trained to the plough, and the seed-grain of the cultivators were to be distrained only in case the defaulter did not possess, or the distrainer was unable to attach,[8] other cattle, grain, or property sufficient for the discharge of the arrear of rent.

Landholders empowered to delegate the power of Distraint to Agents.

What property liable to Distraint for Arrears of Rent.

§ 314. When the rent was payable according to written instalments, no demand was necessary before distraining—a demand being required only when there was no written specification of the exact time of payment.

No demand before distraint, when rent payable on fixed dates.

[7] One object of this was to destroy incumbrances and under-tenures, which were avoidable when an estate was sold for arrears of Government revenue and purchased by a stranger. By allowing the revenue to fall into arrear, these landholders brought about a sale, themselves became the purchasers by using the names of relations or dependants, and so fraudulently got rid of the under-tenures and incumbrances.

[8] As the distrainer was the judge of his own ability, this restriction was a dead letter.

The landholder or his agent having attached the cultivator's property was then required to give him notice of his intention to bring it to immediate public sale, unless the rent claimed were paid. If the defaulter did not pay, on receipt of this notice, or if he absconded or was *otherwise absent*, so that the notice could not be served, the distrainer sent an inventory of the property to the nearest public officer authorized to sell distrained property, who was to sell it as soon as possible, the law requiring only five clear days between the attachment and sale. Once the landlord or his agent, acting upon his own authority and without giving notice to any public officer, had, for the rent claimed by him, distrained the cultivator's property, the cultivator had one only of two courses open to him—either to pay the rent claimed and thereby admit the rate at which it was claimed, or to enter into a bond with good security, binding himself to institute a suit in the Civil Court within fifteen days for the trial of the demand and to pay whatever sum might be adjudged to be due from him with interest upon it at the rate of twelve per cent. per annum. The *raiyat* was thus forced to give up his rights at once, or in defence of them to enter upon an expensive litigation with a powerful and too often unscrupulous superior. The penalty for resistance to distraint or for forcibly or clandestinely taking away distrained property was double the value of the property. The distrainer was empowered to force open the outer door of any dwelling-house, and to enter the *zenana* or apartments of women, after giving them an opportunity to withdraw. If the distrainer saw reason to apprehend resistance or a breach of the peace, he could require a police officer to be present. Finally, it was stated to be a frequent practice with under-tenants to lodge unfounded complaints in the Criminal Courts against persons attaching their property, as well as against the whole of the officers employed in collecting the rents, and likewise to cause their being summoned as witnesses in causes, with the merits and circumstances of which they were totally unacquainted, for the sole purpose of creating

Distrained property sold, unless raiyat paid rent claimed or gave security to institute a suit.

Stringent provisions to render distraint effectual.

embarrassment and delay in the collection of the rents. The Courts of Justice were accordingly required at all times to discourage and punish "such culpable practices." Magistrates were required, in the case of litigious and unfounded complaints, to punish the complainants by fine not exceeding fifty rupees or imprisonment not exceeding fifteen days; and the Civil Courts were directed, in instances of *zemindarí* officers or others employed in the collections being improperly summoned, to make them such allowance for expenses as would be sufficient for their full indemnification. It was further declared that if any person should wantonly and without cause be the means of summoning to the Courts of Justice, Civil or Criminal, the principal officer or any officer engaged in collecting the rents of any *zemindar*, *talúkdar* or other landholder or farmer of land, and a loss of rent or other evident damage should be sustained by the landholder or farmer in consequence of such wanton and unnecessary summons, an action should lie against the party who caused the summons, for such loss or damage, and on proof thereof the party injured should be entitled to recover the amount with all costs of suit. When we remember that our judicial system was totally new to the country, that its forms, its principles and its procedure were little understood, and that time and experience of them could alone create confidence in the minds of the poor and ignorant, we can understand what a mockery to the Bengal *raiyats* was the offer of justice upon these conditions of failure to satisfy inexperienced judges that they had reasonable ground of complaint, though unable from inexperience, from poverty, from the dread inspired by powerful superiors, from a hundred causes, to prove this by legal evidence.

Penalties on persons making litigious complaints or unnecessarily summoning zemindarí officers.

The Pursuit of Justice by an ignorant race discouraged by such penalties.

§ 315. In order to realize arrears of rent due from dependent *talúkdars*, *kutkinadars*, *jotedars* or other under-tenants, which could not be realized by distraining their personal property, proprietors and farmers were authorized, after demanding the arrear from the defaulter and from

his surety, if forthcoming, or without express demand, if they had reason to believe that the defaulter or his surety was prepared to abscond, to cause the immediate arrest of the defaulter and his surety by presenting a petition to the Civil Court or a Native Commissioner. The defaulter when arrested was to be brought before the Judge, who was to make a summary inquiry, and, if he was satisfied that the arrear claimed or a considerable portion of it was justly due, was to keep the defaulter in close custody, until he paid the amount with costs and interest at twelve per cent., or the plaintiff applied for his release. If the arrear were not immediately discharged, the landlord was at liberty to attach the farm, *jote* or other tenure of the defaulter, and to manage the same by his own agents, or in such manner as he might think proper, until the rent due and any other further rent that might become due was liquidated from the produce. If the arrear were not liquidated during the current year either by this attachment or by payment of the defaulter or his surety, the landlord was at liberty, at the commencement of the ensuing year, to make such provision for the future receipt of rent from the land *tenanted* by the defaulter, as he might judge proper and as might be consistent with the rights of all other persons concerned. If the defaulter were an under-farmer, whose lease had not expired, if he neglected to fulfil the conditions of it by the payment of the stipulated rent, it was to be considered liable to be annulled at the option of the lessor. If the defaulter were a dependent *talúkdar* or the holder of any other tenure, which by the title-deeds or established usage of the country was transferable by sale or otherwise, it might be brought to sale, upon application to the Civil Court, in satisfaction of the arrear of rent. If the defaulter were a leaseholder or other tenant *having a right of occupancy only so long as a certain rent, or a rent determinable on certain principles according to local rates and usages, were paid, without any right of property or transferable possession*, the landlord was to be understood to have

Procedure to recover Arrears of Rent not realizable by Distraint of Personal Property. Arrest of the Tenant and Attachment of the Tenure.

Sale of the Defaulter's Tenure in certain cases.

the right of ousting the defaulting tenant from the tenure which he had forfeited by a breach of the conditions of it. In all the cases above enumerated, proprietors and farmers were declared to be at liberty to exercise the just powers appertaining to them *without any previous application to the Courts of Justice;* "but," added the Regulation,[9] "they will be held responsible for all acts done by them, or by their agents, which may exceed their just powers, and infringe the rights of under-tenants of whatever description, whether founded on *pattas* or other written deeds and engagements, or on long prescription and established local usage. This Regulation is not meant to define or limit the actual rights of any description of landholders or tenants, which can properly be ascertained and determined by judicial investigation only; but merely to point out in what manner defaulting tenants may be proceeded against in the event of their not paying the rents justly due from them, *leaving them to recover their rights, if infringed, with full costs and damages in the established Courts of Justice.*" These last provisions scarcely require comment. The preceding pages will have shown that there is scarcely a country in the civilized world, in which a landlord is allowed to evict his tenant without having recourse to the regular tribunals; but the Bengal *zemindar* was deliberately told by the Legislature that he was at liberty to oust his tenants, if the rents claimed by him were in arrear at the end of the year, leaving them to recover their rights, if infringed, by having recourse to those new and untried Courts of Justice, the failure in which might be punished with fine or imprisonment.

Landlords in certain cases empowered to evict Defaulting Tenants without applying to a Court of Justice.

Tenants, whose rights were infringed, left to bring their action.

§ 316. The Regulation further enacted as follows[1]:—"In like manner, in all other instances, the Courts of Justice will determine the rights of every description of landholder and tenant, when regularly brought before them, whether the same be ascertainable by written engagements

Civil Courts to determine the rights of landholders and tenants.

[9] The language of the Regulation has been reproduced almost *verbatim.*

[1] Clause 8, section 15 of Regulation VII of 1799.

or defined by the laws and Regulations, or depend upon general or local usage, which may be proved to have existed from time immemorial; but it is hereby declared that no part of the existing Regulations was meant to deprive the *zemindars* and other landholders, of *the power of summoning, and, if necessary, compelling the attendance of their tenants for the adjustment of their rents, or for any other just purpose*, or for measuring any land within their respective estates, which may be liable to measurement under the conditions upon which such land may have been leased or held. For the just exercise of such rights and powers, the landholders are not required to make any previous application to the Courts of Justice, and any person opposing them therein will be liable to full damages and all costs, besides being subject, for any breach of the peace, to prosecution and punishment in the Criminal Courts." In 1789—1793 the Indian Government and the Court of Directors declined the difficult task of defining and settling the mutual rights of the *zemindars* and *raiyats*. There was at that time in the minds of some a sanguine expectation that they would come to terms and arrange matters between themselves, and so obviate any necessity for the performance of this difficult task by the Government or the Legislature. A very few years sufficed to show the improbability of this solution of the difficulty; and accordingly in 1799 a new solution was attempted, and *zemindars* and *raiyats* were told to adjust their rights by litigation[2]—And yet it has become the modern fashion to wonder at the litigiousness of the native inhabitants of these Provinces—to blame

Rights of Landholders to compel the attendance of their Tenants declared.

[2] It is only right to mention that the Legislature, while prescribing this solution, still advised both parties that the execution of specific engagements and delivery of receipts for payments would, in all instances, tend most to the security of the landholders and their tenants; and Courts of Justice and Collectors were directed, on every proper occasion, to point out to them the provisions of the Regulations on this subject as their mutual safeguard against all undue demands on the one side and evasions on the other.—See the clause of the Regulation last quoted.

Tendency of the Legislation of 1799.

them for the facility with which they have learned one of the first lessons we tried to teach them. From the description just given of the Regulation of 1799, it will be apparent that in Bengal, as in Ireland, the Government saw fit to support the position of the landlords by abnormal legislation which placed their tenants at a disadvantage. The provision, which declared the *zemindars'* power of compelling the attendance of their tenants for the adjustment of rents or other purpose, may to an English reader appear monstrous, but it would not be fair to judge this provision by the English or Western standard of ideas. In the days of despotism, which preceded our rule, *zemindars* and public officers exercised far greater authority than this, and to have denied the existence of the power declared by the Regulation before regular government was introduced—and its introduction must necessarily have been a work of time and education—would have been to commit the country to confusion and disorder, to which even the worst authority must have been preferable. The mistake, doubtless, was, while leaving everything else indefinite, to give prominence, by a legislative declaration, to a power which savoured of despotism, and which, if its oppressive abuse had been punished from time to time, would, under free institutions, by a natural process, have been gradually restrained within limits consistent with liberty. To my mind, however, this provision was not near so dangerous and unjust, as those other provisions of abnormal legislation, which put the law on the side of the stronger and forced the weaker to attack, when he should have been assisted to defend.

Injurious Effects of the Legislation of 1799.

§ 317. As to the immediate results of the legislation of 1799 there is a large body of concurrent testimony, after reading which no person can entertain a doubt that it had the most injurious operation and effect.[3] Judicial officers, having many important subjects to engage their attention, were, notwithstanding every good

[3] A large portion of this evidence will be found in I *Revenue Selections*, pages 209—259.

intention, seldom able to find leisure to attend to the trial of petty rent-suits. The *raiyats* were too poor to employ *mukhtars* or attorneys, and so had to attend in person at the Courts, wasting day after day while their fields required ploughing or their ungathered crops were being ruined on the ground. Their cattle were sacrified by peremptory sale, buffaloes or bullocks of the value of six, seven or eight rupees being sold for one rupee or half a rupee, while the debtor perhaps owed only three or four rupees. The *zemindars* used their power of compelling the attendance of their tenants and detained them till they gave *kabuliyats* for rent at the rate demanded. When the *raiyat* kept out of the way and could not be brought in, a forged *kabuliyat* served the same purpose. The Kazís and Native Commissioners, who were vested with power to sell distrained property, were too often corrupt, abusing their office to their private gain. Lest, however, those who have had no experience of India should suppose that this picture is overdrawn, I shall quote the very language of the officers of Government and of Government itself. On the 24th July 1810 the Magistrate of Dinajpore wrote to the Court of Circuit as follows :—"Three causes are pretty apparent to account for this poverty : (1) the general character of the *zemindars*. They are low people : low in their original character, and not since raised by their fortunes, heretofore dependents on the Rajah of the district, and who occasioned the disemberment of his estates by their plunder, and which again enabled them at the public sales to concentrate in their own persons the estates of their master : (2) another class of the *zemindars* are men of great wealth, whose sole object is to add daily to their store. They are resident in other parts, and draw from hence their lacs annually, to the impoverishment of the district : (3) what is the natural effect of the other two—a general system of rack-renting, hard-heartedness, and exaction, through farmers, under-farmers, and the whole host of *zemindarí Amlas*" (employees).

Account given by the Magistrate of Dinajpore in 1810.

§ 318. "Even this rack-renting is unfairly managed. We have no regular leases executed between the *zemindar* and his tenants. We do not find a mutual consent and unrestrained negotiation in their bargains. Nothing like it: but instead, we hear of nothing but arbitrary demands enforced by stocks, duress of sorts and battery of their persons. There is also an intermediate class, the money man, in every village, who first relieves, then aggravates the evil by his own usurious practices, and enforces them by like means. The general consequence is general poverty. The evil is of difficult remedy. It might perhaps be relieved by the compelling of the *zemindars* to grant *pattas* to their *raiyats* and by establishing a register-office for recording them; but it is to be feared that any arrangement requiring so much detail, and consequently so much superintendence, would fall into disuse. In order, therefore, to secure the *raiyat* against the *zemindar* and his myrmidons, it would be desirable to relieve him, by reducing or modifying the legal power of the *zemindar* in the distraint of property; for reduced to poverty by distraint, the *raiyat* can neither spare his time (and as for money he has none) in pursuit of justice. All distraint and sale should be prohibited, except for a balance claimed on a regularly registered *patta*. Perhaps the present Regulations might admit a construction not very different; but the investigation thereof is not entrusted to the *Kazí* or officer conducting the sale, but is open for a future discussion on a future prosecution, which the *raiyat*, by the very act of the distraint, is generally disabled to pursue. I am not, however, an advocate for giving power to Commissioners, who are ever too open to improper influence, and therefore can only look to a proper remedy in the abolition of distraint and sale *in toto*. I do not write this without being equally prepared for clamour on the part of the *zemindars*, that they cannot pay the Government revenue, because they cannot collect their own rents. If the *zemindar* will give fair terms on a lease for three years, the *raiyat* will pay; but if, instead of a lease on

Rack-renting enforced by duress and personal violence.

Raiyats disabled from the pursuit of Justice.

fair terms, a nominal *jama* is limited, to be hereafter heaped up with cesses of various kinds, extorted by duress, the *zemindar* may not be able to collect, and who will lament, if he suffers in consequence? But I will venture to say that the actual value of lands would be little affected by such abolition."[4]

§ 319. In the following year (1811) the Collector of Chittagong described a very common phase of oppression in this passage:—"In addition to the cases already adduced, one other, bearing a close analogy, yet in fact different, will suffice to illustrate this position. For instance, when two *zemindars* or other landholders have a dispute about a piece of land, both exact rent from the *raiyat* upon it, and although he or they may have paid the accustomed rent to the holder of the *patta*, yet upon a complaint being lodged against the *raiyat* in the Commissioner's Court, the poor man's effects are seized through the undue influence of one of the disputing parties, and he must either pay his rent a second time or submit to their being sold. Nay, it is no uncommon case that the revenue again tendered is refused, merely because distraining and selling the property affords a great advantage to the rapacity of the Commissioner, although there exists a penal law against such malversation. But it is easy to say that the money was not tendered, yet extremely difficult for the weaker party to disprove the assertion against such collusion. Even the exhibition of the *pattadar's*[5] receipt does not avail: its authenticity is boldly denied, and the Commissioner leans to that side which will turn to the most account." The same oppression was common on estates belonging to joint proprietors, who were at feud amongst themselves as to the extent of their respective shares.

Raiyats forced to pay double rent when Zemindars at feud.

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[4] *Letter from Magistrate of Dinajpore to Acting Judge of Circuit, Moorshedabad, dated 24th July* 1810. I *Revenue Selections*, pp. 211-212.

[5] Person who holds a *patta* or lease from the superior landlord, and therefore a middleman.

§ 320. In the same year the Board of Commissioners thus expressed their opinion as to the operation of the law:—"In securing the landlords from these difficulties and embarrassments, which opposed even the most moderate use of this summary proceeding, the modifications introduced by Regulation VII of 1799 have, without intending it, furnished them with an engine of oppression and extortion as irresistible as their original powers were ineffectual. *The penalties annexed to any unfounded complaints against the distrainer have operated as a denunciation against all complaint whatever* on the part of the tenant, whose mistrust of the result of the long litigation with a powerful and opulent antagonist is increased by the present danger attaching to a failure; and he is, therefore, induced to submit patiently to every injustice, rather than attempt to seek redress at the expense of an immediate interruption of the labor, on which his family depend for support, and with a prospect of total ruin in the end." In this very year, when the greatest complaints were rife as to abuses and oppressions committed by *zemindars* in the exercise of their power of distress and sale of property for recovery of arrears of rent, a Circular calling for opinions was, by order of the Vice-President in Council, addressed by the Board of Revenue to the Collectors.[6] In it occurs this passage:—"But however desirable it is that the abuses above noticed, if they really exist, should be in future prevented, you will no doubt be sensible that, in protecting the *raiyats* and others from oppression, the greatest care should be taken not to preclude the zemindars, farmers and managers of estates, from means requisite to enable them to collect their rents. *The natural consequences of such injudicious restrictions would be the accumulation of heavy arrears to Government,* and all the serious ill-effects heretofore experienced from the constant sale of lands.[7]

Opinion of the Board of Commissioners as to the operation of the Regulation. Raiyats deterred from complaining.

[6] *Letter from Collector of Chittagong, dated 15th August* 1811. I *Revenue Selections*, p. 227.

[7] I *Revenue Selections*, p. 220.

§ 321. Mr. H. Colebrooke, in the year after the issue of this Circular, expressed his opinion as follows :—" In the long experience of twenty years since most of those rules were enacted, and more than ten since the principal alterations were made in them, they have been found (as is very generally acknowledged) to be in many respects defective and insufficient, and in others injurious and harassing. Rules devised for the safety of the public revenue have introduced a needless insecurity in the engagements and tenures of the *zemindars* and *raiyats;* and have imposed more than requisite restraints in the exercise of their discretion in forming mutual engagements, and by consequence, on the free enjoyment of property as well as on agricultural improvement. The provisions of Regulations intended to give protection to the rights of subordinate landholders and permanent tenants and occupants of the soil, have been ineffectual for the defence of their privileges against the encroachment of superior *zemindars*, and *many of the rules designed for their protection have been perverted into engines of their destruction.* Rules that have been contrived to preclude and obviate abuses which formerly prevailed, and have been guarded by penalties, became instruments in the hands of dishonest persons to vitiate their engagements and defraud the persons with whom they have dealings."[8] On the 26th July in the same year (1814), Mr. Cornish, a Judge of the Patna Court of Circuit, wrote thus :—" The consequence of the confusion and doubts which at present exist is, that the *raiyats* conceive that they have a right to hold their lands so long as they pay the rent which they and their forefathers have always done ; and the *zemindars*, although afraid openly to avow, as being contrary to immemorial custom, that they have a right to demand any rent they choose to exact, yet go on compelling them to give an increase ; and the power of distraint vested in them by the Regulation soon causes the utter ruin of the resisting *raiyat*." " These dis-

Mr. H. Colebrooke's Opinion. Rules, intended for the protection, perverted to the destruction, of the peasantry.

Power of Distraint used to exact increased Rent.

[8] Minute of 1812. I *Revenue Selections*, p. 260.

putes, in general, end by the *raiyats* appealing to the Courts of Justice. Suits of this nature are exceedingly intricate and difficult of decision; and the judgments of the Courts are frequently given on principles diametrically opposite. And this must, and ever will, be the case, until the subject is taken into the consideration of Government, and the rights of the *raiyats*, if they have any, clearly defined; or, if they have none, let their minds be set at rest by being told so. In this case, instead of resisting the attempts of the *zemindars* to raise their rents on them, which is sure ultimately to end in their destruction, they would patiently submit to the orders of Government, and secure for themselves the best terms in their power."[9]

Mischievous consequences of the Raiyats' Rights not being defined.

§ 322. The experience of fifteen years had now shown that the peasantry were unable to avail themselves of the provisions of 1799, which allowed them to prove their rights by evidence of general or local usage which might be proved to have existed from time immemorial[1]; and the necessity of some legislative settlement and definition of these rights was again suggested by many public officers. Mr. Cornish suggested it in the passage which has just been quoted. Mr. Rocke, the Acting President of the Board of Revenue, suggested it in his Minute of the 13th June 1815:—"Whatever difference of opinion may have existed," he said, "on the subject of the proprietary right in the soil, it now becomes unnecessary to look back. It has been determined, that this right vests in the *zemindars* and *talúkdars*. It only remains now for Government to determine the nature and extent of the rights and power they have reserved to themselves, in conformity with clause 1, section 8, Regulation 1 of 1793."[2] The difficulty of attempting any definition of the rights of the peasantry was undoubtedly very great; and some Revenue Officers still clung to the idea, that the reciprocal wants of the *zemindars* and *raiyats* would compel them to an amicable

Legislative Definition of the Raiyats' Rights again suggested.

[9] I *Revenue Selections*, p. 366.

[1] See *ante*, page 582.

[2] I *Revenue Selections*, p. 374. For further recommendations that the *raiyats'* rights be defined, see *ante*, pages 559 and 566.

adjustment. Accordingly we find the Board of Commissioners at Furruckabad writing, on the 30th May 1815, as follows :—"But the tenant, although apparently sacrificed to the zemindar, and debarred from all redress against him by the expense, the dilatoriness, and above all the uncertainty of judicial decisions, does not in practice suffer those hardships to which, in theory, he would appear to be exposed. When people have reciprocal wants, their mutual necessities drive them to something like an amicable adjustment. The landholder can no more do without the tenant, than the tenant without the landholder.[3] The obligation of the latter to pay the public revenue is certain, and the consequence of his failure is ruin. Starvation is equally certain to the *raiyat* if he cannot get employment. But nature, in this country, requires little ; and although frequent instances have occurred of *zemindars* being ruined, no instance has been heard of a *raiyat* starving for want of work. The law, indeed, has suffered the positive rights of the tenants, as occupants, to pass away *sub silentio* ; but custom, founded on necessity, and stronger than law, has secured to them privileges, which appear sufficient to have made them happy and comfortable, and with reference to all former periods, rich." [4]

The idea that Zemindars and Raiyats would be forced by their mutual necessities to an amicable settlement not yet abandoned.

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[3] See the fallacy of this reasoning pointed out, *ante*, page 535, and *post*, by Lord Moira.

[4] I *Revenue Selections*, p. 370. They further say in the same letter :—"We in fact believe the tenants in Bahár and Benares to be much better off than they were before Kasim Ali Khan's time. One-half of the produce is still the usual share of the *raiyat*, and he is subject to no exaction. The demand for *raiyats* is so great, that they can make, and do make, better terms. A *raiyat*, who had but one plough at the time of the perpetual settlement, will be found to have now two or three ploughs. The rate of hire for a ploughman is more than doubled since that period, and grain, on an average, is much cheaper ; and although cloth and other articles of necessary use are dearer, the *raiyat*, who was formerly almost naked, is now clothed. If any doubt should exist of the ameliorated state of the tenantry in Bahár and Benares, the fact may be proved by reference to the increase of *nuqdi* and the decrease of *bhaoli* tenures." As the *raiyat* was the producer, and not the consumer, of grain, it is not apparent how his condition was improved by

§ 323. The prospect of any satisfactory settlement of their mutual relations by amicable adjustment was, however, perfectly hopeless, when the demands made by the *zemindars* were so exorbitant, and so utterly ignored all rights of any kind in the *raiyats;* and when, moreover, the *zemindars* had been by the Legislation of 1799 placed in a position to enforce their claims, if not willingly acceded to.

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grain becoming cheaper—especially as *nugdi* rents payable in money are said to have been increasing, while *bhaoli* tenures, in which the produce was divided, were decreasing. It will be remembered that the Board were speaking not of Bengal Proper, but of Bahár and Benares; and between these latter provinces and Bengal Proper, there have always been important points of distinction. The Rent Commission of 1879—1880 observe as follows:—"The difference between Bahár and the Eastern Districts of Bengal appears to illustrate remarkably these two stages of competition. At the time of the Permanent Settlement, Government, while declaring its right to do so, forbore to determine the rents payable by the raiyats to the zemindars, and in fact left them to be settled by the parties themselves as best they could—(see *Revenue Letter of the 15th January* 1819, paragraphs 46-54.) In Bahár the population had come to press closer upon the land than in Eastern Bengal. The landowners accordingly had the advantage in the former province, and were able to maintain the system of payment in kind and push rents up to a point which leaves the cultivator but a bare subsistence; while in the latter part of the country, unreclaimed land being abundant and cultivators scarce, the *raiyats* had the advantage and were in consequence able to procure land on very favourable terms. Thus various tenures at low rents came into existence in the Eastern Districts, to which we find nothing similar in Bahár. It must not, however, be supposed that these tenures, if rents be left to unrestricted competition, will act as a complete barrier to the normal tendency. The tenure-holders have rapidly become middlemen, and where population has begun to press on the land, have sub-let. The sub-letting has in many places reached several degrees. It may be that the existence of these intervening interests, which are readily bought and sold, and the possession of which is much coveted, will exercise a healthy influence in creating a better standard of comfort; but, although the condition of things at their present stage appears fair, it is impossible not to dread a decline into cottierism hereafter, especially as there are no checks upon the increase of population. To show that this apprehension is not without foundation, we quote the following passage from a letter of the pleaders of the Rungpore Courts, written in 1876:—

"The demand for land is, indeed, very great, and as the cultivating class is steadily increasing, the competition for obtaining land, and with it the rate of rent, is also on the increase. So strong is the desire for land on the part of this class, that they sometimes bid for it at a rate of rent, which would leave them no margin for profit. The zemindars in their turn do not fail to take advantage of this state of things to increase their revenue."

Raiyats prevented from proving their rights by the abolition of Kanungoes and Patwaries, and the loss or destruction of the only Records of those rights.

Equally hopeless was the idea that the *raiyats* would be able to prove in the newly established Civil Courts the rates of rent, or general or local usages, upon which their rights, if they had any, might be supposed to depend. Ignorant of the forms of procedure, and the evidence required to prove custom; destitute of legal advice or assistance; deterred from seeking redress by the possible consequences of failure; and if persistent in the pursuit of justice, detained from their houses and their cultivation in weary awaiting the leisure of a judicial officer over-burdened with matters more pressing and important than the petty concerns of half-naked *raiyats*—they were further deprived of the only written records of their rights and the rents which they had paid long enough to afford evidence of usage—deprived, in a word, of the only means whereby there was any prospect of their discharging the burden of proof, which the Government and the Legislature had in their wisdom laid upon them. In the offices of the *Kanungoes* and *Patwaries* there had existed a vast amount of useful information as to the rates of rent paid by *raiyats* of different classes for different kinds of soil and crops, measurements of land, articles of produce and the rules and customs of each *pargana*.[5] Of the extreme value of this information to enable Courts of Justice to decide upon all the material questions raised between the *zemindars* and the *raiyats*, there can be no possible doubt. Yet Lord Cornwallis by way of reform abolished the *Kanungoes* and *Patwaries*, and did away with their offices; and with them disappeared the only written evidence of the rights of the cultivators of the soil.

§ 324. This was pointed out in 1815 by Mr. H. Colebrooke, who, in a Minute of that year, said:—"Other clauses of the same Regulation show that extreme difficulty had been already experienced in the adjustment of the land-

[5] See Mr. Hastings' description of the accounts, *ante*, pages 483-4; and as to *Kanungoes* and *Patwaries* and their duties, see *ante*, page 433, *note*, and page 552.

rents between the *zemindars* and *raiyats*, under the previous rules of the Permanent Settlement, which entitled the tenants to receive *pattas* at the established rates of the *pargana*. Yet not only were no means devised for arranging and preserving a record of those rates, and of the rules by which they were regulated, but an existing institution, the only one in which information could be then found and might be expected to be preserved, was unrelentingly abolished. It cannot be wondered at, that the consequence should have been, as is now generally acknowledged, that (with rare exceptions, in which, owing to special circumstances, a record of the rates exists in the Collector's office, and of course with the exception of Benares and the Ceded and Conquered Provinces, where a reframed Serishta, founded on the Kanungo's office, has been kept up) *the Courts of Justice, which are by Regulation required to decide, according to established pargana rates*, all disputes that arise between the *raiyats* and their landlords regarding the rates of the *pattas*, which they are entitled to, are unable to procure any evidence of those rates, or any other satisfactory information to guide their decisions. Consequently, the provisions contained in the general Regulations for the Permanent Settlement, designed for the protection of the rights of the *raiyats* or tenants, are rendered wholly nugatory."[6]

This was pointed out by Mr. H. Colebrooke in 1815.

[6] I *Revenue Selections*, p. 379. In 1822, Mr. Holt Mackenzie wrote as follows :—"Subsequently to the Perpetual Settlement, Lord Cornwallis, in the Minute wherein he brought forward his great scheme for regulating the Judicial and Revenue establishments of the provinces, proposed the abolition of the office of Kanungo. The grounds on which the measure was recommended it would be superfluous to notice here, excepting in so far as it is instructive to observe how much the distinguished person with whom it originated was misled in regard to the facts on which his reasoning is founded. It seems now scarcely credible that Lord Cornwallis should have been led to believe that all the needful particulars regarding the relative claims of Government and of individuals had been recorded ; and still less, that 'the rights of the landholders and cultivators of the soil, whether founded upon ancient custom or on regulations which have originated with the British Government, had been reduced to writing.' The contemplation of such declarations made by so eminent a person may naturally lead to the cautious, and even suspicious, examination of

§ 325. It may be asked whether the complete failure of the *Patta Regulations* and the mischievous consequences of the legislation of 1799 were known to, and understood by, the Head of the Indian Government and the Court of Directors—whether the views put forward by subordinate officers were accepted and endorsed by the responsible Governors of the country. Let me answer this question, in the first instance, by quoting a Minute of Lord Moira, the Governor-General, dated 21st September 1815, which was forwarded in the following January to the Secret Committee of the Court of Directors :—"This indefeasible right of the cultivating proprietors to a fixed share of the produce was annihilated by our directing that *pattas* should be executed for a money-payment, in which all the claims of the *zemindars* should be consolidated. The under-proprietor was thus left to the mercy of the *zemindar*, to whose demands there were no prescribed limits. The *zemindar* offered a *patta* on his own terms. If the under-proprietor refused it, he was ejected, and the Courts supported the ejectment. If the under-proprietor conceived that he could contest at law the procedure, a regular suit, under all the disadvantages to which he is known to be exposed, was his only resource : but when, after years of anxiety and of expense, the case was at last brought to a hearing, he lost his action, because it was proved that the *patta* was offered and refused, and there was no criterion to which he could refer as a means of proving that the rate was exorbitant." . . . . . "The framers of the Permanent Settlement declared their incompetency to fix any criterion for the adjustment of these disputes. The declaration stands recorded in our legislative code, and to the present

The Condition of Affairs known to the Governor-General and the Court of Directors.

Lord Moira's Minute of the 21st September 1815.

any general statements in regard to the present state of things. It may further justify the inference, that had Lord Cornwallis really known how the fact stood, he would have paused, at least, before he admitted the abuses of the Kanungoes, to constitute a sufficient reason for the abolition of the establishment ; while, at the same time, a reference to those abuses must ever be highly useful in considering the means by which the efficiency of the establishment is to be secured."—Mr. Holt Mackenzie's *Memorandum of the 2nd January, 1822, on Kanungoes and Patwaries.*—III Revenue Selections, p. 41.

day this omission has not been supplied. The consequence of the omission, in the first instance, was a perpetual litigation between the *zemindars* and the under-proprietors, the former offering *pattas* on their own terms, the latter not having forgotten that they possessed rights independent of all *pattas*, and refusing demands they conceived unconscionable. When, at last, the revenue of Government was affected by the confusion which ensued, without enquiring into the root of the evil, the Legislature contented itself with arming those who were under engagements to the Government with additional powers, so as to enable them to realize their demands in the first instance, whether right or wrong—a procedure which unavoidably led to extensive and grievous oppression."

§ 326. "On the large estates, I believe it will be found that the system of *patta* and *kabuliyat* has not yet been fully established between the *zemindars* and the cultivating proprietors. The *zemindar* takes engagements from the farmers and officers he employs to collect his rents, and in the event of their failure, makes the lands and the crops answerable for the amount. The *zemindar* feels none of the evils of insecurity; for, as far as the whole produce of the soil will go, he is armed by the seventh Regulation of 1799 with the power of enforcing his demands; and, considering the constitution of our Civil Courts, it seems unanimously agreed that the *raiyat* or under-proprietor, unless he be a *patt'idar*,[1] is debarred from any adequate means of redress for the most manifest extortions." . . . .

The law enables the Zemindars to commit extortion and the Courts are incapable of affording redress.

"It has been urged, however, that though the rights of the former cultivating proprietors have been suffered by the Regulations to pass away *sub silentio*, still, as the *zemindar* and his tenants have reciprocal wants, their mutual necessities must drive them to an amicable adjustment." . . . . "The reciprocity is not, however, so clear. The *zemindar* certainly cannot do without tenants;

[1] From *patti*, a share—a sharer or co-proprietor, who is not a party in his own name to the settlement with Government.

but he wants them upon his own terms, and he knows that, if he can get rid of the hereditary proprietors, who claim a right to terms independent of what he may vouchsafe to give, he will obtain the means of substituting men of his own : and such is the redundancy of the cultivating class, that there will never be a difficulty of procuring *raiyats* ready to engage on terms only just sufficient to secure bare maintenance to the engager." . . . . "If it were the intention of our Regulations to deprive every class but the large proprietors, who engaged with Government, of any share in the profits of the land, that effect has been fully accomplished in Bengal. No compensation can now be made for the injustice done to those who used to enjoy a share of these profits under the law of the Empire, and under institutions anterior to all record, for the transfer of their property to the Rajahs."[8]

Reciprocal wants unlikely to effect an Amicable Settlement.

§ 327. While the Governor-General in his communication to the Secret Committee admitted that the rights of the cultivators of the soil had been annihilated or allowed to pass away *sub silentio* under the operation of the Regulations, the members of his Government were writing[9] to the Directors to explain that the subject of relations between *zemindars* and *raiyats* presented no real difficulty, and that both parties had rights in the soil, which were perfectly reconcilable. "Although," they said, "we have but too strong grounds to believe that the *raiyats* are frequently subjected to exactions by the *zemindars* and others, and although we unreservedly admit that the existing institutions of this country are very imperfectly calculated to afford to them, in practice, that protection to which, on every ground, they are so fully entitled, yet their rights, considering the question *abstractedly*, do not appear to us by any means enveloped in that obscurity which might be supposed from the elaborate discussions which the subject has occasionally undergone. We consider it as a principle

Revenue Letter from Bengal, dated 7th October 1815.

Members of the Indian Government in 1815 unable to understand the position.

[8] I *Revenue Selections*, pp. 402—403, 426—427.

[9] From Calcutta, the Governor-General being then at Furruckabad.

equally applicable to all the provinces immediately dependant on this Presidency, and we believe we might safely add, to the whole of India, that the resident *raiyats* have an established, permanent, hereditary right in the soil which they cultivate, so long as they continue to pay the rent justly demandable from them with punctuality. We consider it equally a principle interwoven with the constitution of the different Governments of India, that the *quantum* of rent is not to be determined by the arbitrary will of the *zemindar*, but that it is to be regulated by specific engagements contracted between the parties or their ancestors, or in the absence of such engagements, by the established rates of the *parganas* or other local divisions." Unfortunately, however, such questions cannot be safely considered *abstractedly*; and when the relations between *zemindars* and *raiyats* came to be considered *concretely*, it was found that specific engagements had not been contracted between the parties, and that established *pargana* rates had no existence. "If it were asked," they further said, "as in fact has been done by your Honorable Court, how the above rights are to be reconciled with the privileges and immunities which it has been the policy of the British Government to vest in the *zemindars* or other independent proprietors of land? we should answer, that although it may be, in some degree, a misnomer to say that the right in the soil is vested in the latter, yet we do not discern anything incompatible in the two descriptions of tenure. In other words, we can discover nothing in the rights which we have supposed the *raiyats* to possess, at variance with the ideas which are usually attached to the possession and enjoyment of landed property. The cottager in England may have his rights, but they do not necessarily oppugn those which are inherent in the proprietor of the estate."[1] It is scarcely necessary to say that this last observation shows how utterly incapable the

[1] Revenue Letter from Bengal, dated 7th October 1815, I *Revenue Selections*, p. 294.

persons who made it were of understanding the real situation of affairs.

Principle of the Revenue Sale Law.

§ 328. It has been already stated[2] that one of the conditions on which the zemindars were made proprietors by the Permanent Settlement was, that the Government revenue assessed upon their estates should be punctually paid, and that, in default of such payment, a sale of the whole of the lands of the defaulter, or such portion of them as would be sufficient to make good the arrear, would invariably take place. If the proprietor of an estate reduced his own receipts of rent by granting leases at a reduced rent to tenure-holders or *raiyats*, the very probable consequence was that he would be unable to pay his own revenue, and his estate would in consequence come to sale. To prevent this it was thought well to provide that, when an estate was sold for arrears of its own revenue, all incumbrances should be avoided, all leases cancelled, and the estate handed over to the new proprietor in the same condition in which it was at the time of the Permanent Settlement. It was accordingly enacted[3] that, upon a sale for arrears of revenue, all engagements with dependent *talúkdars*, all leases to under-farmers and *pattas* to *raiyats* should stand cancelled from the day of the sale, and the purchaser should be at liberty to collect from the dependent *talúkdars* and *raiyats* whatever the former proprietor would have been entitled to demand according to the established usages and rates of the *pargana* or district, had the cancelled engagements never existed. The only exceptions made to this general rule were—(1) the dependent talúkdars exempted from enhancement at the Decennial Settlement;[4] (2) leases for the erection of dwelling-houses, manufactories, gardens, or other purposes. The rule applied to all raiyats indiscriminately. According to the construction put upon the section by the Privy Council,[5] the engage-

Avoidance of Leases and Pattas by Sale.

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[2] See *ante*, p. 515. [3] By section 5 of Regulation XLIV of 1793.

[4] See *ante*, pp. 519—520; and section 51 of Regulation VIII of 1793.

[5] *Rani Surnamayi* v. *Maharajah Satish Chandra Rai Bahadur*, 10 Moo. In. Ap., 123.

ments, leases and *pattas* did not become *ipso facto* void upon the sale taking place, but the power expressly and affirmatively given to the purchaser supposed the *talúkdars* and *raiyats* to remain in all respects as before, except that they became liable to a certain limited increase of rent "according to the established usages and rates of the *pargana* or district," which words, it was observed, in themselves showed that the section was directed to cases in which grants had been made with *reservations of rent below those usages and rates*—was aimed not at the destruction of the tenure, but at the increase of rent under certain specified and equitable limitations.

Construction by the Privy Council.

§ 329. Regulation XLIV of 1793 contained no provision as to the course to be followed, *if the dependent talúkdars and raiyats refused to pay according to the established usages and rates of the pargana or district.* This was subsequently provided for by clause 5 of section 29 of Regulation VII of 1799 which enacted as follows:—"The purchaser may, without any previous application to the adálat, or Court, *eject* any of the under-renters whose leases are annulled by section 5 of Regulation XLIV of 1793, and who may *decline the renewal of them on such terms as the purchaser by the above Regulation and section 7 of Regulation IV of* 1794 *is authorized to require from them:* though it is hereby declared, in explanation of section 5 of Regulation XLIV of 1793, that it is not meant to annul the leases or in anywise affect the tenures of the *istemrardars* (or tenants at a fixed rent) described in section 19 of Regulation VIII of 1793, who by section 49 of that Regulation were exempted from any increase of their fixed *jama* at the formation of the Decennial Settlement, provided they had held their tenures at a fixed rent for *more than twelve years antecedent to that period.* On the contrary, such under-tenants, being declared in section 19 of Regulation VIII of 1793 a species of *patta* talúkdars, were meant to be included in section 7 of Regulation XLIV of 1793, which exempts from any increase of rent under that Regulation the lands of dependent talúkdars, who were exempted

Eviction of 'Under-renters,' who declined to pay according to the established Usages and Rates of the Pargana.

from any increase of assessment at the formation of the Decennial Settlement, and declares the revenue payable by such talúkdars fixed for ever. The Regulation (XLIV of 1793) authorized the purchaser at a sale for arrears of revenue to cancel (1) engagements with dependent *talúkdars*, (2) leases to under-farmers, and (3) *pattas* to *raiyats*. An exception to (1) was contained in this Regulation itself, and has been already noticed; and this exception was extended in 1799 by the provisions just mentioned to certain *istemrardars*, who were regarded as *talúkdars*. Who are the 'under-renters' whom the purchaser is authorized to eject without any previous application to the Court, if they decline the renewal of their leases on the terms required? 'Renter' or receiver of rents[6] is generally used in the papers of the time as synonymous with 'farmer'; and the 'under-renters' would in this view be the under-farmers mentioned in (2): but unfortunately this does not harmonize with the words *on such terms as the purchaser by the above Regulation and section 7*[7] *of Regulation IV of* 1794 *is authorized to require from them.*" This section (7) mentions *raiyats* and *raiyats* only, so that the necessary inference is that the term 'under-renters' includes *raiyats;* and this construction was certainly acted upon.

Two Safeguards for payment of the Revenue: (1) Term of Leases limited to Ten Years, (2) Avoidance on Sale.

§ 330. It will be remembered that Regulation XLIV of 1793 also prohibited the grant of leases and *pattas* for a longer term than ten years.[8] This provision likewise was intended to prevent the permanent diminution of the resources from which the Government revenue was to be paid. It has been explained that one of the causes of the failure of the *Patta* Regulations was that those *raiyats*, who claimed a prescriptive right of occupancy, would not accept *pattas*, the term of which was limited to ten years, and which therefore suggested the inference that, on the

[6] "Every Collector, renter or receiver of the rents, throughout every gradation from the zemindar to the *raiyat*, &c."—*Propositions* deduced from Mr. Shore's *Minute*.

[7] See *ante*, pages 562-563.

[8] See *ante*, pages 532, 541, 562 and 564.

expiry of this term, they might be evicted.[9] It therefore became a question with the Government whether it was necessary for the security of the public revenue that both safeguards should be retained,—*i.e.*, (1) the prohibition against *pattas* being granted for a longer term than ten years, and (2) the avoidance or cancelment of *pattas* and leases upon a sale for arrears of revenue—and whether the former might not be abandoned. This question was thus discussed by Mr. H. Colebrooke, then a Member of the Government, in his Minute of the 1st May 1812 :—"The rules devised for the safety of the public revenue had introduced a needless insecurity in the engagements and tenures of the *zemindars* and *raiyats*, and imposed more than requisite restraints on the exercise of their discretion in forming mutual engagements, and by consequence on the free enjoyment of property as well as on agricultural improvement." Referring to Regulation XLIV of 1793, he said :—"By this Regulation it is provided that no lease shall be made for more than ten years, nor leases be renewed except in the last year of their term, and every lease granted in opposition to that prohibition is declared null and void. And by another section of the same Regulation, it is further provided that, whenever lands are sold by public sale for arrears of the public assessment, all leases to under-farmers and *raiyats*, and all engagements with dependent *talúkdars*, shall stand cancelled from the day of sale, and the purchaser may collect from the *talúkdars*, *raiyats*, or cultivators according to the rates and usages of the *pargana*, as if the engagement so cancelled had never existed. The operation of this rule was extended by a subsequent Regulation (section 3, Regulation III, 1796) to the entire annulment of leases for lands of which a part only might be sold for the recovery of arrears of revenue, and was, on the other hand, modified in cases of sales taking place after the second month of the year, so that leases, unless collusive, should remain, in such cases,

[9] See *ante*, page 564.

uncancelled until the close of the year. These rules were enacted professedly to guard against the improvidence as well as dishonesty of landholders. The preamble to the Regulation recites the injury to which their heirs might be exposed by these imprudent engagements. But the evil, against which the Regulation was especially intended to provide, was the permanent diminution of the resources of Government, which would be the consequence of the landholders reserving a rent insufficient for the discharge of the public revenue. It was apprehended that landholders, if vested with an unlimited discretion of fixing the amount of rent and the term of the lease, would abuse that power, and would either grant improvident leases at very reduced rates for a perpetual, or at best a long, term, with the view of obtaining an immediate supply of funds, or might grant such leases collusively for the purpose of creating beneficial estates for themselves under borrowed names, or for relations, favorites, and dependents. It is to be observed that no provision is made against the dishonesty of landholders practising such devices with a view to defraud their creditors, their leases and engagements being unaffected by a sale made even under the authority of Courts of Justice for the recovery of private debts due to individuals. As this, which no doubt is a much more favorable case than that of heirs, did not engage the attention of the Legislator, it is fair to infer, notwithstanding the tenor of the preamble, that the security of the public dues was chiefly, not to say exclusively, considered; and indeed there appears no substantial reason for any special care of the interests of heirs in this instance, or for controlling the discretion of proprietors, and guarding against their improvident disposal of their property by lease, while every other avenue is open by which the property may suffer detriment, and the heir's expectancy be defeated."

§ 331. "For the security of the public revenue, two remedies are provided by the Regulations in question, where one would have sufficed—1*st*, the limitation of the landholder's discretion in regard to the period of leases

and *2nd*, the cancelling of all leases, whenever recourse has been had to public sale, even of a part of the lands, for arrears of revenue. Both remedies could not be necessary. If the second were so, as the Regulation supposes, the first was superfluous. If the first were effectual for guarding the resources of the revenue, the second could not be indispensable; and, being a very rigorous rule, and a very discouraging one to agriculture, should not have been adopted, so long as no absolute necessity for it was found to exist. These observations lead naturally to the proposition that one or other of those rules be abrogated, and that the other, which is retained, be modified and amended. I hesitated long, which to recommend should be rescinded, and which retained. Wholesome rules might, no doubt, be framed on the model, perhaps, of the restrictions of English law respecting church leases, and leases by tenants-in-tail (or on some other principle derived from the experience of other nations), by which the landholders might be restrained from making away with the resources of the revenue of the lands. Many considerations would seem to recommend this as the least harsh expedient. But to adopt it to the various cases which can be foreseen, and make it efficient for the purpose for which it is designed, the rules to be adopted could not but be in some measure complex; and we have found, in too many instances, how ill-suited intricate arrangements and regulations are to the manners and capacities of the people of this country, to enter willingly on a new career of complex legislation. On this ground chiefly, and after mature reflection, I am induced to recommend the simple course of abrogating all restrictions upon leases in the first instance, and of preserving the rule which cancels *pattas* in case of a sale for the recovery of arrears of revenue, with this modification, however, that it shall not take effect, unless fraud be proved, until the close of the year in which the sale occurs, nor extend to lands not included in the sale. By this alteration of the existing rules, the landlord and tenant will be at full liberty to form any engage-

Necessity of Retaining both Safeguards considered.

Abrogation of all Restrictions on Leases recommended.

ments that may be most for their mutual benefit, according to their own views of their respective interests. Leases for long terms of years, so requisite to the extension and improvement of agriculture, and so conducive to the welfare of both landlords and tenants, will be no longer prohibited, nor be discouraged by any circumstance but the contingency of the *patta* being cancelled by a sale of the lands for the public revenue due from the landholder. This, I apprehend, must be retained for the security of the revenue of Government."

§ 332. Upon the subject of the *Patta* Regulations and their peculiar provisions, Mr. Colebrooke said in the same Minute:—"Another part of the subsisting Revenue Regulations, which appears to me to need emendation, is that which relates to the form of leases and which annuls such engagements as may not be drawn in the prescribed form. Before the enactment of the Regulations connected with the Permanent Settlement of the land revenues of Bengal, a practice prevailed among landholders in this province of imposing on their raiyats arbitrary cesses termed *abwáb*, being either authorized so to do by reservations in the *pattas* to subject the *raiyats* to such *abwáb* as might be imposed on the *pargana* generally, or else assuming that authority without the sanction of any such reservation in the leases of their tenants. To protect the peasantry from such arbitrary exactions, which had been the source of grievous oppression and of gross abuses, the Regulations of the Permanent Settlement provided that no new *abwáb* should be imposed on any pretence under penalty of three times the amount; that the landholders in concert with their tenants should revise the *abwáb*, and consolidate them with the land rents; and they should give or tender to their *raiyats*, *pattas* prepared according to a form previously approved by the Collector and registered in the *adálát* (Court). These rules are enforced by a provision that *pattas* of any other form are to be held invalid. Notwithstanding this penalty, which was expected to enforce universal compliance by rendering the written

Repeal of the provisions of the Patta Regulations as to the Form of Leases recommended.

engagements of landlord and tenant void, and of no effect, if there be a deviation from the prescribed form, there is reason to believe that little progress has been really made towards the general introduction of the simple and definite leases, which it was thus intended to enforce. But whether generally or partially successful, or wholly ineffectual, that penalty ought, I think, to be now rescinded. There is no longer any sufficient motive for holding the landholders and tenantry of the country in this sort of pupilage, prescribing to them the manner and form of their reciprocal engagements. They may be safely left to consult their mutual interests by entering into such engagements as they may consider to be for their benefit respectively, and to reduce their agreements to writing in any form most intelligible and satisfactory to themselves, or in their conviction most binding and secure. All that need be required is that the *engagements shall be definite*, and it may be accordingly declared that any clause of a lease or other engagement reserving the power of imposing cesses or taxes termed *abwáb*, *mhatút*, or under any other denomination whatsoever, or binding the *patta*-holder to pay any impost or addition whatsoever, beyond the rent, however regulated, in money or in kind, which the *patta* or engagement specifies, shall be void and of no effect; and the Courts shall maintain the remaining definite clauses and enforce payment of such rent, and such only as is specially stipulated and agreed for by the *patta* or other engagement. Under this alteration of the existing rules, the Courts of Justice will give effect to the agreements of the parties according to their ascertained intentions, with exception only to stipulations subjecting one of the parties to arbitrary demands at the will of the other. This exception, together with the prohibition actually in force against the imposition of any arbitrary cesses or *abwáb* under whatever pretence, will entirely preclude the renewal of those oppressions and abuses which the Regulations I have proposed to modify were designed to prevent."

§ 333. The provisions of the Regulations as to the grant

and renewal of *pattas* and as to the cancelment of *pattas* upon a sale for arrears of revenue assumed, as we have seen,[1] that there were certain well-known or established rates, or *Pargana Rates*, to which the parties concerned could refer in order to settle the rent, which the *zemindar* or auction-purchaser was entitled to receive or collect. It has been incidentally stated several times[2] that no such established rates existed; and this I shall now show more exactly. In order to mitigate the hardships inflicted upon tenants by the provision of law, which authorized the purchaser at a revenue sale to cancel leases then existing, it was enacted that when the sale took place after the second month of the native year, the purchaser was not to exercise his power till the close of the year, provided "that this suspension be not considered applicable to any engagements, *pattas* or leases evidently collusive." In the Minute already referred to, Mr. Colebrooke remarked as follows upon this rule:—"Considering the proneness of the natives to abuse any power or authority with which they are invested, the latitude here given seems much too loose and too extensive. Either a judicial enquiry, summary at least, should take place before sequestrators, and still more, purchasers are allowed to levy from the growing crop a higher revenue than the cultivator or renter has engaged to pay, or a very clear and definite test should be provided by which the suspicion of collusion may be tried. It should not be left to the discretion of any Amín, or of an interested purchaser, to say whether the leases of the cultivators of an estate are collusive. The Regulation aims at no more than to do away with such leases as may have been made in contemplation of the attachment or sale with the view of evading or defeating it. The date of possession, and the comparison of the rent to that of preceding years, would, therefore, furnish satisfactory ground on which to found a presumption. If the tenant were in possession during one or more anterior years and the rent reserved

Assumption that there were Established Rates, or Pargana Rates, not founded on fact.

[1] *Ante*, pages 562-563.

[2] See *ante*, pages 560, 563 and 566.

be equal to the average rent of preceding years, no just suspicion can be admitted against the lease. But fraud and collusion may be presumed if a reduction of rent have been conceded to a tenant in possession, or a lease have been granted to a new tenant for a less rent than has been most accustomarily paid within the three last years."

§ 334. "In cases where *pattas* are set aside or cancelled under the rules above quoted, as well as in other similar instances, it is provided that the rent or revenue to be demanded shall be determined by the rates and usages of the *pargana* or district, and the *raiyat* is entitled to require a renewal of his *patta* upon those terms. *This would be very unexceptionable if, as is here supposed by the Regulations, the proportion of annual produce in money or in kind, constituting the revenue demandable as the due of Government, could be with certainty determined, and if the rents which the landlord may properly ask, according to the established rates and usages of the pargana, were accurately ascertainable.* For the interests of the cultivator and tenant would be sufficiently protected and secured if the established rules and rates of the *pargana*, according to which he is pronounced entitled to demand the renewal of the lease, and according to which the Courts of Justice are required to decide disputes arising between landlord and tenant, were either known or ascertainable. But there is reason to presume that the *pargana* rates are become very uncertain. In several causes of magnitude which were perseveringly contested by the parties, it appeared from proceedings which came before the *Sadr Díwání Adálat*, while I sat in that Court, that in a district and province in which dependent *talúkdars* were particularly numerous, no rule of adjustment could be discovered after the most patient enquiry conducted by a very intelligent public officer. From the proceedings held in numerous other cases in the Courts of Justice, the same conclusion may be drawn respecting the relative situation of the *raiyat* and *zemindar* in most districts. In some, indeed, a rule of adjustment may still be found in full force and actual

Proportion of Produce demandable as the due of Government indeterminate.

Pargana Rates uncertain.

operation. The Regulations of Benares have maintained the table of rates of 1187 Faslí, and the Kanungo Office yet exists in that province for its preservation. In the vicinity of Calcutta the *raiyats* have been, I understand, supported by the decisions of adálats (Courts) in their pretensions to hold their lands upon the rents payable by them, or by the persons whose representatives they are, according to the last general measurement which was undertaken with the authority of Government before the Permanent Settlement, and of which the record is understood to be preserved in the office of the Collector of the Twenty-four *Parganas*. Other instances may exist, but they are few, and the position, as a general one, is unquestionably true that *there is actually no sufficient evidence of the rates and usages of parganas*, which can be now appealed to for the decision of questions between landholders and *raiyats*."

No distinct notions of Pargana Rates, when Regulations were passed which refer to such Rates.

§ 335. I apprehend that when the Regulations in question were framed, no very distinct notions were formed of the *pargana* rates and established usages referred to. At least, it is evident that several passages in the Regulations, where reference is made to such rates and usages, were not exactly applicable to the state of things which then existed. Possibly it may have been owing to caution, suggested by feelings of doubt on that subject, that the Regulations everywhere look to the Courts of Justice for the determination of all disputes between landlord and tenant without providing definite rules for the Courts' guidance; while, on the other hand, the Courts of Justice have in general, and of late years especially, looked to the Regulations alone for rules of decision, without entering into tedious, and possibly vain, researches into local usages. In this state of matters, it would be better to abrogate most of the laws in favor of the *raiyat*, and leave him, from a certain period to be specified, under no other protection for his tenure than the specific terms of the lease which he may then hold, than to uphold the illusory expectation of protection under laws which are nearly

Regulations look to Courts; and Courts look to Regulations, for guidance.

ineffectual. The tenant might thus be rendered sensible of the necessity of obtaining a definite lease from the landlord, and would find it his interest to require such a lease as the condition of his persisting in the culture of the lands. The landholder would equally find it necessary to grant definite leases to induce the *raiyat* to continue the cultivation of the ground. The parties would be thus compelled to come to an understanding; and this result would, on every consideration, be preferable to the present state of uncertainty, which naturally leads to oppression, fraud and endless litigation. But if it be thought expedient, in place of abrogating the laws which were enacted for the protection of the tenantry and especially of the *khudkasht raiyat*, or resident cultivator, that the right of occupancy, which those laws were intended to uphold, should be still maintained, and that the *raiyat* should be supported in his ancient and undoubted privilege of retaining the ground occupied by him so long as he pays the rent justly demandable for it, measures should rather be adopted, late as it now is, to reduce to writing a clear declaration and distinct record of the usages and rates according to which the *raiyats* of each *pargana* or district will be entitled to demand the renewal of their *pattas* upon any occasion of general or partial cancelling of leases."

Uncertainty caused by expectation of Government Protection.

Promise of Protection should be abrogated; or, Rights be defined and recorded.

§ 336. After referring to a plan which he had had under consideration for the preparation of such a record, Mr. Colebrooke continues :—"On the maturest deliberation upon this difficult and intricate subject, I am compelled, however reluctantly, to relinquish the idea of restoring a definite and certain standard, to which appeal may be made for determining the rights of persons having dependent and subordinate tenures under landholders-in-chief, and for settling the disputes and questions which arise between them. Abandoning this idea, and apprehensive that an entire alteration of the provisions of existing laws, however inefficient, which suppose such a standard, may be productive of alarm, at least, if not of serious and real

Mr. H. Colebrooke proposes that provision be made for cases where Pargana Rates are not ascertainable.

evil to the tenantry of the country, by abridging privileges of which they yet have an imperfect enjoyment, I shall content myself with merely proposing that provision shall be made by Regulation for cases where the *pargana* rates are not ascertainable, which should regulate the *pattas* of *khudkasht raiyats*, or of other persons entitled to a renewal of their leases. This will silently substitute a new and definite rule in place of ancient, but uncertain, usages. The following are the rules which I should propose with these views:—(1) In any instance where a *khudkasht raiyat*, or other occupant or tenant, may be entitled, under the existing Regulations, to receive a renewed *patta*, in consequence of the cancelling of former *pattas* by reason of a public sale for the recovery of arrears of revenue, or in consequence of any other circumstance rendering requisite the renewal of *pattas* according to the rates of the *pargana*, as well as in every case in which the landholder, farmer, or manager, or other person in charge of the collections, is authorized to collect according to the rates of the *pargana* in place of subsisting engagements; if, in any such case or instance, it shall not appear that established rates are known in the *pargana*, or other local division, within which the land is situated, or if those rates shall not be ascertainable owing to long disuse or insufficient evidence of them; then, and in every such instance, the renewed *patta* shall be granted, and the collection made, in the case of an individual *raiyat* or tenant, at such rate or rates as are paid or payable for other land of similar description, and as near as may be of the same quality in the vicinity; but in the case of cancelling generally the *pattas* of the *raiyats* and tenants of a whole estate, or of an entire *mauza*, or other local division of the country, the new *pattas* shall be granted, and collections made, at rates not exceeding the highest rate paid for the same lands in any one year within the period of three years last past, antecedently to the date of cancelling the *pattas*. (2) In the case of a dependent *talúkdar*, if the rent of the land be computed according to the rates payable by *raiyats* or

Proposed Rule for Khudkasht Raiyats or other tenants entitled to a Renewal of their Pattas.

Proposed Rule for Dependent Talúkdars.

cultivators for land of similar quality and description, a deduction shall be allowed from the gross rent in the adjustment of the *jama* of such dependent *taluk*, at the rate of ten per cent. for the *talúkdar's* profit or income, over and above a reasonable allowance for charges of collection, according to the extent of the *taluk*."

§ 337. "In regard to the annulment of leases on presumption of fraud or collusion, I have already stated the rule which I think should be adopted as to that point. In respect to the more extensive power of annulling all leases when lands are sold for arrears of public revenue, and still more generally the landlord's right, however vested in him, or from whatever cause arising, of enhancing[3] the rents payable by a *raiyat* or occupant, I am of opinion that further provision should be made for the security of the tenant in addition to, or amendment of, the existing rule that *pattas* shall not be cancelled before the close of the year in consequence of a sale taking place subsequently to the second month of the year. The principle, on which the amendment I mean to propose will be founded, is that of a tenant not being liable to pay a greater rent than he had reason to expect he should be subject to, when he entered on the cultivation of the land for the crop of the current season. Whether his lease had even expired, or were on any account voidable, if he have been nevertheless allowed to commence the cultivation of the ground, at the expense of his money and of his labor, without notice of an enhanced rent, he cannot justly be chargeable with a higher rent than borne by his former lease, or usually paid by him. More, he could not expect, would be demanded from him; and if more be exacted, it is a surprise little short of fraud, since he has been deluded into the expenditure of capital, and the employment of labor, in the confidence of being

Proposal to regulate Landlord's general Right to Enhance Rents.

[3] Here, it may be observed, is a distinct acknowledgment of the zemindar's right to enhance rents made less than twenty years after the Permanent Settlement.

only subject to the former rent, and has not had the opportunity of choosing between the relinquishment of the land and the payment of the enhanced rent required of him. It should therefore, in my opinion, be made a universal rule that no cultivator, or tenant of land, shall be liable to pay an enhanced rent, though subject to enhancement under subsisting Regulations, unless written engagements for such enhanced rent have been entered into by the parties, or a formal written notice have been served on such cultivator or tenant at the season of cultivation, *viz.*, in the month of Jeyt, notifying the specific rent, under the landlords' right of enhancing it, to which he will be subject for the ensuing *Faslí* or for the current Bengal year. Unless the due service of such notification be proved, no greater rent should be exigible, by process of distress or confinement of person, nor recoverable by suit in Court, than the cultivator or tenant was bound to pay by his previous engagements ; and if more be levied from him, he should be entitled to a refund of the excess with damages, on proof of the circumstances before a Court of Justice."[4]

Raiyat should not be liable to enhanced Rent, unless he has agreed or has had notice.

§ 338. Mr. Colebrooke's recommendations were substantially adopted and were incorporated in the celebrated *Punjum* or Fifth Regulation of 1812. The Preamble of this Enactment recited that it had been deemed advisable to revise the rules established regarding the grant of *pattas* by the proprietors of land paying revenue to Government to their tenants, and also the rates at which persons purchasing land at the public sales were entitled to collect their rents ; and that there were grounds to believe that considerable abuses and oppression had been committed by *zemindars*, *talúkdars*, and farmers of land in the exercise of the powers vested in them with respect to the distress and sale of the property of their tenants for the recovery of arrears of revenue. The Regulation then declared proprietors of land competent to grant

Mr. Colebrooke's Recommendations embodied in the Punjum, or Fifth Regulation of 1812.

[4] I *Revenue Selections*, pp. 260—266.

leases for *any period* which they might deem most convenient to themselves and tenants, and most conducive to the improvement of their estates. They were also declared competent to grant leases to their dependent *talúkdars*, under-farmers and *raiyats*, and to receive correspondent engagements for the payment of rent according to *such form* as the contracting parties might deem most convenient and most conducive to their respective interests, provided, however, that this should not be construed to sanction or legalize the imposition of arbitrary or indefinite cesses. All such stipulations were to be null and void, but the Courts were, notwithstanding, to maintain and give effect to the definite clauses of the engagements contracted between the parties, or, in other words, to enforce payment of sums *specifically* agreed upon between them. Persons attaching land on the part of Government, and purchasers at the public sales, were forbidden to annul existing leases within the year on the ground that they were collusive, without obtaining a decision to this effect in a Court of Justice. The Regulation then referred to the provisions of the pre-existing law, under which purchasers at Revenue Sales were entitled to collect, during the year in which the sale took place, whatever the former proprietor would have been entitled to receive "according to the established usages and rates of the *pargana* or district in which such lands may be situated," and recited that there was reason to believe that the *pargana* rates had in many cases become very uncertain. It accordingly provided that when any known established *pargana* rates existed, they should determine the amount of rent to be received by purchasers at public sales and persons attaching lands on the part of Government. Where no such established *pargana* rates were known, *pattas* were to be granted and the collections made *according to the rate payable for land of a similar description in the places adjacent.* If the leases and *pattas* of the tenants of an estate generally, which consisted of an entire village or other local division, were liable to be cancelled, new *pattas* were to be granted and collections made at rates not exceed-

Proprietors declared competent to grant Leases for any Term and in any Form.

But Contracts for indefinite Cesses forbidden.

Rules to be followed by Purchaser where there were no established Pargana Rates.

ing the highest rate paid for the same land in any one year within the period of three years next preceding the period at which the leases were cancelled. In the case of dependent *talúkdars*, if the rent were computed according to the rates payable by *raiyats* or cultivators, a deduction was to be allowed from the gross rent at the rate of ten per cent. for *talúkdars*' profit, over and above a reasonable allowance for collection charges.

These Rules applicable to Purchasers—Their Effect.

§ 339. The provisions just stated applied to purchasers at sale for arrears of revenue. When we remember what has been said about the quantity of waste land in Bengal at the time of the Permanent Settlement, and the power which the zemindars had of letting this land upon what conditions they pleased, it will be evident that in very many cases *the rate payable for land of a similar description in the places adjacent* was a high rate, and any reference to this standard was certain to involve enhancement. Similarly the provision in the second case for collecting at rates *not exceeding the highest rate paid for the same land in any one year* had an enhancing tendency by bringing rent generally up to the highest point reached on a single occasion. With respect to the general right of landholders to enhance, the Regulation provided that no cultivator or tenant of land should be liable to pay an enhanced rent, though subject to enhancement under the subsisting Regulations, unless written engagements for such enhanced rent had been entered into by the parties, or a formal notice had been served on the cultivator or tenant at the season of cultivation, *i.e.* in or before the month of Jeyt, notifying the specific rent, under the landholder's right of enhancing it, to which he would be subject for the ensuing year. Without such notice no greater rent was to be exigible by process of distress or confinement of the person, or to be recoverable by suit in Court. The law of distraint was at the same time amended. A written demand upon the tenant was made necessary before his property could be distrained. Ploughs, implements of husbandry and cattle used for agriculture were absolutely exempted from distress and sale. All

Tenant declared not liable to enhanced rent unless upon Agreement or after Notice.

Amendment of the Law of Distraint.

attachments for rent were to be withdrawn, if the tenant disputed the demand and gave security, binding himself to institute a suit within fifteen days. In order to prevent the sacrifice of distrained property by its being knocked down at grossly inadequate prices, it was to be appraised before sale ; and, if the price bid was less than the appraised value, the sale was to be postponed. Finally, in order to expedite the decision of cases arising between landlords and tenants, they were all to be referred, as soon as instituted, to the Collectors for report, instead of the overburdened Judge referring them, if he saw fit, when he found leisure to take them up for the first time. It is impossible not to admit that the provisions contained in this Regulation were, in view of the evils referred to in Mr. Colebrooke's Minute, conceived with the best intention of providing a remedy ; but, as we shall see, the remedy was ineffectual. It dealt with a portion only of the real mischief. So long as the rights of the *raiyats* were undefined and uncertain, the base of the disease remained untouched, and superficial remedies could afford at best but temporary and partial relief. Whatever benefit might have been conferred by Regulation V of 1812, was moreover neutralized by other legislation, which had a most mischievous effect upon the best interests of the cultivators of the soil.

The provisions of Regulation V of 1812 dealt with a portion of the Mischief only, and were neutralized by other Legislation.

§ 340. Under the Mahomedan Government there was a practice,[5] by no means uncommon, of letting the revenue of an estate or tract of country to a *mustajír* or farmer, who agreed to pay a certain annual sum to his lessor, and was allowed in consideration thereof to collect from the cultivators, and make what profit he could upon the transaction. We have seen that this system of farming was adopted by the English in their first attempts to manage the revenues of the country.[6] That the farmers sub-let to under-farmers is clear from the constant reference to 'under-farmers' and 'under-renters' in the papers of the period and in the Regulations. It appears from the same sources

[5] See *ante*, pages 428—429.

[6] *Ante*, page 478.

The Farming System adopted and continued after the Company undertook the management of the Revenue.

of information that the *zemindars* when created proprietors adopted, continued, and extended this system, which was particularly convenient to persons who were at the same time indolent in their habits and inexpert in the conduct of business—who accepted the advantages of property, while they were very willing to be relieved of its cares and responsibilities. The evils of the farming-system were not unknown[7] to the Government which was driven to adopt it as the best expedient to which, with their limited knowledge, they could have recourse at the time and under the circumstances. The experience of a century in Bahár and those parts of the country, in which the system has continued to the present time, has shown that its evils were certainly not overstated, while their consequences and effects were scarcely foreseen or properly estimated. Middlemen have in all countries been found pernicious; and the *ejarahdars* and *durejarahdars*, the farmers and under-farmers, of Bahár and other provinces in the Bengal Presidency, have supplied a vast mass of evidence to corroborate the general experience. No class of middlemen can possibly be worse than farmers of rents for a term. They have no interest in the estate beyond the period of their lease; and are not restrained in their exactions and oppressions by any consideration of after consequences. Provided they secure the honey of the season,[8] they care not whether the bees live to make another supply. From 1765 to the present day, no steps have ever been taken to discourage or put down the *ejarah* system. On the contrary, Government has recognized it, and has regularly used it for the management of its *Khas Mahals*, or estates under the direct control of Government or its officers. It is scarcely too much to say that no reform of the agricultural law of these provinces, which does not provide a remedy for this evil, can ever be complete or fully effectual.

Vicious nature of the System, Farmers and Under-farmers, Middlemen of the worst type.

No Reform complete which does not provide a remedy for this Mischief.

[7] See *ante*, page 479.

[8] See Sir John Macpherson's simile, *ante*, page 444.

§ 341. In the districts of Bengal Proper the middleman system was introduced in another form scarcely less mischievous, and its introduction was encouraged by the formal sanction of the Legislature. Notwithstanding the prohibition against leases for a longer term than ten years, which remained in force up to 1812, the practice of granting *taluks* and other leases at a rent fixed in perpetuity had been common with the *zemindars* of Bengal.[9] When the prohibition was repealed, it was omitted to declare whether leases granted in violation of it, while it remained in force, were to be valid and binding upon the parties. This omission was repaired, and all such leases declared good and valid in 1819.[1] At the same time legislative sanction was given to a tenure, known as a *patni tenure*, which had its origin in the estates of the Raja of Bardwán, but was thence extended to other *zemindaries*. The character of this tenure was, that it was a *taluk* created by the *zemindar* to be held at a rent fixed in perpetuity by the lessee and his heirs for ever. The tenant was required to furnish collateral security for the rent and for his conduct generally, though he might be excused from this obligation at the zemindar's discretion. But even if the original tenant were excused, the *zemindar* might require this security from any new tenant introduced by private transfer or purchase at a sale for arrears. By the terms of the engagements interchanged between the *zemindar* and *patnidar*, if the rent fell into arrear, the tenure might be brought to sale, and if such sale did not yield a sufficient amount to make good the arrear, the remaining property of the defaulter could be made available for this purpose.[2] These tenures were heritable by their conditions, and the Legislature further declared them to be "capable of being transferred by sale, gift or otherwise, at the discretion of the holder,

Perpetual Leases granted before 1812 validated.

The Patni Tenure validated. Description of this Tenure.

[9] So recited in the preamble to Regulation VIII of 1819.

[1] By section 2 of Regulation VIII of 1819.

[2] See preamble, *id.* The similarity between this tenure and the *Emphyteusis* of the Roman Law has been already pointed out, *ante*, page 6.

as well as answerable for his personal debts, and subject to the process of the Courts of Judicature in the same manner as other real property." Provision was made for bringing them to summary sale upon application to the Collector, if the rent was not paid ; and this was allowed to be done twice in the year. The effect of the sale of a *Patni Taluk* was made similar to that of a revenue-paying estate, inasmuch as all leases granted, and incumbrances created by the defaulting tenant were voidable by the purchaser, who was entitled to take the *taluk* in the condition in which it was upon its original creation. Persons, whose interests might suffer in this way by a sale, were authorized to pay the rent due by the *Patnidar*, and on doing so could claim to be put in possession of the *Patni* tenure in order to recoup themselves. If they did not take this course, and the *patni* tenure were sold, they could claim to be compensated out of any surplus, which remained from the sale-proceeds after satisfying the rent due to the *zemindar*. If they were unable to obtain compensation in this way, they might bring an action for damages.

Sale of Patni Taluks for arrears of Rent.

Avoidance of Leases and Incumbrances by such Sale.

§ 342. *Patni* tenures usually included a considerable area of land ; and as some of the *zemindaries* were very extensive and in consequence too large for effective personal management, it is quite possible that more good than harm might have been done by the introduction of the Patni system, if the sub-letting had not descended lower. Unmanageable tracts would have been broken up into estates of convenient size, capable of being well managed by their owners, if they devoted themselves to their duty. But, unfortunately, it became the common practice of the holders of *Patni Taluks* "to underlet on precisely similar terms to other persons, who on taking such lease went by the name of *darpatni talúkdars*. These again sometimes similarly underlet to *se-patnidars*,"—and the sub-letting was in very many instances continued several degrees lower. This system of sub-letting—of *quasi*-sub-infeudation was distinctly legalized by the Legislature ; and the consequence has been that at the

Patni Taluks of the second, third and fourth degree.

time when middlemen were being abolished in Ireland, they were being created and their creation encouraged in Bengal. They have now for half a century been common in most districts under various appellations ; and in some places, there are as many as a dozen gradations between the zemindar at the top and the cultivator of the soil at the bottom.[3] It is easy to conceive how landlords of this class abused the extraordinary powers with which the Legislature invested them and ground down the

Sub-letting and Middlemen.

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[3] In Backergunge, we have (1) *zemindari*, (2) *taluk*, (3) *Zimba taluk*, (4) *Shamilat taluk*, (5) *Ashat taluk*, (6) *Nim Ashat taluk*, (7) *Howla*, (8) *Ashat Howla*, (9) *Nim Ashat Howla*, (10) *Nim Howla*, (11) *Ashat Nim Howla*, (12) *Mirash Karsha*, (13) *Kaim Karsha*, and (14) *Karshadar or* cultivator. It may be observed that the Patni Regulation VIII of 1819 directly encouraged that sub-infeudation, which the statute of *Quia Emptores* (*ante*, p. 17) was directed to prevent in England. It is remarkable that the mischievous tendency of the Regulation did not strike, as it does not seem to have struck, the Court of Directors, and it is all the more remarkable as Mr. Canning, then President of the Board of Commissioners, in a letter addressed in 1817 to the Chairman of the East India Company, stated four points upon which the Court and the Board were unanimous. One of these was :—"That the creation of an artificial class of intermediate proprietors between the Government and the cultivators of the soil, where a class of intermediate proprietors does not exist in the native institutions of the country, would be highly inexpedient." Unfortunately, however, with change of men there is too often change of administration. In a dispatch (No. 14 of 9th July 1862) from the Secretary of State it was said that "it is most desirable that facilities should be given for the gradual growth of a middle class connected with the land, without dispossessing the peasant proprietors and occupiers. It is believed that among the latter may be found many men of great intelligence, public spirit, and social influence, although individually in comparative poverty. To give to the intelligent, the thrifty and the enterprising the means of improving their condition, by opening to them the opportunity of exercising these qualities, can be best accomplished by limiting the public demand on their lands. When such men acquire property and find themselves in a thriving condition, they are certain to be well affected towards the Government under which they live. It is on the contentment of the agricultural classes, who form the great bulk of the population, that the security of the Government mainly depends. If they are prosperous, any casual out-break on the part of other classes or bodies of men is much less likely to become an element of danger." Applied to a class of peasant proprietors, these observations are excellent ; but so far as they can be construed as an approval of middlemen, they are impolitic.

Consequent Oppression and Misery of the Raiyats.

toiling millions of the country.[4] "The wretchedness of the *raiyat*," wrote Mr. Marshman, "was consummated by the system of sub-letting, which often descended to the fourth degree. The accumulated demand was extorted from the cultivators by every ingenuity of oppression." Mr. Butterworth Bayley, the Magistrate of Bardwán, where the Patní system originated, said that he had met with more than one instance of a village being held in portions by six or eight individuals as a *dar-dar-dar-patni*[5] *taluk*, and he pointed out the oppression and exaction caused by the practice. "The sub-letting system," wrote Mr. Dampier, the Superintendent of Police for Bengal, in 1843, "which relieves the zemindars from all connection with their estates or *raiyats*, and places these in the hand of middlemen and speculators, is striking its roots all over the country, and is grinding down the poorer classes to a bare subsistence, if it leaves them that." Some fifteen years later, Mr. Sconce, a Member of the Legislative Council, and a gentleman of great experience in Bengal, wrote as follows:—"The bane of the landed interest in India, that is, of all those who are primarily interested in the land, the landholders on the one hand, and the actual cultivators on the other, is the creation of sub-tenures for the benefit of those, who seek to lease rents, not lands; who speculate upon the opportunity they may be enabled to command of realizing extortionate rents; and who, being neither landlord nor cultivators, are permitted to absorb such an amount of the profits of the land as is calculated to paralyze the efficient operations of those, with whose prosperity the prosperity of the entire country is most nearly identified."[6]

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[4] In 1811, the zemindar's interest sold for 28 years' purchase—see para. 92 of the Directors' Letter of the 6th January 1815, I *Revenue Selections*, pp. 285—286. This fact is pregnant to show what large profits were extracted from the *raiyats*.

[5] The term 'dar' means 'under.'

[6] For further discussion of the subject and further evidence of this mischief, as to the existence of which there can be no doubt, see *The Calcutta Review*, Vols. LI and LIX.

CHAPTER XXIV.

Landholding, and the Relation of Landlord and Tenant in India—Acquisition and First Administration of Benares, and of the Ceded and Conquered Provinces.

§ 343. Before I proceed further with the history of the land-laws in the Lower Provinces of Bengal, it will be useful and important to give some account of the acquisition of the other provinces of the same Presidency, and of the policy pursued in dealing with the similar questions which arose in the course of their administration. After the battle of Buxar[7] and the defeat of *Shujah-ud-Daulah*, Nawab of Oudh, the Emperor ceded to the Company Ghazipur and Benares or the *zemindari* of Rajah Bulwant Singh (29th December 1764). The Directors having, however, condemned this transaction, these districts and the rest of his territory were in 1765 restored to the Nawab of Oudh with the exception of Corah and Allahabad, which were left in the Emperor's possession.[8] The Emperor Shah Alam now resided several years at Allahabad ; but, being desirous to mount the throne at Delhi, he put himself into the hands of the Marattas, who were gradually recovering from their defeat at Panipat. On the 25th December 1771, they conducted him into Delhi with great ostensible pomp, but afterwards kept him in their hands as a mere puppet. In 1773 they extorted from him a grant of Corah and Allahabad, but,

History of Corah and Allahabad.

[7] See *ante*, page 456.

[8] See Articles 4 and 7 of the Treaty of the 16th August 1765—*Aitchinson's Treaties*, vol. II, pp. 77, 78. The Nawab of Oudh is usually known as the *Nawab Vizier*, *Shah Alam* having conferred the office of Vizier upon him, when he himself assumed the title of Emperor.

the Emperor's representative having refused to surrender these districts and having appealed to the English, it was held that the grant to the Marattas was contrary to the Treaty of 1765, by which they were given to the Emperor for the support of his own dignity; that by such grant he had "forfeited his right to the said districts," and that they had "reverted to the Company from whom he received them." They were therefore sold for fifty lakhs of rupees to the Nawab of Oudh on the 7th September 1773. The Emperor being now in the hands of the Marattas possessed no real power; the payment of the twenty-six lakhs of rupees reserved in the grant of the Díwání was stopped; and the Nawab Vizier was the *de facto* sovereign of Oudh and a considerable portion of territory in Northern India. In 1768 a treaty was concluded between the English Company and the *Súbahdár* of Bengal, Bahár and Orissa on the one part, and the Nawab Shuja-ud-Daulah, Vizier of the Empire, on the other part, to the effect that the latter should restrict his army to 35,000 men. In 1775 Shuja-ud-Daulah died, and was succeeded by his son *Asaf-ud-Daulah*, with whom a new treaty[9] was concluded on the 21st May 1775. It was now stipulated that the payment made for the services of British troops should be raised to Rs. 260,000 a month for each brigade, and that "all the districts dependent on the Raja Cheit Singh together with the land and water duties and the sovereignty of the said districts in perpetuity" should be given up to the English Company. The territories so ceded were Sarkar[1] Benares, Sarkar Chumah, Sarkar Ghazipur, Saktessgar, the districts of Juanpúr, Bijehpore

Nawab Vizier de facto Sovereign of a large tract of territory.

[9] It may be observed that the *Súbahdár* of Bengal, Bahár, and Orissa was no party to this treaty. He had been relieved of the performance of the duties of the Nizamat, his political importance was gone, and he had now really become a pensioner of the Company. Mr. Harington (Analysis, vol. I, p. 4) puts the change even earlier and dates it from 1765.

[1] *Sarkar*—'the Government,' 'the State,' is sometimes used to designate a subdivision of a *Subah*, containing several parganas, a province.

Bahdore, Malbass Kauss, the Pargana of Sikandapur, Jeride, Shaay Abad, Tappa, &c., and the mint and Kotwali of Benares."[2] In 1781 the Nawab Vizier having got into great pecuniary difficulties about the payment of the large sums required for the English troops, relief was given to him by a new treaty, under the terms of which all the troops were to be withdrawn except a single brigade and one additional regiment. Owing however to the weakness of the Nawab's Government, it was found unsafe to withdraw the troops, and in 1786 a further arrangement was made, by which the Nawab was to make an annual payment of fifty lakhs in satisfaction of all claims. The pecuniary difficulties of the Nawab still however continued, owing to his incapability and the mismanagement of his finances.

Cession of the Province of Benares.

§ 344. In 1797 Asaf-ud-Daulah died, and was succeeded by *Mirza Ali*, whose illegitimacy having been proved, *Sadat Ali*, the brother of the deceased Nawab and the eldest surviving son of Shuja-ud-Daulah, became Nawab Vizier[3] (21st January 1798). A new treaty was concluded with him on the 21st February 1798, by which it was agreed that the annual subsidy to the English for the military defence of his territories should be increased to seventy-six lakhs, and the English forces maintained in the country of Oudh for its defence should never consist of less than ten thousand men. The fort of Allahabad was also placed in the hands of the English, and the new Nawab engaged to be guided by the advice of the Company's Government in making such reductions as would enable him to meet his liabilities under this

Provinces ceded by the Nawab Vizier.

[2] This treaty was negotiated under the auspices of Mr. Francis and the other Members of Council appointed under *The Regulating Act* of 1772, who had arrived in Calcutta on the 19th October 1774. Francis had condemned Warren Hastings for letting the Company's troops out to hire, but he himself continued the practice.

[3] Mr., then Sir John, Shore was himself on the spot, and though threatened with considerable danger by Mirza Ali and his party, carried out the necessary steps for his removal with temper, ability, and firmness.

treaty. Difficulties however ensued, the subsidy was not regularly paid, and it was at last in 1799 proposed to the Nawab Vizier that he should cede a certain portion of his territory as a substitute and provision for the money payment. After a display of considerable reluctance on his part, a treaty was at length concluded on the 10th November 1801, by which he ceded to the Honorable the East India Company in perpetual sovereignty those territories in the Doab, which were afterwards (by section 2 of Regulation II of 1803) divided into seven zillahs or districts,—namely, Moradabad, Bareilly, Etawah, Furruckabad, Cawnpore, Allahabad, and Goruckpore. In return for this cession of territory, the East India Company engaged to defend the territories which remained to His Excellency the Vizier against all foreign and domestic enemies and to guarantee to him, his heirs and successors, the possession of the territories so remaining together with the exercise of his and their authority within the said dominions.[4] The Nawab Vizier further engaged to reform his internal administration, to advise with the British Government and to conform to its counsels in affairs connected with the ordinary Government of his dominions and with the usual exercise of His Excellency's established authority." A Resident was to be stationed at Lucknow, and through him the advice of the British Government was ordinarily given; though on important occasions the Governor-General might make a direct communication in person or by letter.[5] Three members

[4] See the Treaty—*Aitchison's Treaties*, vol. II, p. 121; and the subsequent Memorandum, p. 127, *idem*.

[5] This was a treaty of unequal alliance, involving guarantee, protection, and a right of interference in the internal administration of the Nawab Vizier's dominions, which thus became what Western International Lawyers would call a *semi-sovereign* State (see Wheaton's Elements of International Law, p. 45). It will be useful to give here a brief account of subsequent dealings with the family of the Nawab Vizier of Oudh. In 1812 a treaty was concluded with Nawab Sadat Ali, which provided for the adjustment of the boundary line between the British territories and Oudh, as the course of the rivers which formed the original boundary changed from time to time. Sadat Ali Khan died on the 11th July 1814, and was succeeded by his son Ghazi-ud-

of the Civil Service were appointed to be a Board of Commissioners for the administration and settlement of the *Board of Commissioners.*

din Heider, with whom all previous treaties were continued. In 1814 Lord Moira (afterwards Marquis of Hastings) was at Cawnpore in order to be near the scene of the Nepal war. Differences had arisen about the extent of interference exercised in the internal administration by the Resident; and the Nawab Vizier, having sought a personal interview with the Governor-General in order to their adjustment, was so gratified with the courtesy with which he was treated by Lord Moira that he offered him a present of a crore (ten millions or one hundred lakhs) of rupees (£1,000,000). The present was of course declined, but Rs. 1,08,50,000 was taken as a loan bearing six per cent. interest, which was to be devoted to the payment of certain stipends guaranteed by the British Government, the principal of these stipends, as they lapsed, being repayable to the Nawab. A second loan of a similar amount and at similar interest was taken in March 1815 to meet the continued expenses of the Nepal war, at the conclusion of which this amount was paid off by ceding to the Nawab that portion of the territory conquered from the Gurkhas, which lies between the river Gograh and the district of Goruckpur. At the same time (1st May 1816) the Pargana of Nawabgunj in the district of Goruckpur was given in exchange for the Pargana of Handia lying between the British districts Jaunpur, Mirzapur, and Allahabad. In 1819 the Vizier formally renounced his dependence upon the titular Emperor of Delhi, and with the recognition of the British Government assumed the title of King of Oudh. Ghazi-ud-din Heider died in 1827, and was succeeded by his son Nasir-ud-din Heider, who died in 1837, and was succeeded by his uncle Mahomed Ali Shah. The last mentioned King died in 1842 and was succeeded by his son Amzad Ali Shah, who was in 1847 succeeded by his son Wajid Ali Shah. The conditions of the treaty of 1801, which empowered the British Government to interfere in the internal administration, had always proved a source of difficulty, more especially as the Nawab Vizier of that time or his successor had never effectually carried out the sixth article of that treaty by which His Excellency engaged that he would establish in his dominions "such a system of administration to be carried into effect by his own officers as shall be conducive to the prosperity of his subjects and be calculated to secure the lives and property of the inhabitants." As the beneficial results of good administration gradually showed themselves in the neighbouring territories subject to British rule, the mal-administration of Oudh and its effects became more conspicuous, and forced themselves on the notice of the Paramount Power, with whom the above stipulation had been entered into and upon whom therefore devolved the duty of seeing it carried into operation—a duty towards the people of the county, which lay at the very foundation of the principles upon which the treaty of 1801 rested. Repeated admonitions and warnings having proved wholly infructuous, the British Government at last resolved to assume the administration of the country. The King, Wajid Ali Shah, having refused to sign a new treaty which was

ceded territory; and Henry Wellesley, brother of the Governor-General, was nominated President of the Board and Lieuteuant-Governor of the new provinces.

§ 345. Sevaji, the founder of the Maratta power, was born in 1627, and was the grandson of Mallaji Bhonslay, a captain of horse in the service of the king of Ahamednagar. Having made himself master of his father's Jagír of Puna, he commenced a sort of guerrilla warfare upon his neighbours and rapidly extended his authority and his territory, until at the age of thirty-five he was in possession of the whole coast of the Concan from Callian to Goa. He then attacked the Mogul dominions; and Shaista Khan, afterwards *súbahdár* of Bengal, was sent to repel him. Notwithstanding the plunder of Surat and Barcelore, he was unable to resist the overwhelming forces which Aurangzib sent against him, and he submitted and entered into the service of the Emperor. Considering himself insulted by his treatment at Court, he eluded the vigilance that would have detained him, and returned to consolidate his dominions and renew his ravages. On the 6th June 1674 he assumed the *insignia* of Royalty. He died on the 5th April 1680, greatly to the satisfaction of Aurangzib, who then, bringing his whole power to bear against the Marattas, wrested from them most of Sevaji's conquests, and taking his son Sambaji prisoner put him to a cruel death. Saho or Sahaji, Sambaji's son, was detained in captivity during Aurangzib's lifetime. After the Emperor's death he obtained his release; and, returning to the Deccan, notwithstanding the opposition of his cousin Sevaji and his aunt Tara Bai, recovered his rights through the ability and exertions of Balaji Wiswanat, his Minister or *Peishwa*, who was originally the hereditary accountant of a village in the Concan. Balaji subsequently became

Rise of the Maratta Power.

The Peishwa.

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proposed to him, the government of the country was taken over by the British absolutely and for ever in February 1856. A provision of twelve lakhs a year was made for Wajid Ali Shah, who is allowed to retain the title of King during his lifetime.

the real head of the Marattas, while Sahaji settled down to a life of ease at Sattara, of which place his descendants became the Rajas. Balaji Wiswanat died in October 1720, and was succeeded by his son Baji Rao, the office of Peishwa now becoming hereditary in his family. He concluded the first treaty with the English in 1739, about a year before his death. It related to commercial matters chiefly. He was succeeded by his son Balají Rao, usually known as the Nana Saheb, with whom the English entered into an agreement in 1755 to unite their forces for the purpose of attacking the pirate Angria or Tulají. This expedition proved completely successful in 1756 under the command of Admiral Watson and Clive, Gheriah, the stronghold of the pirate, having been taken and plundered. Sahají, before his death, which occurred in 1749, executed a deed by which he transferred all power to the Peishwa on condition that the royal title and dignity should be maintained in the house of Sevají. Balají Rao became thus the acknowledged head of the Marattas, who were now at the zenith of their power. That power was however broken at the battle of Panipat on the 6th January 1761, and Balají, who never recovered the shock of this disaster, died soon after. He was succeeded by his son Madhu Rao, a minor. Raghoba, Balají's brother, acted as regent during the minority, and, after Madhu's death in 1772, and the murder of Narain Rao, his brother and successor, usurped the office of Peishwa. He was at first assisted by the English, to whom he offered to cede Bassein, the island of Salsette and other islands on the Bombay coast; but the Supreme Government at Calcutta disapproved of this arrangement, and on the 1st March 1776, through their special agent Colonel Upton, concluded the treaty of Púrandah,[6] which acknowledged the party

[6] This treaty ceded the City and Pargana of Broach and territory in the vicinity yielding three lakhs. The 13th article declared that the *chauth* of Bengal and its dependencies had been for time out of mind part of the Jagír of Bhonslay, and could not therefore be withdrawn; but that, if he or his descendants created disturbances by claiming it, the Marattas would not assist him.

who opposed Raghoba, and wished to set up as Peishwa Madho Rao Narain, the posthumous son of the murdered Narain Rao. The terms of this treaty having been evaded, the English resolved to assist Raghoba, and made a new treaty with him on the 24th November 1778. The English troops were defeated, and the disgraceful convention of Wargaum was the result. This Company's Government would not admit the validity of this convention. Further hostilities and negotiations ensued; and at last the treaty of Salbye was concluded, and ratified at Fort William on the 6th June 1782. This treaty provided amongst other things that the territories conquered from the Peishwa after the treaty of Púrandah should be restored, and that Salsette and three other islands as well as the city of Broach should remain in the hands of the English. Madhu Rao died on the 27th October 1795; and, after much dispute as to the succession, Bají Rao, the son of Raghoba, became Peishwa, chiefly through the support of Daulat Rao Sindia.

Convention of Wargaum, Treaty Salbye.

§ 346. War soon after broke out between Sindia and Holkar in 1801, which resulted in the defeat of the combined forces of Sindia and the Peishwa at the battle of Púna on the 25th October 1802. Bají Rao, forced to fly from Púna to escape falling into the hands of Holkar, now made an urgent application to the British for assistance. The result of this application was the celebrated treaty of Bassein, dated the 31st December 1802, by which it was stipulated that the British Government should never permit any power or state whatever to commit with impunity any act of unprovoked hostility or aggression against the rights and territories of the Peishwa, but should at all times maintain and defend the same; and that the Honorable East India Company should furnish a permanent subsidiary force of not less than six thousand regular native infantry, with the usual proportion of field pieces and European artillerymen "with a view to fulfil this treaty of general defence and protection." For the payment of the expense of this force, the Peishwa assigned

Battle of Púna.

Treaty of Bassein.

and ceded in perpetuity certain territories detailed in a schedule annexed to the treaty, yielding an annual revenue of twenty-six lakhs of rupees. By a supplementary treaty, dated the 16th December 1803, part of the territory so ceded was exchanged for territory in the Province of Bundlekund, yielding an annual revenue of Rs. 36,16,000, to be taken "from those quarters of the province most contiguous to the British possessions, and in every respect most convenient for the British Government. The territory selected and ceded in full sovereignty under this supplemental treaty was formed into the British *Zillah* or District of Bundlekund. The territories ceded nearly at the same time by Daulat Rao Sindia under the provisions of the treaty of Sirjí Anjengaum (the 30th December 1803), and which are designated in the Bengal Regulations as "*The Conquered Provinces situated within the Doab and on the right bank of the river Jumna*" were formed into the British Zillahs or Districts of Panipat, Allyghur, northern division of Saharanpúr, southern division of Saharanpúr, and Agra. The territories ceded by the Nawab Vizier and by the Peishwa, and those taken by right of conquest from Daulat Rao Sindia, are generally denominated in the Bengal Regulations "*The Ceded and Conquered Provinces.*" They were subsequently, with some additions, formed into the Lieutenant-Governorship of the North-Western Provinces.[7]

Supplementary Treaty.

Bundlekund.

The Conquered Provinces.

What is meant by "The Ceded & Conquered Provinces."

[7] By the 3 and 4 Will. IV., cap. 85, s. 38 (1833), it was enacted that the territories subject to the Government of the Presidency of Fort William in Bengal should be divided into two distinct Presidencies, to be styled the *Presidency of Fort William in Bengal* and the *Presidency of Agra.* These provisions were not, however, carried into effect, and they were suspended by the 5 and 6 Will. IV, cap. 52 (1835), which enacted that, during their suspension, the Governor-General in Council might appoint a Lieutenant-Governor of the North-Western Provinces, and from time to time declare and limit the extent of the territories to be placed under, and the extent of the authority to be exercised by, such Lieutenant-Governor. A Lieutenant-Governor was appointed under these provisions, which were continued by the 16 and 17 Vict., cap. 95, s. 15 (1853). The 16th section of this last-mentioned Statute authorized the appointment of a Lieutenant-Governor of such part of

Bhonslay Family.

Berar or Nagpur.

Cession of the Province of Cuttack.

§ 347. The Bhonslay family, who ruled Berar with its capital Nagpur, were another branch of the great Maratta confederacy. The founder of the house is said to have been Parsají, a private horseman, who rose to power under Sahají, and was entrusted with the collection in Berar of the *chauth*, or one-fourth part of the revenue, exacted by the Marattas as the price of forbearing to ravage the country. He was succeeded by his son Ragají, who extended his authority from the Nerbudda to the Godavery, and from the Adjuntah Hills to the sea. Having terrified the Peishwa by a march towards Púna, he was bought off by a Jagír of the *chauth* of Bengal and Bahár. Ragají died in 1755, and was succeeded by his eldest son Janají, who died without issue in 1755, having adopted his nephew Ragají, a minor, as his successor. Disputes ensued, and Sahají, Janají's brother, seized and held the Government until 1775, when he was killed by Madají, the father of the minor Ragají. Madají, as regent for the minor, exercised the power of the State until his death in 1788, upon which Ragají, then twenty-eight years of age, succeeded. He refused the overtures of the English to enter into an alliance for the purpose of reducing the rising power of Sindia; and finally, after the treaty of Bassein, joined Sindia in the war against the English, and shared Sindia's defeat. Reduced to extremities by the loss of the battle of Argaum, and the capture of the fort of Gawilgur, Ragají sued for peace; and on the 17th December 1803 signed the treaty of Deogaum, the terms of which were negotiated by Mr. Mountstuart Elphinstone. By this treaty the Province of Cuttack, including the port and district of Balasore, and all the territory west of the river Wurdah and south of the

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the territories under the Presidency of Fort William in Bengal, as for the time being might not be under the Lieutenant-Governor of the North-Western Provinces. The Lieutenant-Governor of Bengal is appointed under the authority conferred by this section. Under the 3 and 4 Will. IV, cap. 85, s. 69, the Governor-General in Council had been authorized, as often as the exigencies of the public service required, to appoint a *Deputy Governor* of the Presidency of Fort William in Bengal, *i.e.* of the Presidency as constituted by the 38th section above referred to.

Nernulla and Gawilgur Hills were ceded to the Honorable Company in perpetual sovereignty. Ragají died in 1816, and was succeeded by his son Parsají, under the regency of Appa Saheb, his cousin, by whom he was murdered in 1817. Appa Saheb now became the head of the Nagpur State, and joining the Peishwa commenced hostilities by an attack on the Residency on the 26th November 1817. He was, however, repulsed ; and, on the 6th January 1818, was compelled to sign a provisional agreement, ceding territory for the support of a British Contingent Force, and engaging to conduct the government according to the advice of the Resident. He had scarcely signed this agreement, when he commenced fresh intrigues, was in consequence arrested, made his escape, and, after an ineffectual attempt to recover Nagpur, died at Jodhpur in 1840. After his flight, Ragají's daughter's son, who also took the name of Ragají, was made Raja of Nagpur, on the 26th June 1818, the Resident managing the State during his minority. On his coming of age in 1826, a new treaty was concluded, by which, admitting that he succeeded by the favour of the British Government, he agreed not to enter into negotiations with any other State without consulting the British Government ; he ceded in perpetuity, for the support of the British subsidiary force, Mundilla, Jubbulpur, Seoni, Chauragur, Rewa, Baitul, Mullagi, Sambhalpur and Patna with its dependencies ; and bound himself to adopt such regulations and ordinances as should be suggested by the British Government through its representative, for ensuring order, economy and integrity in every department of the Government. Ragají died on the 11th December 1853 without issue or male relations, and without having adopted a son. The succession in the Bhonslay family was hereditary in the male line to the exclusion of females. The State had been forfeited in 1818 by the hostility of Appa Saheb, and had been declared to belong to the British Government by right of conquest. The grant to Ragají was made out of grace and favour : and, on the death of the donee without heirs, the territory lapsed to

The Central Provinces.

the donor, and being incorporated with the British dominions, was formed into the Chief Commissionership of the Central Provinces.

Date of acquisition of Sovereignty uncertain.

§ 348. The acquisition of territorial sovereignty in India by the Company has been always held to have been made on behalf of, and in trust for, the Crown of England.[8] At what precise time the Company's officers in India exchanged the character of subjects for that of sovereign, and obtained for the Crown the rights of sovereignty, is by no means clear. For a long time after the first acquisition of territory, no such rights were claimed, nor any acts of Sovereignty exercised. But though the precise date of the acquisition of sovereignty cannot be exactly fixed—doubtless because it was effected by a gradual change, not by any single occurrence happening on a particular date—there can be no doubt that at the beginning of 1806 the sovereignty of the Bengal Presidency had been acquired ; and the British power had become paramount in India. The Emperor of Dehli, deprived of sight by a ruthless marauder (Gholam Kadir, 1788), and then detained for many years a helpless captive in the hands of the Marattas, had gladly thrown himself on the protection of the British, when he was released by Lord Lake after the battle of Dehli[9] (15th September 1803). The Nawab Vizier of Oudh had, by the treaty of the 10th November

[8] This proposition was advanced on the occasion of every discussion as to the renewal of the Company's privileges. The Statute 53 Geo. III., cap. 155, s. 95, declared the *undoubted sovereignty* of the Crown over the territorial acquisitions of the East India Company. The 16 and 17 Vict., cap. 95, s. 1, provided that the territories then in the possession and under the government of the Company should continue under such Government *in trust for* Her Majesty, her heirs and successors, until Parliament should otherwise provide.

[9] The twenty-six lakhs reserved in the grant of the Díwání were withdrawn when he put himself in the hands of the Marattas. This was done by the authority of the Directors (see their letter of 11th November 1768). After the battle of Dehli, he was allowed a pension of Rs. 60,000, afterwards increased to Rs. 100,000 a month. Sháh Alam died in 1806, and was succeeded by Akbar Shah, who died in 1837, and was succeeded by Bahadúr Shah, who joined the mutineers in 1857, and was in consequence banished to Rangoon.

1801, ceded to the Company a large portion of his territory in perpetual sovereignty, and had agreed to govern the rest under the advice and in conformity with the counsel of the British Government. The Treaty of Bassein concluded on the 31st December 1802 with the Peishwa, together with the Supplementary Treaty of the 16th December 1803, had acknowledged the supremacy of the British Power and recognized a similar treaty concluded with the Guikwar on the 29th July 1802. The Treaties of Deogaum with the Raja of Berar (17th December 1803), of Sirjí Anjengaum with Sindia (30th December 1803), and of the banks of the Beas with Holkar (14th December 1805) had been dictated by the authority of conquest. Seringapatam and with it the power of Tippu Sultan had fallen in Southern India. Of all the States that had from time to time enjoyed a brief superiority, none any longer ventured to contest the supremacy with the British Power, which had by cession and conquest acquired a large territory, and by its strength and the superiority of its arms had raised itself to the position of the Paramount Power in India.

But Sovereignty certainly acquired before 1806.

§ 349. From the account just given it will appear that the territories comprised in the North-Western Provinces were acquired, some forty years after the grant of the Díwání and about twelve years after the Permanent Settlement had been proclaimed in Bengal, Bahár and Orissa. The first result of inquiries made in order to the settlement of the newly acquired Provinces was to create an impression that a mistake had been committed in 1793, and that the Government had then acted prematurely and upon insufficient information. Subsequent experience still further confirmed this impression: and the Court of Directors therefore resolved not to act without the fullest information in settling the revenue of the Ceded and Conquered Provinces. In the Proclamation of the 14th July 1802, addressed by Lord Wellesley to the *zemindars*, *talúkdars* and other proprietors of the Ceded Provinces, it was notified that after the expiry of ten years, a permanent settlement would be concluded for *such lands as*

First steps towards the Settlement of the Ceded and Conquered Provinces.

would be in a sufficiently improved state of cultivation to warrant the measure.[1] A similar proclamation was in July 1805 addressed to the *zemindars*, independent *talúkdars*, and other actual proprietors of land in the Conquered Provinces and Bundlekund.[2] In 1807 it was further notified to the above classes in all the above-mentioned provinces that the revenue which would be assessed during the last year of the settlement immediately ensuing the then existing settlement would remain fixed for ever, if the arrangement received the sanction of the Court of Directors.[3] This more extensive promise was not however approved by the Directors,[4] and it was accordingly again notified[5] that such promise was rescinded, and that at the end of the ten years, a permanent settlement would be concluded, in the terms of the first proclamation, for such lands only as would be in a sufficiently improved state of cultivation to warrant the measure. It was further declared that it would be the duty of the Board of Commissioners to ascertain what estates were in a sufficiently improved state of cultivation to warrant the conclusion of a permanent settlement.[6]

§ 350. As soon as it was attempted to carry into effect a rule limited by such a very indefinite condition, the necessity for more exact orders became at once apparent,[7] and the first question asked was—what proportion of waste land should operate to exclude from the benefit of a permanent settlement? This question was then answered

[1] During this period of ten years, there were two triennial and one quartennial settlement at an amount of revenue increased for the period of each settlement—See section 29, Reg. XXV of 1803.

[2] See Reg. IX of 1805.

[3] See section 5, Reg. X of 1807.

[4] See paras. 44 to 47 of the *Dispatch of the 27th February* 1810.

[5] See sections 2 and 3, Reg. IX of 1812, for the Ceded Provinces; and sections 2 and 3, Reg. X of 1812, for the Conquered Provinces and Bundlekund; and § 19 of Mr. Holt Mackenzie's Minute.

[6] Section 4 of Reg. IX of 1812 and section 4 of Reg. X of 1812.

[7] It will be seen hereafter that this necessity for more definite instructions increased with additional information, and that, so recently as 1871, the whole question had to be referred to the Home Government.

by adopting a scale varying from one-third to one-fourth of waste. The Court of Directors ordered[8] that the settlement of no district was to be declared permanent until the whole of the proceedings had been submitted to and approved by them. In order to allow time for the collection, transmission, consideration, and return of the requisite information, it was directed that a further temporary settlement should be made for a period of five years.[9] The first district, in which operations were commenced, was Cawnpore; and the result was, that the Board of Commissioners entertained such doubts as to the accuracy of the materials on which the settlement had to be formed, that the Board and the Government and the Court of Directors were agreed not to confirm the settlement in perpetuity, but to leave it open to revision after the resources of the country had been better ascertained and *individual rights established*.[1] A similar determination was formed with respect to Bareilly and Shahjahanpore, to which districts operations were next extended. As inquiry progressed further, it became more and more evident how little reliance was to be placed on arguments drawn from the experience of Bengal, how complicated was the problem to be solved, and how great danger lay in precipitancy. Having thus given a brief outline of the course taken in dealing with the settlement of the *Ceded and Conquered Provinces*, I shall now give some account of the Province of Benares; and then proceed to a more detailed history of the settlement proceedings in the former Provinces and of the steps taken in order to avoid the errors committed in Bengal.

Restrictions and Conditions for Permanent Settlement of the Ceded and Conquered Provinces.

§ 351. The Province of Benares was, as we have seen, finally vested in the Company in 1775, ten years after the acquisition of Bengal, Bahár, and Orissa. A *sanad* and *patta* were granted to Raja Cheit Singh on the 15th April 1776, by which his former rights were confirmed to

[8] *Dispatch of 1st February* 1811. [9] *Dispatch of 27th November* 1811.

[1] Paras. 49 *et seq.* of *General Letter of 28th April* 1817.

Settlement of Benares.

him on condition of his paying an annual tribute of 22,66,180 sicca rupees at Benares, or 22,21,745, if paid at Calcutta. When Cheit Singh, unable or unwilling to pay the fine of fifty lakhs imposed on him by Mr. Hastings, was expelled in 1781, a *patta* was granted to his successor, Raja Mehipnarain, by which the *zemindarí* was confirmed to him at an annual *jama* of 4,000,000 Benares sicca rupees exclusive of *jagírs* and pensions. Up to 1791, the Resident stationed with the Raja had not interfered in the internal management of the *zemindarí;* but, as Mehipnarain's age disqualified him for personal superintendence, the administration of the revenue came now to a certain extent under the control of the Resident. In 1787, in order to correct abuses, this officer was entrusted with fuller control over the collections and settlement. Finally on the 27th October 1794, an agreement was entered into between the Raja Mehipnarain and the Resident Mr. Duncan on the part of the Company, by which the system established in the Provinces of Bengal, Bahár and Orissa in 1793 was to be introduced into the Province of Benares; and this was effected by Regulation I of 1795, which contains the conditions of the Permanent Settlement for this Province.[2]

First Administration of the Ceded Provinces.

§ 352. The Ceded and Conquered Provinces were at first termed *The Upper Provinces* by way of distinction from *The Lower Provinces* of Bengal, Bahár and Orissa, and the intermediate Province of Benares. An account has already been given of the territories which constituted these provinces and of the time and manner of their acquisition. The territory ceded by the Nawab Vizier in November 1801 was placed under a Lieutenant-Governor (the Hon'ble Henry Wellesley) and a Board of Commissioners, who were entrusted with the settlement of the revenue and the formation of a temporary scheme of internal administration, until sufficient information could be acquired to form

[2] In section 2 of this Regulation and in Regulation II of 1795 will be found an account of what was done in the way of settlement, &c., in the Province of Benares before the assessment was fixed in perpetuity.

the basis of a more permanent system. The Company's servants stationed in the districts exercised the united powers of Magistrates, Collectors and Judges; and, in addition to these duties, endeavoured to collect detailed information concerning the country placed under their authority. The Commissioners discharged the functions of Judges of Appeal and Circuit, and also assisted the Lieutenant-Governor and the Governor-General in Council in preparing Regulations adapted to the condition and requirements of the new provinces. This plan of administration continued until the beginning of 1803, when a settlement of the land revenue having been concluded for a term of three years, the Lieutenant-Governor resigned his office and the provisional Board was dissolved.

§ 353. The system introduced into the Lower Provinces by Lord Cornwallis in 1793 had at first been made the subject of the highest commendation, before experience had disclosed those defects which have since been brought to light. It was therefore in the first instance decided to introduce this system into the Ceded Provinces with such modifications as the information collected in the short space of a year and a few months showed to be advisable. Accordingly, on the 24th March 1803, a set of Regulations was passed for the Provinces Ceded by the Nawab Vizier, which consisted of the Regulations already passed for Bengal, Bahár, and Orissa with slight alterations and additions,[3] and which incorporated and confirmed[4] a proclamation issued by the Lieutenant-Governor and the Board of Commissioners on the 14th July 1802. This proclamation had notified to the *zemindars*, *talúkdars* and others concerned, that, at the commencement of the Fasli year 1210, a settlement would be concluded for a period of three years; that, at the expiry of this period, a second settlement would be made for a like term at a *jama* formed by adding to the *jama*

Bengal system at first introduced into the Ceded Provinces.

[3] A glance over the Titles of the Regulations of 1803 will show the general similitude between the two sets of Regulations.

[4] See section 29 of Regulation XXV of 1803 and section 53 of Regulation XXVII of 1803.

of the first settlement two-thirds of the difference between such jama and *the actual yearly produce of the land* at the time of the expiry of the first settlemeet;[5] that, at the end of these two triennial periods, a further settlement would be formed for four years at a *jama* formed by adding to the *jama* of the second period three-fourths of the net increase of revenue during any one year of that period; that, at the close of the ten years comprised in these three periods, a Permanent Settlement would be concluded for such lands, as should be *in a sufficiently improved state of cultivation to warrant the measure*, on such terms as Government might deem fair and equitable. The promise thus held out of a Permanent Settlement to be concluded at the expiry of an experimental period of equal length with that previously adapted for Bengal, Bahár and Orissa was made without any reservation as to the subsequent approval of the Court of Directors.

Promise of a Permanent Settlement for these Provinces.

§ 354. The Regulations made for the Ceded Provinces were in 1804-1805[6] extended to the Conquered Provinces and to the territory in Bundlekund ceded by the Peishwa; and a plan of settlement precisely similar was notified in a proclamation contained in Regulation IX of 1805 passed on the 11th July of that year. The oversight in promising a Permanent Settlement without reference to the Court of Directors was corrected by section 5, Regulation X of 1807, by which proprietors were informed that the *jama* assessed on their estates in the last year of the settlement immediately ensuing the then existing settlement would remain fixed for ever, if they were willing to engage for the payment of the public revenue on those terms, and if the arrangement received the sanction of the Honorable the Court of Directors. This sanction was however withheld, as, before the time came from which the settlement

Same system and same promise extended to the Conquered Provinces.

[5] In consequence of a severe drought which prevailed in the Fasli year 1811, this increase of assessment was not exacted—See sections 1 and 2 of Regulation V of 1805.

[6] See the Regulations of these years, more especially Regulation VIII of 1805.

was to become permanent, the very strongest reasons had arisen for doubting the expediency of settling the revenue in perpetuity in the then condition of the country and upon the information then available. When the second of the triennial periods was drawing to a close, and it became necessary to arrange for the quartennial settlement of the provinces ceded by the Nawab Vizier, it was naturally considered to be a matter of the first importance that this settlement, which was intended to be perpetual, should be made upon the most accurate and reliable materials. The Board of Revenue at Calcutta, who had charge of the Revenue Administration of the Upper Provinces from the dissolution of Mr. Wellesley's Government, was too remote to exercise an efficient control and superintendence. It was therefore resolved to create a Special Commission for the settlement of these provinces; and two Commissioners, one a Member of the Board of Revenue and the other a Civil Servant of experience,[7] were accordingly appointed and vested with all the duties, powers and authority previously exercised by the Board of Revenue.[8] The primary object of this Board of Commissioners was the superintendence of the quartennial settlement of the provinces ceded by the Nawab Vizier, and of the second triennial settlement of the Conquered Provinces and Bundlekund; and it was at first intended that the Commission should cease to exist as soon as this work was completed. In less than two years after, *the Board of Commissioners in the Upper Provinces* was however declared to be permanent by Regulation I of 1809, and was further vested with the administration of the land revenue in the Province of Benares.

Board of Commissioners created for the Upper Provinces.

§ 355. The Commissioners, after being engaged about a year in collecting information, submitted a report dated the 13th April 1808, in which, having dwelt upon the large quantity of arable land (one-fourth) still uncultivated,

[7] The Commissioners appointed were Messrs. Cox and Tucker.

[8] Sections 1 to 4 of Regulation X of 1807. A Secretary, an Accountant and a competent staff of native officers were attached to the Board.

Commissioners report against an immediate Permanent Settlement.

the insufficient knowledge of the then state of the country or of its means of future improvement, the sparseness of the population, the want of capital necessary in order to make improvements, the absence of commerce, the illegal alienations of revenue-paying lands, the numerous disputes as to proprietary rights, the small acquaintance of the people with the English system, and other facts, they submitted it as their deliberate and unqualified opinion that a Permanent Settlement of the Ceded and Conquered Provinces was at that moment unseasonable. The Court of Directors being made aware of this report (to the recommendations contained in which the Indian Government were wholly opposed) informed the Governor-General in their final dispatch[9] upon the subject, that they had come to the conclusion that a perpetual settlement of these provinces would then be premature, as being likely to result in a large ultimate sacrifice of revenue. Whether such a measure would be eligible at a future period, and if so, with what modifications, were questions which they left for future discussion. At the same time they directed that no settlement should be made for a longer period than five years. Upon receipt of these instructions, the absolute promise of a permanent settlement[1] was rescinded[2]: but the rule that, at the close of the ten years comprised in the two triennial and one quartennial periods, a permanent settlement would be concluded for *such lands as might be in a sufficiently improved state of cultivation to warrant the measure, on such terms as Government should deem fair and equitable*, was declared to be in full force and effect.[3]

Court of Directors takes the same view.

Grant of a Permanent Settlement to depend upon state of cultivation.

[9] General Letter of the 27th November 1811. The Commissioners, aware of the views of the Indian Government in favor of an immediate permanent settlement, proved the strength of their convictions and the sincerity of their opinions by resigning rather than be instruments of measures, which their judgment founded on local observation could not approve.

[1] As contained in section 5, Regulation X of 1807.

[2] By section 2, Regulation IX of 1812, for the Ceded Provinces, and section 2, Regulation X of 1812, for the Conquered Provinces and Bundlekund.

[3] By section 3, Regulation IX of 1812, for the Ceded Provinces, and section 3, Regulation X of 1812, for the Conquered Provinces and Bundlekund.

The Board of Commissioners were accordingly required to ascertain what estates were in a state of cultivation to warrant the conclusion of a permanent settlement, and also to submit a report specifying the estates which did not appear to be in a sufficiently improved state of cultivation to admit of the conclusion of such a settlement without a sacrifice of those resources which might thereafter be derived from them for the exigencies of Government.[4] In the case of estates of the former class, it was declared that a revision would be made of the jama on the principle of leaving to the proprietors a net income of ten per cent. thereupon, exclusive of charges of collection, and the assessment so made would, after approval by the Governor-General in Council,[5] remain fixed for ever.

§ 356. When the Board of Commissioners proceeded to enquire what estates were in a sufficiently advanced state of cultivation to warrant the conclusion of a permanent settlement, the first question which had to be determined was, what was the precise point of improvement which should be accepted as sufficient to warrant the measure, and they accordingly applied (4th September, 1812) for specific instructions, suggesting that the scale of waste land which should exclude from a permanent settlement ought not to vary more than from one-third to one-fourth. This proposition was generally approved. The Court of Directors, however, subsequently noticed[6] that this point was not determined in the Regulations and could not be determined by any prospective Regulation, that the

What degree of improvement was to entitle to a Permanent Settlement?

The rule itself is contained, for the former in clause 4, section 29, Regulation XXV of 1803, and in clause 2, section 53, Regulation XXVII of 1803; and for the latter in section 7, Regulation IX of 1805, and in clause 6, section 4, Regulation XII of 1805.

[4] Sections 4 and 5 of Regulation IX of 1812, and sections 4 and 5 of Regulation X of 1812.

[5] This was going beyond the authority given by the Court of Directors, who, in their letter of 1st February 1811, ordered that "no settlement shall be declared permanent till the whole proceedings preparatory to it have been submitted to us, and till your resolutions upon these proceedings have received sanction and concurrence."

[6] Dispatches of 16th March 1813 and 17th March 1815.

question was left completely open for the future exercise of the discretion of Government, and that "it was for the constituted authorities at home, aided by the information transmitted from India, to decide whether the land was or was not in such a state as to warrant a measure irrevocable in its nature and involving so materially not only the financial interests of the Government, but the welfare and prosperity of those living under its protection." The resolution of the Court of Directors that no settlement should become permanent until it had received their sanction, and their intimated intention of not giving such sanction except upon the very fullest information, were an effectual check upon anything like precipitancy on the part of the authorities in India. Indeed a considerable time was suffered to elapse before any active steps were taken to obtain that extended information, which would enable the Government of Bengal to submit their propositions in a complete shape to the Home Authorities. This was due in the first place to the difficulty of deciding what measures were to be adopted in order to collect the required information; and, secondly, to press of work arising from the necessity of making a new settlement[7] at the close of the decennial period, which terminated in the Ceded Provinces with the Faslí year 1219 (1811-1812), and in the Conquered Provinces and Bundlekund with the Faslí year 1222 (1814-1815).

Delay in collecting the necessary information.

§ 357. On the expiry of the decennial period in the Ceded Provinces, a settlement was made for a period of five years, from 1220 to 1224 inclusive (1812-13 to 1816-1817), and was subsequently continued[8] for a further period of five years, *i.e.* 1225 to 1229 inclu-

[7] If, as was originally intended by the Indian Government, the settlement of the quartennial period had become permanent, no new settlement would have been necessary. The orders of the Court of Directors arrived just before the expiration of the quartennial period in the Ceded Provinces. On its expiration some of the zemindars were left without engagements, it being impossible to arrange the terms of a fresh settlement in time.

[8] See Regulation XVI of 1816.

sive (1817-18 to 1821-22). Similarly on the expiry of the decennial period in the Conquered Provinces and Bundlekund, a settlement was made for five years, 1223 to 1227 (1815-16 to 1820-21), and extended[9] for a further similar period—1228 to 1232 (1820-21 to 1825-26). A considerable amount of information had been obtained in making these settlements, and during the period of their operation the Collectors had acquired a further and most valuable knowledge of their districts. No systematic plan had, however, been laid down for conducting the operations necessary to adjust the questions preliminary to a permanent settlement, and at the end of 1818 almost nothing had been done towards fulfilling the promises continually held out for thirteen years.[1] The Board of Commissioners had expressed their doubts as to the accuracy of the materials upon which the settlement of Cawnpore (1220 to 1224) had been made; and notwithstanding that the land fit for cultivation, but uncultivated, was generally less than one-fifth, the Government resolved, and the Court of Directors confirmed the resolution, that the settlement should not be made permanent. The same principle was followed with respect to Bareilly, Shahjahanpore and other districts. The second of the quinquennial periods of settlement of the Ceded Provinces was now drawing to a close, and it became necessary to provide for making a new settlement, as the settle-

Temporary Settlements of the Ceded and Conquered Provinces and of Bundlekund.

[9] See Regulation IX of 1818.

[1] The Board of Commissioners in their Report of the 27th October 1818 strongly advocated that the benefits of a permanent settlement be no longer withheld from the Ceded and Conquered Provinces; but they did not suggest any tangible mode of obtaining the information which the Court of Directors required as preliminary to their sanction. They considered a minute professional survey not to be feasible, owing to the length of time required for its completion, the *data* for this conclusion being derived from the performances of a Lieutenant Gerard, who had been appointed surveyor under the Board and employed in Deyra Dún. They therefore recommended that the Collectors should *ascertain cursorily* the comparative state of the improvement of the villages, and that all villages should be declared permanently assessed, in which the Collector, *on this cursory survey*, should be of opinion that the reclaimable land not in cultivation did not bear a greater proportion than one-fourth to the cultivated land.

ment already made was not to be perpetual in any of the districts. In this state of affairs Mr. Holt Mackenzie, the Secretary to the Board of Commissioners, wrote his very able "*Memorandum regarding the past settlements of the Ceded and Conquered Provinces with heads of a plan for the Permanent Settlement of those Provinces*,"[2] which, it was at once acknowledged, suggested an apparently practical plan of proceeding. Effect was finally given to his suggestions by Regulation VII of 1822, which declared the principles according to which the settlement of the land revenue in the Ceded and Conquered Provinces, including Cuttack, Puttaspore and its Dependencies, was to be thereafter made.[3] In order to allow time for operations under the Regulation, the settlements of the Ceded Provinces and of Cuttack, which were about to expire, were continued in force for a further period of five years:[4] and, two years afterwards, the settlement of the Conquered Provinces and of Bundlekund, which was then on the point of expiring, was extended for a further similar period.[5] In 1826 it was found necessary to extend the settlement of the Ceded Provinces for a further period of five years—to the end of 1229 (1831-32)—"until a careful revision of the settlement can be completed"—and this was accordingly done by section 2, Regulation II of 1826.

Mr. Holt Mackenzie's Minute, 1819.

Regulation VII of 1822.

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[2] Dated 1st July 1819.

[3] See Title and Preamble.

[4] Clauses 1 and 2 of section 2. This carried the settlement down to the end of 1234 (1826-27).

[5] By section 2 of Regulation IX of 1824.

CHAPTER XXV.

Landholding, and the Relation of Landlord and Tenant in India—The Zemindars and Raiyats from 1822 to 1859 A. D.

§ 358. The different policy pursued in dealing with the Ceded and Conquered Provinces and the increasing evidence that a mistake had been made in Bengal produced the effect of rendering the Court of Directors anxious to obtain clear and detailed information about the rights of all those interested in the land of the later acquired provinces. We accordingly find them writing as follows on the 15th January 1819[6]:—"We do not clearly understand whether, in speaking of resident *raiyats*, you do or do not contemplate only the *khudkasht raiyats*,[7] who have a permanent hereditary interest in the soil; and whether, in adverting to 'those lands upon which no resident *raiyats* are established,' you do or do not intend all lands cultivated by *paikasht* or migratory *raiyats*, whose tenure is temporary." . . . . . "Does this permanent hereditary interest in the soil constitute the only distinction between the *khudkasht* and *paikasht raiyat?* Or, if that be not the only distinction, are the payments to be made by the *paikasht*, equally with that of the *khudkasht*, to be regulated according to the custom of the *pargana?*" . . . . . "Whatever may be the distinction between them as to their rights, it is clear that, in every respect, the two classes of *raiyats* are equally entitled to the protection

The Directors require detailed information as to the Rights of persons interested in the Land in the Ceded and Conquered Provinces.

What are the respective rights of Khudkasht and Paikasht Raiyats?

[6] I *Revenue Selections*, p. 351 and following pages.

[7] Even in 1811, what constituted a *khudkasht raiyat* was not very well understood—see *ante*, page 566. Paikasht *raiyats* were not properly termed migratory.

of Government; and we observe that you concur with us in the opinion, that however well intended for this purpose our Regulations under the Permanent Settlement have not been effectual to it." . . . . "Although the *zemindars* with whom the Permanent Settlement was made are, in the Regulations respecting that arrangement, declared to be "the actual proprietors of the soil," although their *zemindaries* are called landed estates, and all other holders of land are denominated their under-tenants; and although, as we shall have occasion more particularly to observe in the course of this dispatch, the use of these terms, which has ever since continued current, has in practice contributed, with other causes, to perplex the subject of landed tenures, and thereby to impair, and in many cases to destroy, the rights of individuals, yet it is clear that the rights which were actually conferred upon the *zemindars*, or which were actually recognized to exist in that class by the enactments of the Permanent Settlement, were not intended to trench upon the rights which were possessed by the *raiyats*."[8]

Failure of Permanent Settlement Regulations to protect the Raiyats.

The Directors in 1819 construe the intention of the Permanent Settlement,

§ 359. After referring to the minutes and dispatches, which led up to the Permanent Settlement, they continue thus:—"Such having been the sentiments of Lord Cornwallis and the ruling authorities in England, and such having been the acts of the Local Government on the first introduction of the Permanent Settlement, the question naturally occurs, whence it has arisen" (to use your own words), "that our institutions are so imperfectly calculated to afford the *raiyats* in practice that protection to which, on every ground, they are so fully entitled; so that it too often happens that the *quantum* of rent which they pay is regulated neither by specific engagements, nor by the established rates of the *parganas* or other local divisions

And desire to know why that intention was not effectuated.

[8] If this were the true intention, then in India as in Ireland (see *ante* pages 298, 323) law and fact were directly opposed. But there is sometimes a fatal difference between the intention, which was in the mind of the law-maker, and the intention really expressed by the language which he has selected for his purpose.

in which they reside, but by the arbitrary will of the *zemindars*." After referring to what Mr. Cornish wrote in 1814,[9] they proceed as follows:—"Mr. Colebrooke asserts, from his own experience, that disputes between *zemindars* and *raiyats* in the Lower Provinces were less frequent and more easily determined anterior to 1793 than they now are;" and he further states "that the provisions contained in the general Regulations for the Permanent Settlement, designed for the protection of the *raiyats* or tenants, are rendered wholly nugatory[1];" and that "the Courts of Justice, for want of definite information respecting their rights, are unable effectually to support them. 'I am disposed, therefore,' he adds, 'to recommend that, late as it now is, measures should be taken for the re-establishment of fixed rates as nearly conformable to the anciently-established ones as may be yet practicable to regulate distinctly and definitely the relative rights of the landlord and tenantry'" . . . . . "Mr. Sisson, in his letter on the relative state of landlord and tenant in Rungpore, describes the 'arbitrary oppression under which the cultivator of the soil groans as having at length attained a height so alarming as to have become by far the most extensively injurious of all the evils under which that district labours;' and expresses an apprehension, 'that until, by a steady adherence to the most decisive and vigorous measures, the bulk of the community shall have been restored from their present state of abject wretchedness to the full enjoyment of their legitimate rights, it will be in vain to expect solid and substantial improvement.' The sentiments of many other of the local authorities employed in the internal administration of the country, whose reports are now before us, are equally strong upon this subject."

They refer to the opinions of Mr. Colebrooke and others as to the failure of the Regulations to protect the Raiyats.

§ 360. Referring to the Minute of the 21st September 1815, written by the Marquis of Hastings, when Lord

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[9] *Ante*, page 588.

[1] See *ante*, page 593.

Moira, and to which allusion has already been made,[2] the Directors say:—"The Marquis of Hastings describes the situation of the village *zemindars*[3] to be such as to call loudly for the support of some legislative provision. 'This,' observes his Lordship, 'is a question which has not merely reference to the Upper Provinces' (of which he had previously been speaking); 'for, within the circle of the Perpetual Settlement, the situation of this unfortunate class is yet more desperate. In Bardwán, in Bahár, in Cawnpore, and indeed wherever there may have existed extensive landed property at the mercy of individuals, whether in farm or *Jagír*, in *taluk* or in *zemindarí* of the higher class, complaints of the village *zemindars* have crowded in upon me without number; and I had only the mortification of finding, that the existing system, established by the Legislature, left me without the means of pointing out to the complainants any mode in which they might hope to obtain redress.' 'In all these tenures, from what I could observe, the class of village proprietors appeared to be in a train of annihilation; and unless a remedy is speedily applied, the class will soon be extinct. Indeed, I fear that any remedy that could be proposed would even now come too late to be of any effect in the several estates of Bengal; for the licence of twenty years, which has been left to the *zemindars* of that province, will have given them the power, and they have never wanted the inclination, to extinguish the rights of this class, so that no remnants of them will soon be discoverable.'"

Reference to account given by the Marquis of Hastings when Lord Moira.

In Bengal any Remedy too late after twenty years' Licence allowed to the Zemindars.

§ 361. "His Lordship adds:—'It is well known (and even if it were questionable, the practice of the provinces which have lately fallen under our dominion would set the doubt at rest), that the cultivating *zemindars* were, by a custom more ancient than all law, entitled to a cer-

[2] I *Revenue Selections*, p. 425.

[3] It must be remembered that the Village Zemindars here spoken of were cultivating peasant proprietors, not owners of estates and receivers of rents like the Bengal Zemindars.—See *ante*, page 512, *note*.

tain share of the produce of their lands, and that the rest, whether collected by *pargana-zemindars* or by the Officers of Government, was collected as the *huck* of the Sircar (right or due of Government). The paramount importance, on every ground of justice and expediency, as connected with the welfare and prosperity of the British Empire in India, of adopting all practicable means for ascertaining and protecting the rights of the *raiyats*, has, in our former correspondence, been made the topic of frequent and serious representation ; nor can it be otherwise than most satisfactory to us to find that the members of your Government, and those acting under its authority in the internal administration of the country, are now so earnestly occupied in the furtherance of this most important and essential work." . . . . "We fully subscribe to the truth of Mr. Sisson's declaration, that 'the faith of the State is to the full as solemnly pledged to uphold the cultivator of the soil in the unmolested enjoyment of his long-established rights, as it is to maintain the *zemindar* in the possession of his estate, or to abstain from increasing the public revenue permanently assessed upon him.'"

Cultivators entitled to a certain share of the Produce.

Importance of defining the Rights of the Raiyats realized by the Directors.

§ 362. On the 18th December 1820, Mr. Stuart in a Minute,[4] in which he argued against a permanent settlement of the Ceded and Conquered Provinces, while he observed that in the condition and relation of the inferior classes connected with the lands in Bengal, including the great body of the cultivators of the soil, the system of the Permanent Settlement intended to effect no direct change,[5] yet proceeded to observe as follows :—"It has been objected to the system, that the rights and interests of those classes were sacrificed to the *zemindars*. That the practical tendency of the system was injurious to the inferior classes of the agricultural community, I fear,

Mr. Stuart in 1820 argued against a Permanent Settlement of the Ceded and Conquered Provinces.

[4] III *Revenue Selections*, p. 219.

[5] This will be conceded by all who have studied the subject. The mischief was done by not defining the rights of the cultivators, and by placing them in every way at a disadvantage in maintaining these rights and resisting aggression.

cannot be denied. Doubtless the native institutions, on which the maintenance of their rights chiefly depended, had been deeply impaired at the period of the Perpetual Settlement; but it is also clear, that it was not a studied purpose of the authors of that great measure to consummate their ruin. Lord Cornwallis and his advisers unhappily, in my humble conception, regarded the native revenue institution[6] merely as means of inquisition into the profits of the lands, and they hastened to abolish them from the apprehension that, while they were preserved by the Government, the *Zemindars* would never feel proper confidence in its pledge to abstain from further demands upon the land" . . . . "The condition of the inferior classes of the agricultural community under the operation of the system is the most difficult part of the subject upon which to form an opinion. That from the time the British Government assumed the administration of the revenue down to the period of the Perpetual Settlement, this class was subjected to grievous and oppressive exaction, appears to have been a prevailing belief. In the review of the system, I have shown that no efficient practical measures were adopted to settle and maintain their rights; they were committed to the protection of the Courts, and I believe it is the general apprehension that that protection has not been effectual. In what degree they may have derived the benefit which Lord Cornwallis predicted from the improved circumstances of their superiors, is a point on which my information does not enable me to pronounce. That, generally speaking, they are subject to great oppression, I fear, continues still to be the prevalent opinion; but the imperfectness of our information must be confessed." He then observed that the Permanent Settlement in the

[6] The institutions here referred to were the accounts and records kept by the *Kanungoes* and *patwaris*, as to which see *ante* pages 592-3. As to their idea that the *Zemindars* would have no confidence in our pledges, if we appeared to be entering into scrutinies of their collections from the *raiyats*, see *ante* pages 468-469, *note*.

Lower Provinces was an assignment for ever of the dues of the Government in favour of the chief revenue-engagers, and such a measure obviously opposed a perpetual bar against the Government extending to the inferior classes of the agricultural community any relief from the burden of 'their present payments'—that, if there were any force in this consideration, the Government might by the adoption of a permanent settlement for the Ceded and Conquered Provinces, forego for ever very noble means of promoting the welfare of the most numerous and most meritorious body of its subjects.[7]

Such a Settlement interposed an obstacle to the promotion of the welfare of the Cultivators of the Soil.

§ 363. In 1818 the Indian Government writing[8] to the Court of Directors referred to a Report from the Board of Commissioners in Bahár and Benares, in which they had entered at considerable length into a discussion on the difficulties which must attend all attempts to fix the rates payable by the *raiyats*, and the evils which would in their judgment result from their success. "Being doubtful," said the Commissioners in this Report, "whether we fully understand those parts of your orders, which direct the distribution of *pattas* in all future settlements of landed estates, we take the liberty of requesting your further commands on the subject. The doubt which has arisen in our minds is, whether your orders refer to the *form* only, or both to the *form and rates* of such *pattas*. If the former only, we cannot anticipate any difficulty in executing your orders; but if, as we are more inclined to believe, your commands refer to the latter, their real execution appears to us so arduous and difficult,[9] and their operation, as they

Board of Commissioners in Bahár and Benares state the difficulty and inexpediency of fixing rates.

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[7] There can be no doubt that the Permanent Settlement interposed an *obstacle*, but it did not oppose a *bar* to promoting the welfare of the cultivators. Mr. Stuart was, however, considering the question whether any limit of the Government demand or, as he termed it, a sacrifice of the fiscal interests of the State, would be more beneficially made in favour of the great body of the agricultural community in preference to the higher classes connected with the land.—III *Revenue Selections*, p. 221.

[8] See III *Revenue Selections*, p. 437.

[9] The Commissioners were quite right in their view of the difficulty of the problem to be solved—the same problem which arose for solution in Ireland.

may affect the permanent interests of both Government and the public, so questionable that we trust we shall stand excused in adverting both to the obstacles which we apprehend would interpose to counteract such an undertaking, and to the evils which would be likely to flow from it were it to be effected." Referring to this passage in the Report of the Commissioners and to the letter of the Government of Bengal, the Court of Directors wrote to that Government as follows[1] on the 9th May 1821:—"The purport of this document you correctly describe in the following words: 'The doctrine which it is the chief object of the Report in question to support is that the prosperity of the country will best be obtained by the annulment of all the prescriptive rights possessed by the resident *raiyats*.' This is the more remarkable on the part of these Commissioners, as in the third paragraph of that very Report of theirs they say: 'It is almost superfluous to observe that in the discussions prior to the decennial settlement, it was allowed that the *raiyats* had vested rights in the lands, and the Revenue authorities were especially enjoined to secure them in them.' The annulment of all those rights, therefore, is, or would be, the most extensive act of confiscation that ever was perpetrated in any country. This is a subject of immense importance, and we are happy to see that you have not passed it over lightly."

The Directors' Dispatch of the 9th May 1821.

§ 364. "This doctrine, *viz.*, 'that the prosperity of the country would best be attained by the annulment of the prescriptive rights possessed by the resident *raiyats*, might,' you observed, 'be consolatory under past failures;' but you at the same time expressed the persuasion you entertained, 'both of its unsoundness in point of general

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Assume that the landlords have a property in the land, and that the tenants or any class of tenants cannot be evicted so long as they pay their rent (which is really an interest equivalent to property in another form), how is the rent to be adjusted, how are the profits to be shared, how are the boundaries of the two interests to be defined?

[1] III *Revenue Selections*, p. 438.

policy, and of the injustice of acting upon it, even though better founded:' and you added, 'we are abundantly sensible, that the task of ascertaining and securing the rights of the inferior classes of the agricultural population is one of the utmost difficulty, nor can we be confident of success when all preceding Governments have failed. Still, however, we hope that the obstacles which have hitherto opposed the endeavours of Government in favor of that interesting class of our subjects may be overcome by firm and persevering exertion.' With these sentiments, it appears to us surprising that you should, in any case, great or small, while you remain in so much professed ignorance of what is proper for you to do, precipitate that irrevocable settlement, which, for aught you know, may hereafter preclude you from the very means essential to your end. We need not inform you that we have perused the Report of the Commissioners and your reply to it with peculiar attention—the latter document, we are happy to add, with no ordinary satisfaction, on account both of the sentiments which it expresses and the ability with which it is drawn. The Report of the Commissioners divides itself into two parts. In the first, they maintain the proposition that the rights of the *raiyats*, though expressly acknowledged at the time of forming the Permanent Settlement with the *zemindars*, are now abrogated in all the provinces subject to that settlement, and that this has been the necessary effect of Regulations which have been passed by your Government since that settlement was made. In the second they endeavour to prove that it would not be good, but extensively mischievous, to fix the rates payable by the *raiyats*."

The Directors see that a Permanent Settlement may be an obstacle to securing the Rights of the Raiyats.

§ 365. "In regard to the first of these affirmations, it does not appear to us that your proposition contradicts it. What you maintain is, that Government never *intended* to abrogate those rights, and that the reservation contained in Regulation I of 1793 leaves it entirely open to Government to adopt any such measures as may appear necessary for maintaining and protecting

them. This is unquestionably true; but so also, practically at least, is what is said by the Commissioners. The construction which the Commissioners apply to the Regulation V of 1812 is that it left no rights[2] to the

[2] Regulation V of 1812 was understood by the *zemindars* and farmers as authorizing them to consider the *raiyats*, on the expiration of their leases, as tenants-at-will, and consequently led them to demand enhanced rents. They, in fact, regarded the provision in sections 9 and 10 (*ante*, p. 614), as to service of notice of enhancement, not as limiting, but as recognizing and extending, their right of enhancement, and proceeded to serve notices wholesale. The mischief was probably aggravated by a Construction of the Sadr Díwání Adálat, that the general principles of these sections, "although professedly enacted for the guidance of persons purchasing lands sold for arrears of revenue, appeared to be applicable to all cases where no written engagements existed." It is due, however, to the Court to say that in the ame Construction they approved of the view taken by the Judge of Rungpore, that the landlord had not the power of exacting in the first instance by distraint or summary process the enhanced rent claimed in the notice, the *raiyat* being merely left the option of resigning the land or continuing to hold it subject to the enhanced rent, until he could prove the injustice of the demand by a regular suit—and that it was necessary for the landlord (whether prosecuting summarily for enhanced rent, or defending suits instituted by *raiyats*, who had released their property, giving security to contest the demand) to show that the amount demanded in the enhancement notice was conformable to the *pargana* rates and the actual extent of land. It may be well to inform the inexpert reader that a *Construction* was an opinion delivered by the Sadr Díwání Adálat upon a moot point of law, not arising in a case judicially before the Court, but submitted by some Subordinate Judicial Officer, who desired to have the law explained to him. This informal mode of legislation was afterwards objected to by Government, and the Sadr Díwání Adálat had to drop the practice.

It may be important to mention in this context that it was provided in 1819 (by section 18 of Regulation VIII amending section 15 of Regulation VII of 1799) that when an arrear of rent was adjudged by the Court upon a summary investigation to be due from a tenant holding a lease, farm or other limited interest *between the proprietor and the actual cultivator*, the proprietor was at liberty (clause 4) of his own authority to cancel such lease, farm or other such interest, not being a *taluk*, which would be sold to realize the arrear; but (clause 5) the power of attaching and cancelling the tenant's interest was declared not to extend to *khudkasht raiyats* or other resident cultivators of the soil. If an arrear was adjudged by the Court to be due from them, and *the amount were not immediately paid into Court, the plaintiff was to be authorized by the Court to make such new arrangements as he might judge proper for the future management of the lands.* In 1849, the following explanation was given to these provisions in the North-Western Provinces:—"In the case of a person possessing any lease, farm or other limited interest

raiyats; and this, it appears to us, is admitted by yourselves. 'The rules,' you say, 'contained in Regulation V of 1812, afford, it may be feared, a very insufficient remedy for the defects of former enactments, and those especially by which the direct interference of the officers of Government in settling the form of the *pattas* to be granted and received by the *zemindars* and *raiyats* is superseded, and the *zemindars* and their tenants left to settle the terms on which the latter are to hold their lands, have, it may be feared, been frequently misunderstood.' But though we must agree with the Commissioners, that where the zemindar is left to settle as he pleases with the *raiyat*, all rights in the land on the part of the *raiyat* are actually and for the time extinguished; yet we do most fully agree with you, that Government did not, by that enactment, bind itself to sacrifice for ever the rights of that numerous and valuable class of its subjects, or even to abstain from retracing that very step, if it should find, upon consideration and experience, that it was a false one. This enactment was no part or condition of the Permanent Settlement; it is, therefore, revocable, and ought not to be maintained, if found to be inconsistent with that protection of the *raiyats* in their rights, and from those arbitrary exactions, which did form, in principle at least, a part of the Permanent Settlement, and is the foundation, as it were, on which your revenue and judicial system professed to be built."

The Directors agree that the Raiyats' Rights had been extinguished in the Permanently Settled Provinces, but that this result had not been intended.

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intermediate between the plaintiff and the actual cultivator, the plaintiff on obtaining a decree in a summary suit 'shall be at liberty to cancel the lease of his own authority.' In the case, however, of 'a khudkasht *raiyat* or other actual cultivator of the soil, the plaintiff shall be authorized by the Court to make such new arrangements as he may judge proper for the future management of the lands in question, if the amount adjudged to be due shall not be immediately paid into Court.' The way in which this distinction is stated shows that some greater indulgence is designed in the latter case than in the former, and that on the Court is devolved the duty of securing this indulgence to the defendant. This indulgence may fairly be held to be the opportunity of paying up the sum adjudged within a reasonable time on demand subsequent to adjudication."—*Letter to Secretary, Sadr Board of Revenue, N. W. P., dated 4th January* 1849—Thomason's Dispatches, Vol. I, p. 492.

§ 366. "The second proposition of the Commissioners, that to *fix* the rates of the *raiyats* would be exceedingly mischievous, is founded on the assumption, that to give the *raiyats* more than the bare and miserable subsistence allowed them by the *zemindars* would not make them more happy; but, as they are indolent and improvident, would only render them less productive; and that, happily for the country, the profit left by the permanent assessment on the land 'had not exclusively centered with the *raiyat*, which it must chiefly have done had the original intentions of its authors been enforced.' It is assumed that the *zemindar*, on the other hand, is a man of a very provident disposition; and 'by allowing him,' they say, 'to derive a fair profit by enhanced rents, a strong excitement would be given to the extension of the cultivation. Capital would be employed in the mode most conducive to augment the wealth of the country, while the advantages attendant on industry would be more generally promoted: new channels of abundance and riches would be opened.' All this magnificent promise, you may observe, is founded on the two suppositions, that the *zemindars* in India are a provident productive class, and that the *raiyats* are the reverse; and on no better foundation than this do Messrs. Rocke and Waring place the conclusion, that all the prescriptive rights of the *raiyats* ought to be annulled. We desire to record our satisfaction at the following part of your reply. 'The Vice-President in Council is little disposed to believe that any rules will be required to guard against the extension of too great advantages to the *raiyats:* still less can he for a moment admit the position, that the native of India, by a strange perversity of nature, requires the stimulus of misery to goad him to exertion, and that he must for ever remain insensible to the benefits, however great and manifest, which industry holds out to him. The influence of such an opinion must extend far beyond the question now under discussion, and would, in fact, destroy all hopes of the moral improvement of the people. It appears, how-

Question of fixing the Rates of Rent payable by the Raiyats.

No reasonable assumption that Zemindars are, and Raiyats are not, provident and productive.

ever, to the Vice-President in Council altogether at variance with the acknowledged principles of human nature. In point of fact, too, the experiment has never been tried. On the contrary, it may be much more justly said, that the characteristic indolence and imprudence of the Indian peasantry are the necessary results of the circumstances of their situation; and it would be unreasonable to expect the efforts of industry or the cares of prudence from persons who cannot but feel that the laws are insufficient to protect them in the enjoyment of the fruits of the one, and still more to secure them the more distant advantages of the other.'[3] You had, indeed, express and decisive experience to which it lay with you to appeal. There is scarcely any fact to which there is more frequent testimony in your records than the improvidence and prodigality which characterize the *zemindars*."

Miserable condition of the Raiyats admitted—

§ 367. "With respect to the actual situation of the *raiyats* in the permanently settled territories, you justly observe that 'the records of Government contain numerous representations of the oppressed and miserable condition to which they have in many cases been reduced.' The inference made by the Commissioners, that because it is very difficult to protect the rights of the *raiyats*, therefore, the rights of the *raiyats* should be annulled, you have answered with great propriety. 'That obstacles,' you say, 'will be opposed by the *zemindars* to any measures calculated to protect the *raiyats* from their oppressions, appears extremely probable. These obstacles, however, the Vice-President in Council would hope, may be overcome by firm and persevering exertion on the part of the officers of Government; and though it is, undoubtedly, in every respect desirable that the work of reform should be gradual, we can scarcely anticipate, from the causes noticed in your letter, inconveniences at all commensurate with those which have been so long experienced from the indefinite state in which the rights of

But not the Inference that because Protection had failed, their Rights should be annulled.

[3] The same observation has often been made as to the Irish peasantry.

the inferior classes of the agricultural population have hitherto been left. The Vice-President in Council cannot at the same time but feel, that so long as the rights of that class shall remain unprotected, the British Government must be considered *to have fulfilled very imperfectly the obligations which it owes to its subjects.*' A great part of the stress of that argument of the Commissioners which is drawn from the assumed inutility of attempting to protect the *raiyats*, rests, we perceive, upon the point of fixing, that is, rendering perpetual the rates of the *raiyats*. This argument, insufficient as it is, applies to you only, who on this occasion prescribed the Permanent Settlement, not to us, who, so long as we remain without the means of knowing how to protect the rights of the several classes of the people, should on that account alone desire that all irrevocable settlements may be avoided. We have, in our former dispatches, directed that no such settlements be formed in the Ceded and Conquered Provinces without our previous sanction; and we now direct that you consider those instructions also applicable to all cases, in which you may not be precluded by the Permanent Settlement. We are certainly most desirous, not only to see the *raiyats* duly protected in their rights, but also to see them thrive and prosper; for upon this more than upon anything else depends the welfare and improvement of the country; but we cannot discover the necessity of fixing in perpetuity the rates payable for the land in their occupation, or in other words, of limiting for ever the amount of revenue derivable by the State from the land, which in an Indian country constitutes the grand source of public supply, from whence to administer to the necessary wants and exigencies of the public service." [4]

Welfare of the Raiyats may be secured without fixing their Rents for ever.

[4] In para. 41 of Revenue Letter to Bengal, dated 6th January 1815, the Directors, while postponing the permanent settlement of the Ceded and Conquered Provinces, had said :—" We certainly do not wish to revive the doctrine of the Sovereign in India being proprietor of the soil, either *de facto* or *de jure*; but we deem it necessary to be extremely cautious in foreclosing one

§ 368. In a dispatch of the following year,[5] the Government of India writing to the Directors said:—"In the Ceded and Conquered Provinces, our separate dispatches relative to the settlement will show that we design, as far as practicable, to adjust, through the agency of the Collectors, the rights and interests of every *raiyat* in every village as it may be settled, and specifically to define the rights of the *zemindars* with reference to the *mufassil jamabandi*[6] so made. The existence of the Permanent Settlement in the Lower Provinces does not, in our judgment, oppose any legal bar to the adoption of a similar course there, if we can command a sufficiency of fit instruments, and the scheme be generally deemed expedient; for Government, in limiting its demand, specifically reserved the option of such an interference: and if the *zemindars* have themselves failed to assess their *raiyats* and to issue *pattas* on equitable terms as provided, such an interference would require no other justification than the proof that it could be expediently exercised. As soon, therefore, as the Regulation relative to the settlement of the Ceded and Conquered Provinces is published, we purpose consulting the Revenue Board on the expediency of enacting such rules as may enable the Revenue Authorities in the Lower Provinces, under proper restrictions, to make a *mufassil* settlement with the cultivators of estates held subject to a fixed jama, or free of assessment on behalf of the *sadr malguzars* or *lakhirajdars*. The subject, however, is so difficult and important, and the magnitude of the work to be performed is so strongly in contrast with the extent of the machinery we can apply to its accomplishment, that we must entreat your indulgence, if we shall appear unnecessarily to postpone our final determination."

Rights and interests of every Raiyat in the Ceded and Conquered Provinces to be adjusted.

A similar adjustment contemplated for the Lower Provinces.

§ 369. In reply to this the Directors wrote in 1824:[7]—

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of the principal sources of revenue now open to us in the precarious expectation that other sources equally productive may afterwards be discovered."

[5] Dated 1st August 1822—III *Revenue Selections*, 441.

[6] Rent Roll showing the land held and the rent payable by each *Raiyat*.

[7] III *Revenue Selections*, 448. It may here be mentioned that various schemes for the registration of tenures and rights and interests in land

"We perceive with you the magnitude and difficulty of the task; and the step you have taken of 'recording the

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were suggested from time to time in order to replace the valuable information that was lost by the abolition of the offices of the *kanungoes* and *patwaries*. One of these schemes is referred to above, but it came to nothing. Mr. H. Colebrooke recommended the restoration of these offices, and from 1816 to 1820 attempts were made to revive them, which, though successful to some extent in Bahár, never succeeded in Bengal Proper. In 1818, the Government of India wrote to the Directors as follows:—"It appears to us to be an object of the highest importance to obtain and preserve an accurate register of existing tenures, and of all transfers and divisions of landed property; and the attainment of this object shall occupy our anxious attention. We are not, however, yet prepared to indicate any specific scheme of measures to be adopted for that purpose."—*Revenue Letter from Bengal of 17th July* 1818—III *Revenue Selections*, 55. The following passage from a letter of the Directors will give some idea of the difficulties to be contended with:—"The necessity of some measure for reforming the business of registration in the several Collectorship seems first to have attracted your attention upon receipt of a letter from the Board of Revenue, dated 18th March 1817, transmitting a communication from the Acting Collector in the *Twenty-four Parganas*, dated the 27th February preceding. 'That the Record Offices,' says that gentleman, 'throughout the country are in a most lamentable state of irregularity, frequently nothing more than a *vast collection of forgeries*, which serve as a never-failing fund of emolument to the Record-keepers and the rest of the native *amlah* in their confidence, must be too well known to the Board to require any enlarging on.' Of the particulars which he adduces in support of this general representation, we shall repeat only one, which is of peculiar importance. 'I am confident,' he says, 'that in every district collusion, more or less, exists between the *zemindars* and the native Record-keepers.' We trust that your attention has been directed to the proof thus afforded of the difficulty which will be found in preventing, not only between the zemindars and *patwaries*, but also between the *zemindars* and *kanungoes*, such a state of collusion as would frustate all our expectations from that class of functionaries. In this representation of the state of the Record Offices, we find that all authorities concur. We desire to recall your attention to the opinion expressed in the following passage of your letter dated 17th July 1818—'It appears to us to be an object of the highest importance to obtain and preserve an accurate register of existing tenures, and of all transfers and divisions of landed property.' It gives us great pleasure to repeat what you add immediately after, 'and the attainment of the object shall occupy our anxious attention.' It cannot fail, however, to fill us with regret that a duty so simple and of so much importance should for so great a length of time have been utterly neglected. The cause of the disgraceful state of the business of registration is, by the Board of Commissioners and by the Commissioners in Bahár and Benares, ascribed almost wholly to the negligence and incapacity of the Collectors."—*Revenue Letter to Bengal of 2nd May* 1821, III *Revenue Selections*, 55.

result of judicial decisions with reference to the mahals and villages to which they apply,' is important as far as it reaches; that is, provided those decisions are formed upon the proper principle, and not according to that practical application, the mischievous consequences of which are spoken of in the preceding paragraph. As there is no doubt, that it is only after an inquiry as complete as a judicial inquiry ought to be, that rights ought to be recorded as definitely ascertained, it remains for you to consider by what means such inquiry can be made, with the greatest despatch, into the numerous cases which will present themselves for determination. It is in the highest degree important, that your design of adjusting the rights and interests of the *raiyats* in the villages as perfectly in the Lower as in the Upper Provinces should be carried into effect. The doubts which we have already expressed with respect to the sufficiency of the Collector's agency will receive from you a due degree of attention. The complaint you make with respect to the limited extent of the machinery which you can apply is of serious importance. You certainly do not estimate too highly the danger of performing such inquiries precipitately, and without due security for this being sufficiently exact, and from your assurance 'that the matter will continue to command your most anxious attention,' we feel confident that no unnecessary delay will be incurred. If the great cause of delay is the inadequate extent of the agency you can employ, it is important to consider by what means it may be practicable to enlarge it. We shall have the greatest satisfaction in receiving the result of your deliberation upon this subject, and shall be ready most zealously to co-operate with you for the speedy accomplishment of so desirable an end. Should you succeed in securing to the *raiyats* those rights, which it was assuredly the intention of the Permanent Settlement arrangements to preserve and maintain; and should you, in all cases where the nature and extent of those rights cannot be now satisfactorily ascertained and fixed, provide such a limit to the demand upon the *raiyats*

The Directors approve that the Rights and Interests of the Raiyats in the Lower Provinces should be adjusted.

as fully to leave to them the cultivators' profits under leases of considerable length, we should hope that the interests of that great body of the agricultural community may be satisfactorily secured."

Intentions expressed as to the Raiyats in the Lower Provinces not effectuated.

§ 370. The excellent intentions expressed by the Court of Directors and the Government of India in this correspondence were unfortunately not effectuated, so far as regarded the *raiyats* of the permanently settled Lower Provinces; and while this correspondence was being carried on, fresh legislation to the injury of the cultivators of the soil took place in connection with the rights of purchasers of estates at revenue sales. A Regulation was passed in 1822 to modify and explain the law relating to the sale of land for arrears of revenue. The preamble of this enactment[8] recited that the *then* existing Regulations on this subject were defective, inasmuch as they did not specify the conditions which were to be held necessary to the validity of such sales, nor define with sufficient precision and accuracy the nature of the interest and title conveyed to persons purchasing estates so sold; and that various doubts had accordingly arisen on both these questions, which it appeared necessary and proper to remove. It was therefore provided[9] that the act of sale transfers to the purchaser all the property and privileges, which the engaging party possessed and exercised at the time of settlement, free from any accidents or incumbrances that might subsequently have been imposed, or have supervened thereupon, such as sale, gift, or other transfer, mortgage, marriage settlement, or other assignment or the like; and that, as the property and privileges aforesaid were perpetually hypothecated to Government for the revenue, no claim of right founded on any act of the original engager or his representative, or on any plea impeaching the title by which the said engager may have held, shall be allowed to impugn the right of the Revenue Authorities to make the sale, or to bar or affect the title and interest conveyed to the purchaser by

Fresh Legislation to the Detriment of the Raiyats.

Declaration of the effect of a Sale for arrears of Revenue.

[8] Regulation XI of 1822. [9] Section 29.

the sale. In pursuance of this principle, it was enacted[1] that all tenures which had originated with the defaulter or his predecessors, being representatives or assignees of the original engager; as well as all agreements with *raiyats* or the like, settled or credited by the first engager or his representatives subsequently to the settlement; as well as all tenures which the first engager was under the conditions of his settlement competent to set aside, alter or renew—were liable to be avoided and annulled by the purchaser of the estate or *mahal* at the sale for arrears due on account of it, subject only to such conditions of renewal as attached to the tenure at the time of settlement. From the operation of this rule were excepted *bonâ fide* leases of ground for the erection of dwelling-houses, or buildings, or for offices therefor, or for gardens, tanks, canals, watercourses, or the like purposes, which leases or engagements were to continue in force and effect so long as the land was duly appropriated to these purposes and the stipulated rent paid.

Tenures and agreements with Raiyats voidable by Sale.

Exceptions to the operation of this rule.

§ 371. It was further enacted[2] that these rules or any other rules contained in the then existing Regulations, by which persons were declared competent, under certain restrictions, to annul engagements contracted between former proprietors and their under-tenants, and in certain cases to enhance the rent payable by such tenants, should not be construed to entitle the purchasers of land at public sales to disturb the possession of any village *zemindar*, *pattídar*, *mufassil talúkdar*, or other person having an hereditary transferable property in the land or in the rents thereof, not being one of the proprietors party to the engagement of settlement or his representative—nor was the rule to be construed to authorize a purchaser *to eject a khúdkasht kadímí raiyat or resident and hereditary cultivator having a prescriptive right of occupancy*—nor was a purchaser to demand a higher rate of rent from an under-tenant of either of these descriptions than was receivable

Explanation of this rule in respect to Khúdhasht Kadímí Raiyats.

[1] Section 30.

[2] Section 32.

by the former *malguzar*, saving and except in cases in which such under-tenants had held their land under engagements stipulating for a lower rate of rent than would have been justly demandable for the land, in consequence of abatements having been granted by the former *malguzars* from the *old established rates* by special favour, or for a consideration, or the like; or in cases in which it might be proved that according to the custom of the *pargana*, *mauza*, or other local division, such under-tenants were liable to be called upon for any new assessment or other demand not interdicted by the Regulations of Government. It was declared[3] that persons purchasing at public sales, who were desirous of enhancing the rents of their under-tenants, were still to be required, in the absence of specific engagements, to serve a formal notice of their intention, as prescribed in section 9 of Regulation V of 1812, but that nothing in this section was intended or was to be construed to affect the right of any individual possessing a transferable or hereditary right of occupancy to contest the justness of the demand so made, and to pay his rent as before until the contrary was decided by a competent Court of Justice: nor in any respect to annul or diminish the title of the *raiyats* to hold their land subject to the payment of fixed rents, or rents determinable by fixed rates according to the law and usage of the country. With respect to these last provisions, it is to be observed that they do not create *exceptions* to the general rule contained in the preceding provisions, but *construe* and *explain* the *then* existing law, assuming that the *raiyats* always had the rights referred to. Two descriptions of under-tenants are spoken of, *viz.*—(1) village *zemindars*, *pattídars*, *mufassil talúkdars* or other persons having an hereditary transferable property in the land, or in the rents thereof; and (2) *khudkasht kadímí raiyats, or resident and hereditary cultivators having a prescriptive right of occupancy.* The term "*khudkasht kadímí raiyat*" is not defined in the

Notice of enhancement still required. Explanation of Regulation V of 1812.

These Provisions are explanatory of the law—do not create an exception.

Who were Khudkasht Kadímí Raiyats.

[3] Section 33.

Regulation further than by the words which above accompany it: but it was construed to mean *khudkasht raiyats* who had been in possession of their lands for more than twelve years before the decennial settlement.[4] Mr. Justice Trevor said that the use of this term in the Regulation of 1822 "to designate the cultivators, who would not be liable to eviction on a sale for arrears of revenue, gave rise to the doctrine that *khudkasht raiyats*, who had their origin subsequent to the settlement, were liable to eviction; though, if not evicted, they could only be called upon to pay rents determined according to the law and usage of the country—and also that the possession of all *raiyats*, whose title commenced subsequent to the settlement, was simply a permissive one, that is, one retained with the consent of the landlord."[5] The establishment of this principle as the law of the land practically left the *zemindars* free to enhance the rents of all but a small class of *raiyats* up to any point that competition would raise them: because, although the provisions of the Regulation applied directly to those estates only which had fallen into arrears of revenue and had in consequence been sold, the principle once established was extended by the power of the *zemindars* to other estates also. Quite apart from their power, the raising of rents in one place tended to create a higher prevailing rate, which could by the law be imposed upon the tenants of estates, which had not been the subject of a revenue sale. Moreover, these tenants well knew that, if they resisted, the *zemindar* would accomplish his purpose by allowing the estate to fall into arrears and be sold, purchasing it in the name of a relation[6] or dependent.

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[4] See B. L. R., Sup. Vol., F. B., 215.

[5] B. L. R., Sup. Vol., F. B., 219—where a case from the Sadr Díwání Decisions for 1856, pp. 617 to 628, is quoted. This was a case of sale under Reg. XI of 1822.

[6] In their Dispatch of the 15th January 1819, the Court of Directors said :—"It too often happens that the *quantum* of rent which the *raiyats* pay is regulated neither by specific engagements, nor by the established rates of the parganas or other local divisions in which they reside, but by the arbitrary

Enlargement of the powers of Purchasers at Sales for arrears of Revenue by further legislation in 1841.

§ 372. This Regulation of 1822 remained in force for nineteen years, namely, until 1841, when it was repealed by Act XII of that year, apparently without any saving of the rights acquired under the Regulation by purchasers, who had not exercised them before the repeal. This Act enacted[7] that the purchaser of an estate sold for the recovery of arrears of revenue due on account of the same, in the permanently settled districts of Bengal, Bahár, Orissa and Benares, should acquire the estate free from all incumbrances imposed upon it after the time of settlement, and should be entitled, after notice given under section 10 of Regulation V of 1812, to *enhance at discretion* (anything in the existing Regulations to the contrary notwithstanding) the rents of all under-tenures in the said estate, and to eject all tenants thereof with the following exceptions:—(1) tenures which were held as *istemrari* or *mukarrari* at a fixed rent more than twelve years before the Permanent Settlement[8]: (2) tenures existing at the time of the Decennial Settlement and not proved to be liable to increase of assessment on the grounds stated in section 51 of Regulation VIII of 1793: (3) lands held by *khudkasht* or *kadímí raiyats* having rights of occupancy at fixed rents or at rents assessable according to fixed rules[9] under the Regulations in force: (4) lands held under *bonâ fide* leases at fair rents, temporary or perpetual, for the erection of dwelling-houses or manufactories, or for mines, gardens, tanks, canals, places of worship, burying-grounds, clearing of jungle, or like beneficial purposes, such lands continuing to be used for the purposes specified in the leases[1]:

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will of the *zemindars* . . . . . The documents here enumerated unequivocally confirm the truth of all the information of which we were previously possessed respecting the absolute subjection of the cultivators of the soil to the discretion of the *zemindars*."

[7] Section 27.

[8] These had been protected by section 49 of Regulation VIII of 1793.

[9] Mr. Colebrooke's rule, for example, which was not repealed until 1859.

[1] This class had been protected from the beginning—see section 8 of Regulation XLIV of 1793.

(5) farms granted in good faith at fair rents and for specified areas by a former proprietor for terms not exceeding twenty years, under written leases registered within a month from their date. The power to enhance at discretion the rents of all tenants other than those falling within these five exceptions, given by this Act to purchasers at sales, afforded them the amplest power of exacting rack-rents from the *raiyats*. We have no statistics showing the exact extent to which these powers were exercised, but there can be little doubt that no feeling of moderation on the part of purchasers restrained them from using to the utmost the facilities which the Legislature had placed at their disposal for exacting the highest rent that could be wrung from the cultivators. Like the purchasers at the sales under the Incumbered Estates' Act in Ireland, they bought estates as a speculative investment, and expected to make the most of their bargain.[2]

Act I of 1845.

§ 373. Act XII of 1841 was repealed by Act I of 1845, which, however, re-enacted the above provisions *verbatim*. This latter Act remained in force fourteen years, until it was repealed in 1859. Section 37 of Act XI of 1859 (which was passed five days after Act X) enacts that the purchaser of an entire estate in the permanently settled districts of Bengal, Bahár and Orissa, sold under the Act for the recovery of arrears due on account of the same, shall acquire the estate free from all incumbrances, which may have been imposed upon it after the time of settlement, and shall be entitled to avoid and annul all under-tenures and forthwith to eject all under-tenants with the following exceptions:—(1) *istemrari* or *mukarrari* tenures held at a fixed rent *from the time of*[3] the Permanent Settlement: (2) tenures existing at the time of settlement, but not held at a fixed rent, provided that the rents of such tenures shall be liable to

Act XI of 1859. Restoration to the raiyats of some portion of that which Acts XII of 1841 and I of 1845 had taken away.

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[2] See *ante*, pages 285-86. They were generally money-lenders, and successful legal practitioners.

[3] Words in *italics* substituted for "more than twelve years before" in Acts XII of 1841 and I of 1845.

enhancement under any law for the time being in force :[4] (3) *talukdarí* and other similar tenures created since the time of settlement and held immediately of the proprietors of estates and farms for terms of years so held, when such tenures and farms have been duly registered under the provisions of this Act: (4) leases of lands whereon dwelling-houses, manufactories or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship or burning or burying-grounds have been made or whereon mines have been sunk: but the rent of these lands can be enhanced under the law for the time being in force if they can be shown to have been held at what was originally an unfair rent, and if they have not been held at a fixed rent, equal to the rent of good arable land, for a term exceeding twelve years.

Proviso—Right-of-occupancy Raiyats protected from Ejectment by auction-purchaser, and from Enhancement at discretion—

Provided always that nothing in this section contained shall be construed to entitle any such purchaser to eject any *raiyat* having a right of occupancy at a fixed rent or at a rent assessable according to fixed rules[5] under the laws in force, or to enhance the rent of any such *raiyat* otherwise than in the manner prescribed by such laws, or otherwise than the former proprietor, irrespectively of all engagements made since the time of settlement, may have been entitled to do.[6] In order to understand fully the above provisions of Act XI of 1859, they must be read with Act X of 1859. In this way, for example, the omission of *khudkasht kadímí raiyats* from the exceptions in this Sale Law comes to be explained when we find Act X protecting all tenants who have held their land at rates

Acts X and XI of 1859 to be read together.

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[4] This protected from ejectment. They would also be protected from enhancement, if shown to be entitled to the benefit of the twenty years' presumption of Act X.

[5] These are now to be found in Act X of 1859, which repealed Mr. Colebrooke's rule and the other rules contained in the Regulations.

[6] The last portion of the sentence commencing 'or otherwise' was probably intended to meet the case of dependent taluks or other tenures intermediate between the *zemindars* and *raiyats*—a case not provided for by Act X of 1859.

not changed since the Permanent Settlement, and assisting the proof of such rights by the twenty years' presumption.

§ 374. From the account which has just been given of the Revenue Sale Laws, it will appear that the legislation by which the Government thought necessary to support the *zemindars* from 1799 to 1859 with the view of enabling them to realize their rents and so discharge the Government revenue, placed them in a position of abnormal superiority detrimental to the rights and interests of the *raiyats*. The insecurity of tenure, the mischievous power of annoyance, interference and extortion, which these laws have given to the auction-purchaser have been fatal obstacles to agricultural improvement, and have proved at once the source and the instrument of oppression and wrong.[7] Sir H. Ricketts thus described in 1850 what took place upon the sale of an estate :—"Affrays and litigation cannot but ensue. There must always in every case be years of enmity between the new landlord and his tenantry. There being no record of the *protected*,[8] he assumes that none are protected, while the tenants set up groundless claims to protection, oftentimes supported by the late zemindar. . . . . I can imagine no *condition* more pitiable than that of the inhabitants of a *zemindarí* transferred by sale

The Revenue Sale Law gave the Zemindars a position of Superiority detrimental to the Raiyats.

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[7] Ample evidence on this point, including the testimony of two gentlemen, who afterwards held the office of Lieutenant-Governor of Bengal, Sir F. Halliday and Sir J. P. Grant, will be found in certain papers of 1833 regarding the *Consequences to Under-tenures of the Sale of an Estate for Arrears of Revenue*. In 1815 Mr. H. Colebrooke, with respect to the extent of this evil, wrote thus :—"When it is recollected how large a proportion of the lands of Bengal changed masters in a few following years, it will be easily conceived how prodigiously numerous must have been the cases, in which engagements between landlord and tenant were annulled by sale for arrears due by the landlord to Government."—I *Revenue Selections*, 379. The Directors took the same view—see *ante*, page 558. At a later period, however, revenue sales became less frequent. The threat of allowing the estate to be sold for arrears of revenue was one well understood by those, who had anything to lose by such a sale, and was often as effectual as the consequences of a very sale.

[8] The law contained no provision for compelling the defaulting proprietor to make over his papers to the purchaser, who thus had to start absolutely in the dark.

Sir H. Rickett's description of the consequences to the tenants of a Revenue Sale.

for arrears. Though the purchaser may be a man of good character, his agent may be a tyrant. All the tenures of all classes are open to revision. Each inhabitant can see before him only the feeing of *piyadas*[9] and *amins*,[1] *salami*[2] to the new owner, weary journeying to the sadr station and at last re-adjustment of his rent—'*re-adjustment of his rent*'—we can talk of it and write of it with indifference, but to the tenants of an estate a sale is as the spring of a wild beast into the fold, as the bursting of a shell in the square. It is the disturbance of all they had supposed stable. The consequence must be a recasting of their lot in life, with the odds greatly against them."

§ 375. There were Courts of Justice, no doubt, in which, according to the theory of our system, the *raiyats* might prove their rights, if they had any, and might obtain redress for violations of the law and damages for acts of wrong; but litigation is a form of remedy difficult to the poor and ignorant, and in no country more difficult than in India. The law was all on the side, not of the *raiyats*, but of their landlord, who, besides this superiority and the superiority of wealth and power, could, moreover, legally compel the attendance before them of any *raiyat* suspected of an intention to complain before the authorities, or any other *raiyat*, who might give evidence on behalf of a complainant; and what attendance at the Zemindar's Rent-Office meant in days when Magistrates and their Courts were few and far between, and the police were limited in number and inefficient and corrupt, was too well known to the unfortunates who were sent for.[3] The law of distraint had been amended on paper, but under cover of the power which it conferred, the same wrongs continued to be perpetrated. In 1832 the

The Courts of Justice why unable to afford redress.

[9] The messengers sent to compel the attendance of the *raiyats*.

[1] Who made the measurement of the lands held by the tenants.

[2] A present given out of respect, a fine on the grant or renewal of a lease.

[3] The Reports of the *Police Administration* and of the *Administration of Criminal Justice* afford superabundant proof of the above statements. The Police above spoken of were the *burkandazes* in the pay of Government. Every village had also its *chaukidar*, watchman or policeman, paid by the *zemindar*, and therefore amenable to his wishes.

same account was given as in 1811 of the dealing of the zemindars with their *raiyats,* and it was again urged that the only efficient remedy was an authoritative adjustment of their mutual rights. "If the rights and interests of the agriculturists," wrote a Civilian, "had been previously ascertained, and means taken for their maintenance by the summary enforcement of a penalty at the instance of a public prosecutor, the practical adoption of the principle of limiting the demands of the State would have realized many of the advantages held out by the theory. But it is easy to legislate in the closet; and in the formation of the Revenue Code, the adoption of the principles of English common law interposed an almost insuperable barrier to the participation by the *raiyats* of any of the benefits which it was undoubtedly the intention of the legislator to extend to them by leaving them to seek redress by a civil action for any injuries or infractions of the Regulations, or for encroachments on their vested rights and ancient privileges, which they might experience at the hands of the newly created landed aristocracy. The prosecution of a suit at law involves the expenditure of money and time, neither of which could well be spared by the agriculturists, while the latitude of appeal allowed by the Civil Code enabled the richer party to protract the ultimate decision of the case to an almost indefinite period—in fact, to refer the cultivators to the Courts at law for a remedy against the *zemindar* was tantamount to a denial of justice."[4]

§ 376. The same writer gives the following account of the law for the recovery of rent and its operation.[5] "To enable the proprietors to fulfil their engagements with the Government, it was likewise deemed expedient to vest them with certain extra-judicial powers of great extent over their under-farmers and tenants (for the *raiyats* under the operation of the Code can be considered in no other light than as tenants-at-will), by which they were author-

[4] *Land Tenure* by a Civilian, p. 93.

[5] *Id.*, p. 100.

A Civilian's Account of the operation of the Law for the Recovery of Rent in 1832.

ized to attach their crop, and all personal property (tools and materials of manufacture, cattle, seed-corn, and implements of husbandry excepted), without reference to the Courts of law, and to cause the same to be sold by the 'kazi' or other person appointed for the purpose in liquidation of the arrears. It was supposed that no undue or improper exercise of those powers would be resorted to, in consequence of the severity of the penalties provided; but as these penalties could be enforced only on proof being given in a judicial Court, an injured *raiyat* with neither time or money to spare is ill able to bear the expense of both, which the institution of a suit and the necessary attendance involve; the chances of impunity are very much in favour of the oppressor, and those chances are enhanced by the denunciation of punishment for unfounded complaints, while the Code itself opposed an almost insuperable obstacle to the production of proof by rendering it difficult, if not impossible, for the *raiyat* to summon the *zemindarí* amlah to substantiate his plaint. On the other hand, the severity of the penalties for resistance of attachment, and for the removal, or fraudulent transfer, of the property, with intent to evade it, together with the certainty of their being enforced by summary process, rendered opposition hopeless. The *raiyats* were subsequently subjected to further severities, and were rendered liable to personal arrest and imprisonment before trial, and in default of bail, by summary process for arrears—their doors to be forced by the police, and their houses entered in search of distrainable property. In the event of their being endamaged by the decision passed after the issue of summary process, they could obtain redress only by instituting a civil action, the expense and delays attendant on which (arising out of the latitude of appeals, in a great measure) opposed obstacles which to a poor man may be viewed as insurmountable. If a sale of the proprietor's estate, in satisfaction of arrears of revenue, took place, the sale cancelled all previous obligations between him and the *raiyats*, and the *zemindars* took frequent advantage of this claim by

forcing a sale, solely to enable them to repurchase under a fictitious name, and to raise the rents fixed under former stipulations at a lower rate."

§ 377. In October 1853, Mr. Welby Jackson wrote as follows :—"The state of the law for the decision of suits between landlord and tenant requires alteration. Every one concurs in condemning it, and declares that Regulations VII of 1799 and V of 1812 are mere instruments of oppression in the hands of the landlords. By the help of these instruments a *zemindar* by simply stating an untruth can either consign a man to prison, or sell off his property by distress as a preliminary, without any previous enquiry into the validity of his claim by a Court or public officer. This power is not only in the hands of the *zemindars*, but also in the hands of their agents, *gomashtas*, petty farmers—in fact, of any one who pleases to assert falsely, whether in part or entirely, that a cultivator is in balance of rent due to him. How totally regardless the Bengalis are of speaking the truth, and how perfectly ready they are to make use of any fraudulent trick to serve their purposes, is too notorious to need mention. Fraud and falsehood from the highest to the lowest are the rule in Bengal, and, when successful, are not in the least disreputable. It may easily be inferred what a terrible engine of oppression these laws form in such hands. It may be said the *raiyats* have a remedy in giving security and bringing their suit to remove the attachment of their goods, or prevent the incarceration of their persons ; but what a difficult, almost impossible, matter it is for a poor man to find security ; and further, it must be security to the satisfaction of the *amín* or the *nazir*, both of whom are probably bribed by the more powerful party to reject it if tendered ; and, again, the party arrested must go under arrest to the *Sadr* station, sometimes from 50 to 100 miles off, before his tender of security can be considered, leaving his wife and children starving in his absence ; and after reaching the *Sadr* station, he is of course distant from the assistance of all, who might be disposed to be his security. The fact is, security cannot

Mr. Welby Jackson's Account in 1850.

be given by a poor man ; and the remedy assigned him by the law, the preliminary of which is security for the amount claimed, is useless. The result is, that his property and his person are completely in the hands of his landlord. Again, though the *raiyat* might in very gross cases be able to give security, he seldom has the opportunity. If the object is oppression, and the claim a false one, the *zemindar* who issues the notice of claim, either himself or through the Collector's *nazir*, takes good care that it shall not be served, but a return of service is made without. True, he is liable to punishment for this on suit, but it is impossible to prove it against him, so that, in effect he acts with perfect impunity. These legal remedies are available only in the hands of the rich ; the poor are without the means of profiting by them. Such must be the case where the *zemindar* acts spontaneously on his own legal responsibility, and the *raiyat* is left to enforce that responsibility by process of law. There is but one remedy, that the *zemindar* shall no longer be allowed to be judge in his own case, subject merely to unreal and ineffective restrictions. No *raiyat* or other persons should be liable to be imprisoned, or to have his goods sold by distraint, without some previous enquiry by an impartial person into the validity of the claim against him. The enquiry, too, must not be formal, but fair and real. It is too much the practice in Bengal, even for the Courts of Justice, to say :— 'The witnesses say so and so ; I have no reason to disbelieve them,' when it is well known that the witnesses can be purchased for a few annas a piece ; and that, unless there is something more than their assertion to establish a fact, no one is convinced of the truth of it. I would urge that the previous inquiry should be careful and effective, as well as speedy, that a poor labouring man, whose daily bread depends upon his daily labour, may not be starved into compliance by legal delays. It is scarcely to be conceived how enormous is the extent of tyranny and oppression carried on under the present law, so much so, that zemindars and men of respectability have assured me that almost

all the claims enforced by those means are false. The *raiyats* so well know the power of the *zemindars* that, if they are really in balance, they never think of contesting the point."

§ 378. As a natural consequence of the arbitrary power enjoyed by the *zemindars* and its exercise, rents were in many parts of the country run up to the highest rates,[6] which the cultivators could pay and retain a bare subsistence for themselves and their families. Mr. (afterwards Sir J. P.) Grant said in 1840 that the right to enhance *according to the present value* of the land did not differ in principle from absolute annulment of all tenure: and there can be little doubt that under the influence of English political economy the *raiyats* were gradually coming to be regarded as tenants in the English sense; and the rent payable by them as susceptible of adjustment according to the English theory.[7] We find Lord William Bentinck, the Governor-General, writing to the Court of Directors on the 26th September 1832 in the following terms:—"In regard to the provinces under a perpetual settlement, it might be premised that rents had greatly risen since the year 1793, in consequence of the rise of prices. The question then was, who was to reap the profit arising from that source? The Government had precluded itself from participating in the benefit. If the *raiyats* were to participate, by what standard was the demand upon them to be regulated? If it were possible to ascertain the rents paid by them in 1793, it would be unjust to fix those rates at the present day. In many instances, the increase of profit might have been created by means of improvements made at the exclusive expense of the *zemindars;* in many more instances the fee-simple of estates had been transferred, on the understanding that

Great Enhancement of Rents.

Influence of the English Theory of Rent.

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[6] It has been calculated that since the Permanent Settlement rents have been raised from 20 to 80 per cent. in Bardwán, Hughly, Murshedabad and Dinajpore; 260 per cent. in Patna; and 480 per cent. in Durbhanga.

[7] See one of the *Rules for the Management of Government Khas Mahals*, *ante*, page 555 *note*, which distinctly enunciates the theory of *competition rents*.

the rents were not to suffer diminution by the act of the Legislature, and any attempt now to interfere between the landlord and tenant would be productive of infinite confusion, and would infallibly tend to shake the confidence which the people had hitherto reposed in the Government." . . . . There was, "however, no disputing the fact, that in 1793, the British Government disclaimed for itself and in favor of the *zemindars* all claim to the rent of the land, in consideration of a fixed annual revenue, which the *zemindars* bound themselves to pay. The Regulations of Government provided at the same time for the preservation of all rights, prescriptive and other, of all the cultivating classes. The *raiyats* were heretofore nominally the tenants of the State; but they became *de jure*, what they had long been, *de facto*, the tenants of the zemindars, whose demand on them was thus acknowledged and legalized to the *extent of the Government share of the gross produce of the soil; what that share was*, i. e. *what proportion it bore to the whole, never having been defined.* But at the same time," he thought, "that, in fixing the revenue in perpetuity, the Government compromised no rights but its own *to the increased rent which would have accrued naturally from increased produce, enhanced prices*, and the reclaiming of waste lands; and that no act of the Government could be construed as legalizing a demand on the part of the zemindars of more than the proper land-rent, that is, the Government share of the gross produce; but at the same time all that the cultivating classes had a right to demand was that the proportion which the Government share should bear to the gross produce of the soil should be regulated on some fixed principle, which might always and easily be appealed to. The rent realized by the zemindar would fluctuate, more or less, under such a principle; but by this fluctuation he would gain as often as he would lose, and the rent taken from the cultivating tenant would not trench, as it might be feared was sometimes the case at present, on the very means of subsistence and *just wages of labour*."

§ 379. Elsewhere Lord William Bentinck said:—"It is impracticable also to fix an invariable standard of demand even on net produce. In another place I observed that a maximum however might be fixed, and that the relinquishment by Government of 30 or 35 per cent. of the estimated gross rent would seem to be sufficient under the most unfavourable circumstances to serve as a remunerating return, and to cover all expenses and risk of collections. By the term 'gross rent' I explained that I meant the proportion of the produce or *the value of the produce remaining after defraying the wages of labour and profits of stock.*" . . "I shall, in this place, briefly state my notion of the nature of the Government assessment. I consider that next to the general term Revenue, the word Tax is the most appropriate designation for the Government demand. It is levied, where there are acknowledged landowners, on the rent; and, where there is no middleman between the Government and the actual cultivator, it is levied directly on the produce of the soil, after deducting the wages of *labor and profits of stock* as well as a certain proprietary allowance, where the cultivator and owner of the soil may be one and the same individual. In neither case, however, ought the demand of Government to be proportioned to the value of the products grown. In the one case, the assumption of such a standard would directly discourage the cultivation of the richer articles; and in the other case, it would be the interest of the landowner to prevent the cultivation of such products in anticipation of a settlement, when the tax would be increased in the proportion to the estimate formed according to such a standard of the resources."[8]

Lord William Bentinck's View of Rent and Revenue.

§ 380. In a dispatch of the 22nd February 1827 the Government of Bengal ascribed "the alleged inadequacy of the Civil Tribunals in the Lower Provinces to meet the demands upon them, to the precipitation with which the Permanent Settlement was carried into effect *without*

[8] *Minute by the Governor-General, dated Simla, the 26th September* 1832.

Courts failed to protect individual Rights because interests in Land had not been defined by Law, and could not be proved by evidence of Usage.

previously defining the relative rights and interests of the zemindars and other landholders and the various classes of the cultivating population." To the same effect the Select Committee of 1831-32 said :—" The causes of this failure may be ascribed in a great degree to the error of assuming at the time of making the Permanent Settlement that the rights of all parties claiming an interest in the land were sufficiently established by usage to enable the Courts to protect individual rights ; and still more to the measure which declared the *zemindar* to be the hereditary owner of the soil, whereas it is contended that he was originally, with few exceptions, the mere hereditary steward, representative, or officer of the Government, and his undeniable hereditary property in the land-revenue was totally distinct from property in the land itself. Whilst, however, the amount of revenue payable by the *zemindar* to the Government became fixed, no efficient measures appear to have been taken to define or limit the demand of the *zemindar* upon the *raiyats*, who possessed an hereditary right of occupancy, on condition of either cultivating the land, or finding tenants to do so." Speaking of the encroachments of the Lords of the Manor upon the common lands in England, M. De Laveleye says :—" In 1845, Lord Lincoln could assert in Parliament, without contradiction, that, in nineteen cases out of twenty, the House had disregarded the rights of the peasants, not from any feeling of antagonism, but from sheer ignorance. The country people could not produce before the Committee, which discussed the laws, any proof of rights reposing merely on custom, nor could they pay Counsel to defend them. . . . The Legislature ignored the existence of rights derived from the ancient *Mark* organization. It allowed the Lord of the Manor's eminent domain ; and thought, with Economists, that the common lands should be surrendered to the more productive efforts of individual activity. In the middle ages and the Sixteenth Century the copyholders had been despoiled of their property, because

their title of occupation was deposited in the records of the Manor, against the usurpation of which they had to defend themselves."[9] So in the Lower Provinces of Bengal those *raiyats* who had rights lost them, because they were too poor and too ignorant of our forms of procedure and rules of evidence to produce proof of usage ; and the only records of their title by occupation was in the offices of the *patwaries* who were abolished, and of the *zemindars*, who withheld them.

[9] Primitive Property, p. 257.

CHAPTER XXVI.

Landholding, and the Relation of Landlord and Tenant in India—Some Account of the Settlement of the North-Western Provinces.

§ 381. I now resume the account of the settlement of the Ceded and Conquered Provinces.[1] The Court of

[1] It may be convenient to notice here the settlement history of Cuttack, which though territorially a part of the Lower Provinces is connected, so far as this history is concerned, with the Upper Provinces. This province was ceded to the East India Company, as we have seen, in January 1804; and it was then placed under the management of two Commissioners, who took immediate steps for securing the rights of the landholders in the *Mogulbandi* lands, which by established usage were considered responsible for the revenue assessed thereupon and were held subject to this usage. On the 15th September 1804, a Proclamation was issued to the effect that a settlement would first be made for a period of one year (1212): that, at the end of 1212, a settlement would be made for *three* years (1213-14-15) at a jama formed upon a just and moderate consideration of the receipts of 1212 and former years: that, at the expiry of this triennial period, a further settlement would be made for a period of *four* years at a jama obtained by adding to the annual rent of the preceding term two-thirds of the net increase of any one year of such term: that, at the expiry of this quartennial period, a further settlement would be made for a period of *three* years at a jama obtained by adding to the annual rent of the preceding term three-fourths of the net increase of any one year of such term: and that, at the expiration of these four settlements including a period of eleven years (*i.e.* to end of 1222), a permanent settlement would be concluded for *such lands as were in a sufficiently improved state of cultivation to warrant the measure, on such terms as Government should deem fair and equitable.* This proclamation was incorporated in Regulation XII of 1805, which recites the measures taken by the Board of Commissioners and provides generally for the settlement of the province. The rule that the jama of the last year of the quartennial settlement should become perpetual was extended to Cuttack by section 6, Regulation X of 1807, but was again rescinded by section 2, Regulation VI of 1808, which Regulation enacted that, instead of a quartennial settlement, a settlement should be made for one year (1216), and then a fresh settlement for three years

Directors finally resolved that it was essential to their judgment, on the adequacy and stability of any settlement submitted for their confirmation, not merely that they should have ample information respecting the general nature and the resources of the districts, the extent of the

Detailed inquiry into Rights in Land directed.

(1217-18-19), and that the jama of 1219 should be fixed for ever, *if the Court of Directors gave their sanction.* By the same Regulation a Special Commission was created for superintending the settlement, which, on the completion of this work, was abolished by Regulation IV of 1810, and the powers of the Commissioner transferred to the Board of Revenue. The orders of the Court of Directors being opposed to the perpetuity of the settlement, section 2, Regulation X of 1812, rescinded the absolute promise of a permanent settlement contained in sections 5 and 6 of Regulation X of 1807: but section 3 of the same Regulation declared to be in full force the rule that, at the expiration of 1222 a permanent settlement would be concluded for such lands as might be in a sufficiently improved state of cultivation to warrant the measure. The Board of Revenue were directed by section 5 (see *supra*) to submit the necessary report. A further change was made by Regulation I of 1813, which directed a settlement for one year (1220), then a settlement for two years (1221-22), at the expiry of which the Board were to conform to the provisions of section 5, Regulation X of 1212. The Report of the Board as to what lands were and were not in a state of cultivation to warrant a permanent settlement was not however sent in; and Regulation III of 1815, reciting that unavoidable delay had occurred in providing for the revision of the settlement, continued the existing arrangement till the end of 1223. Regulation VI of 1816, reciting that the information acquired by Government respecting the limits and produce of estates was too imperfect to afford grounds for the adjustment of a perpetual assessment, declared that the existing settlement should remain in force for a further period of three years, *i.e.* to the end of 1226. Disturbances, due in a great measure to the operation of the Sale Law, now took place, and a Special Commissioner was appointed by Regulation V of 1818, and was vested with the powers of the Board of Revenue as well as with judicial powers for the administration of civil and criminal justice. Regulation XIII of 1818 extended the settlement for a further period of three years, to the end of 1229, in order to "afford due time to the revenue officers to collect the materials necessary for the formation of a settlement on proper principles." The materials were not however collected, and clause 2, section 2 of Regulation VII of 1822, extended the settlement for five years, to the end of 1234. Act VI of 1837 declared the then existing settlement in force until a new settlement should be completed and confirmed. The settlement so completed and confirmed extended to the end of 1274. Before its expiry, Act X (B.C.) of 1867 was passed, which continued such settlement for a further period of *thirty years*, *i.e.* to the end of 1304. The Province of Cuttack (which includes the Districts of Cuttack, Puri and Balasore) has not therefore been as yet permanently settled, and is not likely to be so until the close of the present century.

land cultivated and capable of cultivation, and the quality and value of the produce, but likewise that they should receive a full and particular detail of all local tenures and usages, of the rates of rent and the modes in which it was collected and distributed, of the constitution of the village communities and the rights and interests of the classes composing them, of the character and habits of the people, and generally of all points relating to the internal condition of the country.[2] Regulation VII of 1822, the main

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[2] Mr. Holt Mackenzie's *Memorandum of the 1st July* 1819, § 224. Elsewhere in the same Memorandum, Mr. Mackenzie remarked that the tendency of our revenue system had been to pay rather too little respect to the various tenures and other circumstances attaching to the Village Communities, which must (if private rights be held sacred) limit the Government demand—and he gave it as his opinion that the adequacy or inadequacy of any assessment of revenue could not be determined without an inquiry into the tenures, rights and privileges of the community; and that such inquiry would properly be united with the investigation of the extent and produce of estates before declaring the cases to which the provisions of a permanent settlement should be held applicable—§§ 253, 254, 302 and 316. In their Revenue Letter of the 17th March 1815, the Directors themselves had said:—"In like manner, it might be asked, when the *zemindars* are not themselves the cultivators, what are the rights of the cultivating *raiyats?* What proportion of the gross produce of the soil do they pay to the *zemindars?* Is this fixed by custom, by agreement, or by the discretion of the *zemindars?* Is it paid in kind, or commuted into money? Is the proportion the same in all situations, or does it vary in different *parganas*, and in different species of soil in the same *pargana?* Can a *zemindar* legally dispossess a resident *raiyat*, who has regularly paid the customary rent for his land, to make way for one who may engage to pay more than the customary rent? If he can, how is the power reconcilable with the privileges which we are warranted by great authorities in ascribing to the *raiyats?* If they cannot, how is the want of power reconcilable with the absolute right of property in the soil, which, under a permanent settlement, we profess to convey to the *zemindars?* What rules have been digested to enforce the grant of *pattas*, and thereby to avert the manifold evils which have resulted from the total inefficiency of the Regulations for that purpose in the Lower Provinces? And lastly, What measures have been adopted for placing the offices of *kanungo* and *patwari* in that state of efficiency, which we regard as altogether indispensable to the security of the legitimate rights of Government, the *zemindars*, and the *raiyats*, and to the prevention of those numerous and fatal disorders, which may be traced, in great part, to the degeneracy or entire suppression of those offices in the Lower Provinces?"—I *Revenue Selections*, 291. The result of the inquiries as to the *zemindar's* power to eject was thus summed up in a letter dated 5th January 1819, from the Board of Commissioners:—"The

principles of which were suggested by Mr. Holt Mackenzie's Memorandum,[3] was passed in order to give effect to this resolution. The preamble of this Regulation recites it to be the wish and intention of Government that, in revising the then existing settlement, the efforts of the Revenue Officers should be chiefly directed not to any general and extensive enhancement of the *jama*, but to the objects of equalizing the public burthens and of *ascertaining, settling, and recording the rights, interests, privileges, and properties of all persons and classes owning, occupying, managing, or cultivating the land, or gathering or disposing of its produce, or collecting or appropriating the rent or revenue* payable on account of land or the produce of land, or paying or receiving any cesses, contributions or perquisites to or from any persons resident in, or owning, occupying or holding parcels of any village or mahal. Section 9 enacted that "it shall be the duty of Collectors and other officers exercising the powers of Collectors, on the occasion of making or revising settlements of the land-revenue, *to unite with the adjustment of the assessment and the investigation of the extent and produce of the lands, the object of ascertaining and recording the fullest possible information in regard to landed tenures, the rights, interests, and privileges of the various classes of the agricultural community;*"—and that for this purpose their proceedings should embrace "*the formation of as accurate a record as possible of all local usages connected with landed tenures, as full as practicable a specification of all persons enjoying the possession and property of the soil or vested with any heritable or trans-*

Regulation VII of 1822.

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reports now submitted would show that the landholders conceive themselves to possess the power of ousting resident tenants, although the practical exercise of such power does not appear to be frequent; and we believe that, in estates consisting of single villages, more instances would be found of tenants deserting, from the inducement of lands on cheaper terms in another place, than of tenants dispossessed to make way for persons offering a higher rent. The legality of this power would be a question for the Courts to decide, unless Government should think proper to determine it by a legislative enactment."—III *Revenue Selections*, 171. See also *ante*, page 531, *note*.

[3] See *ante*, p. 644.

ferable interest in the land or the rents of it, care being taken to distinguish the different modes of possession and property and the real nature and extent of the interests held, more especially where several persons held interests in the same subject-matter of different kinds or degrees." Under these provisions the Settlement Officers in the North-Western Provinces have constructed, for every settled estate, a "*Record of Rights*" containing the most valuable information as to all rights in land existing in those Provinces.

Provisions of Regulation VII of 1822 not carried into immediate effect.

§ 382. No effectual progress was however made for some years in carrying out the inquiries contemplated by Regulation VII of 1822; and when Lord William Bentinck arrived in Calcutta, and assumed the office of Governor-General (4th July 1828), little or nothing had been done towards accomplishing the object with which this Regulation had been passed six years before. It was said that the successful working of the enactment would entail an amount of labour for which Collectors could not possibly find leisure amidst the press of other duties; and that the detailed inquiries required by its provisions would take a century for their completion. There can be no doubt that the work to be performed was wholly beyond the powers of the agency available for its performance; and the utter hopelessness of bringing any portion of it to a conclusion deterred even the most energetic from making a beginning. Lord William Bentinck applied himself to the subject, and, after mastering its details in personal consultation[1] with the Revenue Officers, endeavoured to devise a remedy for the evident mischief caused by the doubt and uncertainty resulting from the non-fulfilment of promises so often repeated. The remedy devised was twofold—to lessen the difficulty and detail of the inquiries to be made for the purpose of settlement; and to increase the agency available for making these inquiries. This twofold remedy was incorporated in Regulation IX of 1833, section 2 of which

Reasons for want of progress.

[1] During a tour of the North-Western Provinces made some two years after his arrival.

repealed so much of Regulation VII of 1822 as prescribed that the amount of *jama* to be demanded from any *mahal* should be calculated on *an ascertainment of the quantity and value of actual produce, or on a comparison between the cost of production and value of produce.* The repeal of this single provision dispensed with an enormous amount of work not compensated by the satisfactory nature of the results obtainable. The third section gave an almost equal amount of instant relief by repealing so much of Regulation VII of 1822 as prescribed that the judicial investigation into and decision on questions of disputed private claims should be conducted simultaneously with the ascertainment of, and determination on, the amount of the Government demand. Settlement Officers were thus enabled to give their full time and attention to the assessment of the land-revenue, leaving these questions of disputed right for subsequent decision.[5] The increase of agency available for settlement work was effected by creating the office of Deputy Collector, which was declared open to Natives of India of any class or religious persuasion. Deputy Collectors were to be subordinate to the Collector under whom they might be placed, and were required to perform all duties assigned to them by that functionary, who was empowered to employ them in settlement duties, in the superintendence of the Government Khas Mahals, and generally in the transaction of any other part of the duties of a Collector.[6]

Remedy applied by Regulation IX of 1833.

Deputy Collectors appointed.

§ 383. A practicable task being now presented to the Revenue Officers of Government as the result of these changes, settlement work was recommenced with fresh zeal, and made real progress under the auspices of Mr. Robert Bird. In order to avoid the injurious consequences of temporary settlements of short duration, and to allow ample time for the collection of full materials

Thirty years' Settlement of the North-Western Provinces.

[5] It will be remembered that the old settlements so often renewed were now on the point of expiring: and the work of reassessment was therefore most urgent.

[6] See Regulation IX of 1833.

for future decision, it was now determined to make a settlement for a period of thirty years. In their dispatch[7] on this subject, the Directors wrote thus:—"Whilst we are anxious to promote the prosperity of the Western Provinces by all the means which we consider likely to advance that desirable end, we must decline granting the discretionary power[8] you solicit, because we are not satisfied that its exercise would be beneficial either to the Government or to the country. We are aware, indeed, of the advantages which may be expected to result from so defining the claims of Government upon those interested in the soil as to create a feeling of security calculated to promote industry and consequent improvement, and we earnestly desire the establishment of such a system as may ensure these desirable objects. With this view we are prepared to sanction the formation of settlements for periods not exceeding thirty years. It appears to us that such a term is sufficient to inspire the holders and occupiers of the soil with those feelings of confidence which it is desirable they should possess, while it reserves to the State the power, without breach of faith, of revising the settlements at the expiration of the term for which they may be made, and of participating to a reasonable and moderate degree in the increasing prosperity of the country—a power the exercise of which may become imperatively necessary by a change in the value of the precious metals or an enhancement of the price of the necessaries of life." . . . . . "There are two points which we desire most especially to press upon your attention. The *first* is the indispensable necessity of ascertaining the rights of all parties interested in the land, and of providing for them as carefully as for those of the State. No claim should be rejected hastily or without due scrutiny, nor should any discouragement be offered to the presentation of claims. They should be received with attention, and

Reasons for this measure.

Rights of those interested in the land to be ascertained and defined.

[7] Dispatch No. 6, dated 12th April 1837.

[8] As to a permanent settlement.

investigated with impartiality. Where a plurality of rights is found to exist, it will be necessary that each should be clearly and precisely defined both as to its nature and extent; and if, in any case, a settlement be made with a superior landholder, protection must be afforded to those who hold under him. The advantages which the chief will enjoy from the assessment being fixed for a definite period must be extended to his inferiors; the amount of their payments must be regulated with reference to the same equitable principles which will govern the contract between the superior landholder and the Government, and the latter must not only insist upon the formal recognition of the right of these advantages, but guarantee their substantial enjoyment."

Under-tenants to be protected.

§ 384. "With regard to the practice which exists of forming assessments according to the value of the crops produced, and not according to the value or capabilities of the land, a subject which was noticed by us in our dispatch of the 15th February 1833, this is a mode of assessment which, we find by the proceedings under review, continues to be observed in many districts in the Western Provinces—a practice which, as remarked by Lord William Bentinck,[9]

Assessment to be made not according to the crops produced, but according to the value and capabilities of the Land.

[9] On this subject Lord William Bentinck said in his Minute of the 26th September 1832:—"As far as the rights of the Government are concerned, I think I am at liberty to assume that a minute inquisition into the capacity of each field or each village of the country is unnecessary. As observed by the Governor of Madras, in his Minute, dated the 10th of May 1822:—'In fixing the assessment of the lands of any village, the safest guide is the actual produce and collections of former years. Nor is any such investigation intended for the benefit of agriculturists, not having permanent interest in the soil; for, as observed in the same minute, the rent which the assessment is intended to fix is that of Government, not that of the *raiyat* and his tenant.' The object of the minute surveys hitherto conducted has been to fix the payment which Government can properly require as revenue from those who directly contribute it, in other words, the amount of private rent available for taxation in the hands of the community, and the amount which should be contributed by each individual of that community. But it has been expressly stated by Sir Thomas Munro, than whom it will be admitted there could not have been a more competent judge, that calculations of produce proceeding from the detail to the aggregate are apt to be enormous. Experience has abundantly proved the justness of this state-

must act as a check on industry and discourage cultivation. We are desirous of drawing your particular attention

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ment. In their letter, dated the 25th of May 1831, the Sadr Board have observed as follows :—'It may be assumed as a fact that the real accounts of the rents of villages cannot be obtained from those who are interested, or think they are interested, in withholding them ; and to *presume that the European officers of this Government, who have no direct connection with agricultural operations, are qualified to assess the rent of every field in a village by classifications of soil, and nice calculations of average produce and prices, even though the extent of stock and personal means of each raiyat, which should have some influence at least in such matters, were known, is, in our opinion, to presume that, in support of which neither the actual results of experiment, nor the fair deductions of reason can be adduced.*' The degree of success which has attended the detailed survey within the Poona Collectorate may be judged of from the observations in the letter from the Bombay Government, dated the 2nd of May 1832, from which it would appear to have been the opinion of the principal Collector of Ahmednuggur, 'that the results contemplated by the institution of survey have not been attained, and that the adoption of the new rates will in reality tend rather to increase than to diminish those inequalities of assessment, which it was one of the primary objects of the survey to remedy.' In a reply to one of the questions propounded to him by the Committee of the House of Commons, in his examination which I have recently had an opportunity of perusing, Mr. Mill has made the following remark :—'Unhappily the assessment partakes too much of guess-work everywhere, and it has been stated in one of the questions already put, that it is little better than guess-work in England. Great pains have been taken in India to make it as little guess-work as possible, and I alluded to the Deccan as a particular case in which care has been take to ascertain the capabilities of the soil, the cost of production, and the surplus that may remain after remuneration is made to the cultivators.' The extract from the dispatch of the Bombay Government above given, will show how completely the above anticipation has proved fallacious. Indeed, the proposed object of all the minute surveys which have been undertaken, seems to have been, not so much the security of the Government revenue, as the security of the rights of the agricultural community. Even for this purpose, the system hitherto adopted seems to have failed. As regards the materials which should be had recourse to with a view to the determination of the Government assessment, I shall here transcribe the 48th and 49th paragraphs of the Resolution I caused to be recorded on the 20th of January last. I have not since seen any reason to doubt the accuracy of the opinions therein stated :—'With regard to the practical effect of the minute investigation into produce, with a view to fix the public assessment, the sentiments of the Revenue officers will be best shown by citing the 13th paragraph of the letter from the Chief Commissioner of Delhi.' It is remarkable that, notwithstanding the care with which Mr. Glyn has apparently laboured to apply to the regulation of the Government demand the several principles

to this subject in especial connexion with the cultivation of cotton, sugar, coffee and other staple commodities suited to the home markets." . . . . . "The prospect is thus opened to Europeans, and will doubtless be embraced of investing their capital in the cultivation of staple articles of product in India, and it may be hoped that corresponding benefits to the agricultural community will accompany the extension of more valuable cultivation. It is nevertheless imperative on us not only to watch narrowly the interests of the native population, but to use every means and embrace every opportunity of improving those interests and ameliorating the general condition of the people. European enterprise and European capital are ever ready to secure the advantages which any changes in State policy, commercial or financial, may seem to hold out; and this it is not our desire to check. At the same time it behoves us to be something more than quiescent with regard to our native subjects, who having the skill and industry may want the enterprise and capital of the Europeans, and occasionally to lead and assist them in the line of improvement. This we consider to be the true policy of a liberal government ruling over a people not possessing the knowledge or means of developing all the resources of their native land." "You are aware that the practice existed at Bombay and Madras as well as in Bengal of making the assessment *according to the produce, and not according to the value and capacities of the lands*, and that it was stated that the Revenue could not afford to bear the change

Encouragement of European Enterprise.

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by which it should be theoretically guided, the result, so far from having led to the establishment of any practical rule of settlement, founded on the application of those principles, seems only to have manifested the insufficiency of them all; and although the calculations of which they were the basis have served to check the conclusions drawn from a merely conjectural estimate of the subject of computation, yet, after all, the principal *data* of settlement appear to have been derived from a review of past payments compared with present circumstances, and from other obvious considerations of position, and facility in realizing the current revenue, aided by the reports of the *Tehsildars* concerning the character and condition of the proprietors."

contemplated by our instructions on this subject. We trust, however, that this practice is generally discontinued at Madras and Bombay, and that the prohibitory instructions which have from time to time been received from us on this subject will be kept in view during the progress of the new settlements in the Western Provinces, and ultimately put a stop to this very objectionable mode of assessment. *It is the productive power of the land and not its actual produce* that should be taken as the guide in making the assessments. By this mode the best description of encouragement is given to the cultivator to extend cultivation, and raise crops immediately beneficial and profitable to himself; and such a system we have on former occasions observed, and are still of opinion, would not ultimately be found detrimental to the interests of the State."

Not the Produce, but the Productive Power of the Land to be the guide in making the Assessment.

§ 385. The assessment of the North-Western Provinces was completed in about ten years. The settlement of the districts having however been made for different periods, and the duration of the settlement, as stated in the engagements of the Malguzars, not always agreeing with that sanctioned by Government, Act VIII of 1846 was passed to avoid the confusion and litigation which might in consequence arise, and also to provide for the continuance of the then existing settlements until a fresh revision should take place.[1] The first section of this Act fixed the *jama* of each district up to and until a certain date specified therein. The first settlement to expire according to these provisions was that of Saharanpore, which was fixed up to the 1st July 1857. The last to expire was that of Banda, which was fixed up to the 1st July 1874. The settlements of the remaining districts were fixed up to dates falling within the intermediate years. Section 5 of the Act provided for the payment of the same *jama* after those dates from year to year until a fresh or revised settlement was

The Annual Revenue and the Term of the Settlement of each District fixed by a Legislative enactment.

[1] *Verbatim* from the Preamble to the Act. *Malguzars* are the person who pay the *malguzari*, or revenue. *Jama* is the amount of revenue or rent annually payable.

effected. It thus happened that the settlements of the districts in the North-Western Provinces began to fall in for revision at the period of an important political crisis in the history of the country,—namely, the period of the Mutiny and the subsequent transfer of the Government from the Company to the Crown. After the suppression of the Mutiny and the restoration of order, the subject of the permanent settlement of the land-revenue of India was considered by Her Majesty's Government, who came to the deliberate conclusion that a settlement in perpetuity in all districts in which the conditions absolutely required as preliminary to such a measure then were or might thereafter be fulfilled, was a measure dictated by sound policy and calculated to accelerate the development of the resources of India, and to ensure, in the highest degree, the welfare and contentment of all classes of Her Majesty's subjects in that country.[2] It was accordingly resolved to

Permanent Settlement of Land-Revenue of India considered by Her Majesty's Government:

[2] *Revenue Dispatch No.* 14 *of* 9*th July* 1862, *published at page* 2889 *of the Calcutta Gazette of* 16*th August* 1862. The consideration of the question arose out of a Resolution of the Governor-General in Council regarding the sale of waste lands and the redemption of the land-revenue thereupon. It is to be observed that the measure contemplated by the Home Government is more extensive than any scheme for a permanent settlement ever before entertained, seeing that the resolution was *to sanction a Permanent Settlement of the land-revenue throughout India.* It was indeed considered that the Madras and Bombay Presidencies were not generally in a condition which would warrant a permanent settlement of the assessed lands at the then existing rates, but in both presidencies it was intended to give the benefit of the measure to such districts as from time to time became fit for it. This important dispatch is too long to reproduce the whole of it here, but the following paragraphs will show some of the most important reasons taken into consideration by the Home Government :—

"The land-revenue of India, as of all eastern countries, is less to be regarded as a tax on the landowners than as the result of a kind of joint ownership in the soil or its produce, under which the latter is divided, in unequal and generally undefined proportions, between the ostensible proprietors and the State. It is not only just but necessary for the security of the landowner that the respective shares in the produce should, at any given period, or for specified terms, be strictly limited and defined. The increase of population, the improvement of communications, and the accumulation of wealth have a tendency to increase the extent of cultivation and the value of the net produce or rent, and the Government may rightly claim to participate in those advantages which accrue from the general progress of society. This has hitherto

sanction a permanent settlement of the land-revenue throughout India, to be introduced gradually into all dis-

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been effected by means of periodical adjustments of the share, or at least of its value in money, which belongs to the State.

"By many persons great advantages have been anticipated from what is usually called a Permanent Settlement, that is, by the State fixing, once and for ever, the demand on the produce of the land, and foregoing all prospect of any future increase from that source. It has been urged that not only would a general feeling of contentment be diffused among the landholders, but that they would thereby become attached, by the strongest ties of personal interest, to the Government by which that permanency is guaranteed. It is further alleged that by this means only can sufficient inducement be afforded to the proprietors to lay out capital on the land, and to introduce improvements by which the wealth and prosperity of the country would be increased. . . . *Her Majesty's Government entertain no doubt of the political advantages which would attend a Permanent Settlement.* The security and, it may almost be said, the absolute creation of property in the soil which will flow from limitation in perpetuity of the demands of the State on the owners of land, cannot fail to stimulate or confirm their sentiments of attachment and loyalty to the Government by whom so great a boon has been conceded, and on whose existence its permanency will depend. . . . . *It must also be remembered that all revisions of assessment, although occurring only at intervals of thirty years, nevertheless demand, for a considerable time previous to their expiration,* much of the attention of the most experienced Civil Officers, whose services can be ill-spared from their regular administrative duties. Under the best arrangements the operation cannot fail to be harassing, vexatious, and, perhaps, even oppressive to the people affected by it. The work can only be accomplished by the aid of large establishments of Native Ministerial Officers, who must, of necessity, have great opportunities for peculation, extortion, and abuse of power. Moreover, as the period for resettlement approaches, the agricultural classes, with the view of evading a true estimate of the actual value of their lands, contract their cultivation, cease to grow the most profitable crops, and allow wells and watercourses to fall into decay. These practices are certainly more detrimental to themselves than to the Government, but there can be no question that they prevail extensively. The remedy for these evils, the needless occupation of the valuable time of the public Officers employed in the revision, the extortion of the subordinate officials, and the loss of wealth to the community from the deterioration of cultivation, lies in a permanent settlement of the land-revenue.

"The course of events which has been anticipated is, indeed, only that which has taken place in every civilized country. Experience shows that in their early stages nations derived almost the whole of their public resources in a direct manner from the produce of the soil, but that, as they grew in wealth and civilization, the basis of taxation has been changed, and the revenue has been in a great degree derived indirectly by means of imposts on articles which the increasing means of the people, consequent on a state of security

tricts or parts of districts in which no considerable increase was to be expected in the land-revenue, and where its equitable apportionment had been or might thereafter be satisfactorily ascertained. It was pointed out that a full, fair and equable rent must first be imposed on all lands under temporary settlement, and that the preliminary step of a revision was necessary in order to ensure accurate results. The Government of India were at the same time reminded that whenever a permanent settlement was made directly with individuals or communities for estates in which other persons possessed subordinate rights and interests, these rights and interests should be guarded with the greatest care, so as to avoid the errors now acknowledged to have resulted from the Permanent Settlement of Bengal.

And its gradual introduction sanctioned.

§ 386. There was a general consensus of opinion that, with one or two exceptions, the districts in the North-Western Provinces in whole or in part fulfilled the conditions entitling to a permanent settlement upon the principles laid down by the Home Government. It was determined, therefore, in accordance with the instructions given for carrying those principles into effect, that, as the term of the thirty years' settlement in each district drew to a close, the opportunity should be taken of revising the assessment finally with a view to its being declared permanent for ever.[3] There were two classes of districts in

Difficulty of carrying these principles into operation in districts, the resources of which were but partly developed.

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and prosperity, have enabled them to consume in greater abundance. I am aware that it has been stated as an objection to promoting such a course of things in India that, in most European countries, the advantages of this change have been mainly appropriated by the large landowners; but it must be remembered that in India, and specially in the districts under *raiyatwari* settlement, the great bulk of the agricultural population are the proprietors, subject only to the payment of the assessment, of the lands which they till; and that, consequently, the benefit of a permanent settlement would be enjoyed, not by a narrow and limited class, but by the majority of the people.

"The apprehension of a possible fall in the relative value of money, which has been previously noticed, though deserving consideration, does not seem to Her Majesty's Government to be of sufficient moment to influence their judgment to any material extent in disposing of this important question."

[3] *Minute of the Governor-General, dated 5th March* 1864, *para.* 10—*page* 431 *of the Supplement to the Gazette of India of October* 13*th*, 1866.

respect of which no difficulty was felt by those charged with the duty of putting the broad rule into operation. Districts in which the estates were so fairly cultivated and their resources so fully developed as to warrant the immediate introduction of a permanent settlement were, as a matter of course, to be admitted to the benefit of the measure, which was on the other hand to be refused to districts in which agriculture was backward, population scanty, and rent not fully developed. There was, however, a third class whose condition was intermediate between these, consisting, that is, of districts in which a large number of estates were sufficiently cultivated to justify the introduction of a permanent settlement, but which at the same time contained also a considerable proportion of estates with resources imperfectly developed, and which could not therefore be permanently settled on their existing assets without entailing a prospective loss to the State.[4] A difficulty was felt as to the course to be pursued in dealing with this class. It was proposed by the Governor-General to pave the way for the introduction of a permanent settlement of such districts by fixing, at the time of making a thirty years' settlement, *first*, the amount of assessment payable during such settlement; and *secondly*, a further sum calculated upon a supposed development of resources which, if the proprietor were willing, he might, at the expiry of the thirty years' settlement, accept as the maximum amount demandable by the Government. Her Majesty's Government, remarking[5] that this proposal, while it failed altogether to bind the landholder, imposed a distant and possibly an inconvenient and improvident obligation on the State, were not however prepared to give their sanction to any settlement in perpetuity which was based, not on the existing assets of the estates to which it is to be applied, but on a prospective estimate of their future capabilities. They declared their readiness to

Orders of the Home Government as to such Districts.

[4] *Dispatch No.* 11 *of* 24*th March* 1865 *and other papers published*, pp. 431—460 *of the Supplement to the Gazette of India of* 13*th October* 1866.

[5] *Dispatch No.* 11 *of* 24*th March* 1865, *idem.*

authorize an immediate settlement in perpetuity, after revision, for all estates in which the actual cultivation amounted to 80 per cent. of the cultivable area; but they directed that all other estates, in which the cultivation was so backward, and the future development of their resources so uncertain that they were unfitted for a settlement in perpetuity, should be treated in the ordinary manner and settled for a term not exceeding thirty years, no expectation being held out and no pledge being given to the proprietors in respect to the course which, at the expiration of that term, it might appear expedient to the Government of the day to pursue in dealing with their properties. It was further intimated that where no pledge had been given or any expectation held out of a settlement for so long a period as thirty years, it might probably be expedient to limit its duration to a period of fifteen or twenty years, at the expiration of which term cultivation might have so far advanced as to bring the estates within the conditions, which would entitle them to a settlement in perpetuity.[6]

§ 387. In a subsequent dispatch[7] the rule thus laid

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[6] The result of the instructions contained in this Dispatch is that the permanent settlement of a *District* is not delayed until *all the estates therein* have come up to the required standard: but the fitness of each *estate* is estimated separately. Some of the estates in a district may therefore be permanently settled, while others are not. In this Dispatch the Home Government also approved of a proposal to reserve, when making a perpetual settlement, a right to claim as revenue a share of the produce of *mines*.

[7] *Of 23rd March* 1867. In the same Dispatch there is the following passage, which indicates a certain change in the opinion of the Home Government as to the expediency of a permanent settlement:—"In consenting to a permanent settlement of the land-revenue at the present time, Her Majesty's Government are advisedly making a great financial sacrifice in favour of the proprietors of land. They are giving up the prospect of a large future revenue, which might have been made available for the promotion of objects of general utility and might have rendered it possible to dispense with other forms of taxation. This sacrifice they are prepared to make in consideration of the great importance of connecting the interests of the proprietors of the land with the stability of the British Government. It is right, however, that I should point out that the advantages now conferred upon the landholders are far greater than those contemplated in former times, and especially that they are quite beyond the scope of the expectations held out when Lord Cornwallis left rather less than one-tenth of the rental to the zemindar. *The*

down was repeated in the form of a limitation, namely, that no estate shall be permanently settled in which the actual cultivation amounts to less than 80 per cent. of the cultivable area: and a further limitation was added, namely, that no permanent settlement shall be concluded for any estates to which canal irrigation is, in the opinion of the Governor-General in Council, likely to be extended within the next twenty years, and the existing assets of which would thereby be increased in the proportion of twenty per cent. Subject to these two limitations, the orders for a permanent settlement remained unaltered. Within the next four years, however, the Government had the weightiest reasons for doubting the sufficiency of these limitations, and the whole question of the wisdom and expediency of such a measure was again brought under discussion. The Settlement Officer, who was charged with the assessment of Pargana Baghput in Zillah Mirat, came to the conclusion that Rs. 2,45,000 would be a fair assessment, regard being had to the great improvement in agriculture. The then existing assessment was only Rs. 1,48,000. It would have been altogether out of the question to raise the revenue from this amount to Rs. 2,45,000 *per saltum*. The Settlement Officer was of opinion that Rs. 2,10,000 would be as high as it would be safe to raise it in the first instance without risk to the well-being of the

Two Conditions Precedent to a Permanent Settlement.

Case of Pargana Baghput.

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present assessment will leave him half; and, in addition to this, one-fifth of the cultivable land, if at present uncultivated, is to be allowed to remain free of assessment for ever. Moreover this settlement, instead of being granted (as was the case in Bengal and Bahár) at a time of extreme depression and impoverishment, is granted at a time of unparalleled hopefulness for all kinds of industry in India, when the demand for every kind of produce is rapidly increasing and the price rising, and when railways and other forms of enterprise are beginning to develop the vast resources of the country and to add to the wealth of all classes and most especially to that of those connected with the land. Under these circumstances it does not appear to be either necessary or reasonable that the Government, as trustees for the whole body of the people, should confer upon the landholder, in addition to the other benefits which I have pointed out, the whole of the great increase in the value of his land which will certainly result from the extension of irrigation without making any reservation on behalf of the public interest."

proprietors and prosperity of the property. The impossibility of at once fixing the assessment at Rs. 2,45,000 was due to two causes, as to which there was neither doubt nor dispute. The first of these was the general principle long admitted in practice, that too sudden a rise is likely to involve, if not ruin, the proprietors, sufficient time not being allowed them to adjust their circumstances to their diminished profits. The second cause was that *rents had not risen in proportion to the improvement* of the Pargana. The two conditions precedent to a permanent settlement prescribed in the dispatch of 1867 were fulfilled, yet if a permanent settlement were made at the possible assessment of Rs. 2,10,000, there would be a loss for ever of Rs. 35,000 a year to Government.[8] Similarly, upon the revision of the assessment of the Búlandshahar District, it appeared that if a permanent settlement were made at the amount of revenue which it was possible for the proprietors to pay, having regard to the rents which they received from their tenants, Government would have to relinquish an increase of fourteen per cent. upon that assessment. The fact was, that the share of the cultivator, according to the usage of the district at the time of settlement, was too large, and the share of the proprietor (*i.e.* the rent) too low. An upward movement of rent had however begun. The proprietors, emancipated from the conservative influence of rent in kind, were endeavouring to push their standard of rent as high as the tenantry would bear it.[9] Until this movement had been completely carried out, an assessment fair to Government could not be imposed upon the proprietors, and a permanent settlement at any lower assessment would be an inexpedient relinquishment of what ought to come into the coffers of the State.

Question reopened.

Case of the Búlandshahar District.

[8] See *Minute of the Lieutenant-Governor of the North-Western Provinces, p.* 4 *of Extra Supplement to the Gazette of India of 3rd October* 1871.

[9] The Government did not claim to share in any further enhancement due to improvement from expenditure of labour and capital or rise in prices.—See *Minute of the Lieutenant-Governor, p.* 19, *Extra Supplement to the Gazette of India of 3rd October* 1871.

Settlement inadvisable where Rental not developed.

§ 388. The Lieutenant-Governor of the North-Western Provinces, in asking the sanction of the Supreme Government to a deferment of a permanent settlement, observed that the sacrifice of revenue, which would be the consequence of immediately carrying out this measure would be gratuitous and indefensible, for the increase of income to the proprietor would not represent the profit of capital invested on the faith of such settlement, but the mere assertion by the proprietor of a larger and more legitimate share in already existing assets. He considered that the sacrifice to which Government had consented in conceding a permanent settlement was a sacrifice of future revenue from improvements accelerated by the increased investment of capital by proprietors, when secure of the whole result[1]; but that in the case of a settlement based on an imperfectly developed rental, the sacrifice would be of future revenue, created by no such expenditure, but simply by the exertion of proprietary power in increasing the relative share of the produce which constitutes rent. This being a process which in the nature of things would come to pass[2]

[1] In so far as the increase would be due to the investment of capital, it might be argued that there was no sacrifice, as Government could fairly claim no part of such increase. The experience of Bengal has shown the improbability of capital being invested, even when the proprietors are secure of the whole result.

[2] With the greatest respect for the opinions of the able author of the Minute from which the above is quoted, I doubt the full inference to which the assumption here contained would lead, *viz.* that proprietary power would or could be successfully exerted under the laws we have made so as to enhance the rent, *i.e.* increase the proprietor's share up to the full limit which these laws allow. There is a considerable difference between the inhabitants of Bengal and the inhabitants of the North-Western Provinces as regards submission to exaction and oppression. Mr. Auckland Colvin, in his *Memorandum on the Revision of Land-Revenue Settlement in the North-Western Provinces*, says:—"There are villages here within sixteen miles of the table at which I am writing, where it is as much as the auction-purchaser's life is worth to show his face unattended by a rabble of cudgellers. He may sue his tenants and obtain decrees; but payment of those rents he will not get. A long series of struggles, commencing in our Courts, marked in their progress certainly by affrays, and very probably ending in murder, may possibly lead him at length to the position of an English proprietor. But in defence of their old rates, the Bramin or Rajpút or Syud community, as the case may be, ignorant

equally whether the settlement were in perpetuity or for a term, the sacrifice would consequently be gratuitous, made without any corresponding object of return. Under these circumstances, it was suggested that a third condition of permanent settlement was shown to be necessary—namely, evidence that the standard of rent prevalent, or the estimate of 'net produce' on which the assessments are based, is adequate; or, having due regard to soil, facilities of irrigation and ratio of dry and wet land, is not below the level of rent throughout the country at large. The adoption of this suggestion would, in all probability, it was intimated, necessitate a re-consideration of the fitness for permanent settlement of estates, which had been reported fit, as fulfilling the two conditions prescribed in the dispatch of 1867.[3] The Government of India, while admitting as indisputably correct the conclusion that the existing conditions of a permanent settlement were insufficient, was not however prepared to agree that the third condition above suggested would supply the insufficiency of the former rules. The Lieutenant-Governor of the North-Western Provinces appeared to assume that the share of the actual cultivator was larger than it ought to be. Until the excess enjoyed by the cultivator without right was transferred to the proprietor,

Necessity of a third condition of Permanent Settlement suggested.

of political economy, and mindful only of the traditions which record the origin and terms of their holding, will risk property and life itself." In a note he mentions the case of a village in Shahjahanpore sold for arrears of revenue and purchased by a Bunnia, or Grain-dealer, who was soon glad to dispose of it to a Mahomedan Vakil, under whose regime the tenants, many of whom had been the worst possible characters, became comparatively reformed, but still *objected decidedly either to pay full rates, or allow other tenants to take their land.* The Assistant Settlement Officer, who reported the case, adds—"I believe the zemindar's agent is most careful never to remain in the village after dark." This is a germ of the state of things which came to pass in Ireland. One or two instances of violent resistance, inaugurated by the "worst possible characters" may create a precedent, which others, whose antecedents are not equally bad, will however follow under the influence of similar exciting causes.

[3] A reference to the numerous papers published in the *Extra Supplement to the Gazette of India of October 3rd*, 1871, will show that there were other parts of the country in which a state of things prevailed similar to that in the Búlandshahar District.

the Government could not obtain the full revenue to which it was supposed to be entitled. Now, as the Government revenue is only fifty per cent. of the rent, it followed that to make up every rupee of which that revenue fell short, the cultivator would be forced to pay two rupees to the landlord. The remedy which would raise the Government revenue to its legitimate amount by first giving the proprietor a fully developed rental could hardly be fully applied, unless it were admitted that it was desirable in the interest of the State and of the public that tenants should pay generally the highest possible rents, that the restrictions placed by law or custom on the power of a landlord to increase his rents should be done away with, and that rights of occupancy should cease. This was a solution not to be accepted; but the fact that this was the only way out of the difficulty appeared to indicate something faulty in the system of assessment.

Re-consideration of the entire question.

§ 389. The whole question of the Permanent Settlement being thus re-opened, it became necessary, in the opinion of the Government of India, to consider whether the experience, gained since the orders of 1867 were passed, showed that the conditions thereby prescribed required amendment in other respects than those noticed by the Lieutenant-Governor; and this question must, the Governor-General in Council considered, be answered in the affirmative. In prescribing the existing conditions for permanent settlement, it appeared to have been the intention of Her Majesty's Government to affirm two principles. The *first* was that the State ought not to demand a share of that increase in the profits of the land, which is the result of the application of the capital and exertions of the occupant.[4] The *second* was that it was not right that the State should sacrifice that share of the increased pro-

[4] This principle was expressly followed in section 30 of Act I (Bom. C.) of 1865: and it lies at the foundation of the Landlord's Enhancement Law, one of the grounds of enhancement being that the value of the produce or the productive powers of the land have been increased "*otherwise than by the agency or at the expense of the raiyat.*"

fits of the land which would almost certainly, within a period which could be easily foreseen, result from the application to the land, not of the skill and capital of the occupant, but of the skill and capital of the State itself. This latter principle had been admitted in the case of increase of value resulting from the construction of canals. There is no reason why it should not apply also to cases of construction of railways or other public works or to other causes independent of the action of the occupant of the land. Great as the additional value given to the land by works of irrigation undoubtedly was, it was hardly greater or more certain than that which was given by railways and canals of navigation, and by the opening out of new and profitable markets. When the question of the permanent settlement was formerly under discussion, the magnitude of the economical revolution through which India is passing was less obvious than it had since become. It might be doubted whether any parallel could be found in any country in the world to the changes which had taken place during the preceding ten or fifteen years in India, to the diminution in the value of the precious metals and the enormous increase in the prices of agricultural produce. It had been suggested, at various times and by various authorities, that the settlement of the land-revenue should be made, not upon the basis of a fixed money assessment, but on the basis of the value of a fixed quantity of produce, which value should be adjusted from time to time according to the average prices which prevailed. A permanent settlement on this basis, it had been urged, might be allowed without any serious sacrifice of future interest, and the result would be in a great measure that which it had long been the desire of the Government to obtain—a system under which improvements made at the expense of the occupant of the land should lead to no increase in the demands of the State on account of its share of the produce; while, on the other hand, the State would not lose the whole of the benefit derived by the land from improved administration, from the construction

Principle of a Permanent Settlement on the basis of the value of a fixed quantity of Produce.

of great public works, and from the general progress of the country. The Governor-General in Council did not wish to give any definite opinion on the subject, but it was one which was open to discussion.[5]

[5] Settlement on the basis of the value of a fixed quantity of produce was the principle of Todár Mal's system, under which, before it was overlaid with the *abwábs* and exactions of the Mahomedan officials, the cultivators are reported to have been prosperous and contented. Todár Mal's settlement was made, as we have seen, with the actual cultivators, while under our system the settlement is with rent-receivers. Restrained by good government and not impelled by the demands of the State to exact or rack-rent, *they* might be unable to repeat the history of past times. Amongst the documents sent home to the Secretary of State with the papers already above referred to, were two Minutes, one by the Governor-General and the other by the Hon'ble J. Strachey (since Lieutenant-Governor of the North-Western Provinces) in which was discussed the question of a permanent settlement on the basis of the value of a fixed quantity of produce, such value to be adjusted from time to time according to prevailing average prices. "I have long believed," writes Mr. Strachey, "that if a permanent settlement can rightly be made at all, some such principle as this is the only one on which it could reasonably be based. It is, in fact, the only principle on which a permanent settlement which deserves the name is possible, for there is nothing really permanent in an assessment fixed in money, the value of which goes on steadily diminishing or changing." He then gives a summary of some of the discussions which have taken place on the subject, and quotes from Mr. (now Sir) George Campbell's *Note on the Permanent Settlement of the Land-Revenue*, who refers to the commutation of tithes in England and of tithes and rents in Scotland as instances of the application of a principle by which a charge in one sense absolutely fixed, while it is liable to periodical re-adjustment with reference to the changes in the relative value of money and the chief staples of production. This principle will be readily understood from the rule for the conversion of tithes under *The Tithe Commutation Acts* (6 and 7 Will. IV, cap. 71, amended by 23 and 24 Vic., cap. 93, and other statutes):—(1) Find the gross average money-value of the tithe of a parish or district for seven years ending Christmas 1835. (2) Apportion the amount of that value upon the lands of the several tithe-payers. (3) Ascertain how much corn could be purchased with such amount; one-third of it to be laid out in *wheat*, one-third in *barley* and one-third in *oats*, at the average price ascertained by the weekly official returns of the price of corn for the seven years preceding Christmas, 1835. (4) *In every future year make payable the price of the same quantity of wheat, barley, and oats at their average prices, founded on a like calculation of the official returns for the seven years ending at each preceding Christmas.* These official returns are published in the *London Gazette* in January of every year, and state the average price of wheat, barley and oats for the seven years ending on Thursday before Christmas then next preceding.

Now to show at once how this rule would be applied to a settlement of the

§ 390. Finally the Government of India came to the conclusion that it had been proved by experience that the

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Land-Revenue in India, let us take one staple (instead of three, in order to simplify the matter), *viz.* paddy : let us suppose that, at the time of settlement, the price of paddy was one rupee per maund, and that the assessment of an estate, instead of being fixed at Rs. 1,000, were fixed at 1,000 maunds of paddy. Let us now suppose the price of paddy to rise as a consequence of progress, improved markets, &c., and that the average price of paddy during a subsequent period of seven years (or any other period selected as the standard period of revision) came to be one rupee four annas per maund. The State would get the price of 1,000 maunds, but this price would now be Rs. 1,250, instead of Rs. 1,000. The student of Political Economy knows that this is merely a practical application of the theory of value, corn or paddy being taken as the measure of the value instead of money. Owing to an increase in the quantity of the precious metals and to other causes, the relative value of money as compared with the value of other things has fallen. Owing to increased demand and other causes, the relative value of corn, paddy, has risen. If the State had originally contracted for payment in corn commutable to its equivalent in money, the State would have gained in two ways : 1*st*, by the increased relative value of corn : 2*nd*, by the diminished relative value of money. Having contracted for payment in money, it has lost in these two ways. Those who think that a permanent settlement, on the basis of the value of a fixed quantity of produce adjustable from time to time, would prove successful as a means of giving the State a share in that improvement in the value of the land which is due to causes of a general character, assume tacitly that the relative value of produce will continue to increase. No doubt, the tendency is that it should increase. But during the last five-and-twenty years, there has been in India a very extraordinary increase of the relative value of produce and an equally extraordinary decrease of the relative value of money. There may, probably will, be a re-action ; and, if produce at its present high price were taken as the measure of value instead of money, the Government might again be a loser instead of a gainer. I do not say that this would be so. I merely say that the contingency should not be forgotten. The object of the Tithe Commutation Acts, it may be well to remember, was to prevent disputes and litigation by the adoption of a fixed principle of commutation. To share in the improvement in the value of land was not the main object proposed, though it has so happened that this has been the result. The proposed principle should strongly recommend itself to proprietors desirous of investing capital in the improvement of their lands. Of the increased produce which will be the result, Government will get no share, the permanent assessment being 1,000 maunds, whether the total produce be more or less : but the increased produce being thrown into the market will increase the supply, and therefore reduce the money-value. As the proprietor is to pay the money-value of the paddy, he will therefore have less to pay. Not only then will he receive the whole increase resulting from its capital, but the investment of such capital will diminish his former payment. It may be remarked that the difference between the proposed principle and

Suspension of the Permanent Settlement pending a decision upon the question thus raised.

existing conditions regarding Permanent Settlements in the North-Western Provinces were insufficient, and that these conditions could not be applied without most serious and certain injury to the future interests of the public. The Governor-General in Council, therefore, requested the Lieutenant-Governor to re-consider the great question of the permanent settlement of the North-Western Provinces: and meanwhile, the whole correspondence was placed before the Secretary of State, with a recommendation that, pending the further discussion of the entire subject, the orders contained in the dispatch of the 23rd March 1867 should be held in abeyance. By a dispatch[6] of the 21st July 1871, this recommendation was approved, and the Government of India were authorized to suspend at once all proceedings towards the permanent settlement of any district until the results of the re-consideration, in all its bearings, of this momentous question were laid before the Home Government.[7] In this state the matter at present rests, no further action having since been taken.

Todár Mal's decennial revision is that Todár Mal did not absolutely fix for ever the quantity of produce; he fixed merely the quantity relatively, relative, that is, to the total quantity and varying therewith from year to year. He therefore took a share of the result of all improvements, to whatever causes they were due.

[6] No. 20—See page 161 of the *Extra Supplement to the Gazette of India of 3rd October* 1871.

[7] The dispatch No. 11 of 24th March 1865 of the Secretary of State having been forwarded to the Government of the Panjab for consideration, that Government was of opinion that any attempt to fix permanently the Government demand for land-revenue would be altogether premature, the province being in a state of agricultural infancy. Of an area of upwards of 100,000 square miles, only 31,513 square miles were (1870) cultivated, and only one-fourth of this cultivated area was irrigated. Sir Donald McLeod, the *then* Lieutenant-Governor, was of opinion that it would be suicidal to declare permanent the *money* assessment, as the purchasing power of money would, he believed, be less than half in another fifty years. If however permanency must be carried into effect, he would make corn the standard. Having regard to the peculiarities of the country with reference to capabilities for irrigation and distribution of population—to the extreme fluctuation of the prices of agricultural produce—and to the absence of any desire on the part of the population for a permanent settlement, Mr. Egerton, the Financial Commissioner, who has since been Lieutenant-Governor, did not consider such a measure advisable.

CHAPTER XXVII.

Landholding, and the Relation of Landlord and Tenant in India—Some Account of the Tenures in the Bengal Presidency.

§ 391. The nature of the *zemindar's* interest in his *zemindarí*,[8] and the meaning of a *Taluk*[9] have been already explained. At the time of the Permanent Settlement, the proprietors of certain so-called *Independent Taluks* were allowed to engage for the payment of their revenue direct to Government, and they in consequence became proprietors. Other *Taluks* which then existed were left *dependent*, that is, the *talúkdars* were to pay their revenue, not to Government direct, but to the *zemindars*, within the limits of whose estates their *taluks* are situate. All *taluks* created since the time of the Permanent Settlement are *dependent*;[1] they are heritable and transferable, but not necessarily held at a fixed rent which cannot be raised, unless there is a special stipulation to this effect. The holdings of *raiyats* are variously termed *jote*, *jumma*, occasionally *jote-jumma*, and *ganthí*. The term *jote* is used especially in Rungpore, but also in many other districts. *Jumma*

Zemindars.

Independent and Dependent Talúkdars.

Raiyats' Interest known by various local Appellations.

[8] *Ante*, pages 510, 513, 516.

[9] *Ante*, pages 512, 513, 617, 618, *note*.

[1] For the protection from enhancement afforded to these *Dependent Talúkdars*, see *ante*, pp. 519, 520. These *taluks* are sometimes termed *shikmí* from *shikm* = 'the belly,' hence 'subordinate,' 'dependent,' 'included.' The same class were in the old *Zemindarí sanads* denominated *Mazkuri taluks*. A *shikmí taluk* cannot be created now, or at least no creation is ever made. The term is properly used of those *taluks* which were in existence at the time of the Permanent Settlement, and were then left dependent on the zemindars. Subsequent creations are usually founded on the *patní* principle.

is common in most districts. *Ganthí* is prevalent in the Twenty-four Parganas and Jessore. *Thicka* is used in parts of the Twenty-four Parganas, and *Chuk* in the Sunderbuns. In Chittagong *Etmam* denotes a similar interest; and the term *Tappa* is also met with. In parts of Bahár we find *Guzastha* Jotes. It is not possible to define the peculiar incidents of each of those holdings, because they have been obliterated by that course of events which has been explained in this work; but some of them, notably the *jote*, the *ganthí*, the *etmam*, the *guzastha*, are yet, in the understanding of the people, *maurasi* or hereditary holdings, in which the *raiyats* have an hereditary right of occupancy, so long as they pay their rent, however that rent may be settled. It is, according to the view of the agricultural community, unjust to put these tenures in the same category with ordinary holdings which have no specific appellations attached to them. While it is erroneous and unreasonable to reduce all *raiyats* indiscriminately to the condition of tenants-at-will, it is equally a mistake to suppose that there is no difference between old and new *raiyats*—between the descendants of the original founders of the village, the men who first broke up the soil, or those who by purchase or for a consideration have been admitted to their rights, and the new men, who have been settled as tenants of land wholly or partly brought under cultivation. In Bengal the difference has been effaced by reducing all to the lower grade; but in the North-Western Provinces, and other parts of India, the distinction has been recognized and maintained. There is undoubtedly much difficulty in discriminating now between the two classes in the Lower Provinces, but it would be as great a mistake to raise all indiscriminately, as it was a mistake and an injustice to reduce all to the lower level. The *raiyat*, occasionally in some places, regularly in others, sublets the whole or part of his holding. The person who holds land under a *raiyat* is variously termed *kurfa*, *burga*, *burgadar* and *adhiyadar* or one who halves the pro-

The Incidents of these Tenures obliterated.

Distinction between Old and New Raiyats.

duce. This subletting is very commonly a species of *metayage*.[2]

§ 392. With reference to some of the tenures or holdings in the Lower Provinces, the Rent Commissioners say in their Report :—"There are in many districts lots of land too large for cultivation by any ordinary family in a country where cultivation is not conducted by capitalists largely employing hired labourers and agricultural machinery. The size of these lots forbids the presumption that the original lessees contemplated cultivating them either with their own hands, or through the members of their families or by hired labour; and all that we know of their history tends to negative the existence of any such inten- *Remarks of the Rent Commissioners.*

[2] The following additional details may help to complete the sketch. Mr. H. Colebrooke, in his *Remarks on the Husbandry and Internal Commerce of Bengal*, expresses an opinion that the origin of the tenures of the petty proprietors in Eastern Bengal is due to an extension of the rights of occupants from vague permanence to a declared, hereditary, and even transferable interest. In many parts of the country there is *chakaran* land, from *chakar*, a servant —land granted to public or private servants in lieu of wages. The Village *Chaukidar* or watchman was commonly paid in this way. Land is sometimes designated from the use made of it, *e. g.*, *bastú*, land used for the site of the *raiyat's* homestead from Sans. *bas* = to dwell; *udhbastú*, land adjoining the *bastú* land; *dihi*, land in the village, &c. Each raiyat generally holds a portion of each description, and the rates of rent vary, that for the *bastú* being usually the highest. Incorporeal rights and easements are not well understood or defined. The *Jalkar* or right of fishery in all large natural waters is regarded as a valuable property, and is usually let by the zemindar at an annual rent, which is sometimes considerable. *Phulkar* is the right of gathering fruit, which is occasionally let apart from the land. Rights of common for grazing and other purposes no doubt exist in the unappropriated waste land belonging to villages, but these rights have not been the subject of legislation or indeed of much litigation. In Bengal, fields are not generally enclosed unless when sugar-cane or other valuable crops are sown, and then the enclosure is not kept up, once the crop is gathered. In some villages as soon as the regular crops are off the ground, the village cattle in a common herd graze promiscuously over the fields of all. In others, each villager grazes his own cattle on his own land, and trespass on other lands is resisted as vigorously as in England. Whether in the former case, any one villager could enclose in permanency is a question which I have never known to be raised. The rural population live in villages or hamlets, which consist of clusters of houses, built of mud, or in the lower and damper districts, of bamboo matting, and thatched with grass or straw.

tion. It will be important to describe the position of per-

The Jotedars of Rungpore.

sons of this class in a few districts. As to Rungpore we take the following passage from a letter of the Collector, written in 1876:—'The *raiyat* who holds direct from the zemindar is called a *jotedar*, and his holding is a *jote*, whatever its size, which may and does vary from one paying a rent of one rupee to one of which the rent is half a lakh. The large majority of *jotedars* have small holdings and are *raiyats* proper, cultivating their lands either by their own or hired labour, or on the system of *adhiyari* or halvers. But a large number of *jotedars* have *raiyats* under them, who are called either *chukanidars* or *kurpa prajas*. The *chukanidars*, too, have often raiyats under them, and in some cases, especially in the larger *jotes*, there are four or more degrees before you get to the actual cultivator. Jotes are saleable quite irrespective of the term during which they have been held, whether jotes held direct from the zemindar, or *chukani jotes*, which are held from a *jotedar*. If a man gets a *jote* to-day, he can legally transfer it by sale to-morrow. Such sales of jotes by registered deed or on decree of Court are of daily occurrence.' There is a strong resemblance between the interests in land in Rungpore and those found in the Bhootan Dooars. The Collector says that when the *jotedar* pays Rs. 100, he collects Rs. 200 from the actual cultivators."

The Howladars and Nim Howladars of Backergunge.

§ 393. "In Backergunge there are as many as thirteen persons having successive interests in the land inferior to that of the proprietor or zemindar.[3] . . . . . The origin of most of the taluks and howlas appears to have been a grant of a considerable tract of waste land upon favourable terms as to rent to some one who undertook to bring it under cultivation. The grantee reclaimed portions and sublet portions to smaller reclaiming tenants; or perhaps sublet the whole, if he could find tenants to reclaim it. These sublessees sublet again; and the subletting was carried still lower, until the whole tract was divided into holdings of a manageable size for single families. The num-

[3] See *ante*, page 619.

ber of grades doubtless varied with the size of the tract originally leased, and with the denseness of the population in the particular locality. Not uncommonly those who had reclaimed land sublet it, when the demand for land increased; or a person, who had taken enough for two or three holdings, reclaimed and retained enough for one, and sublet the remainder. It is easy to imagine the intricacy of interests which must have been the result of such a system. Sometimes the zemindar's grantee embarked a little capital, making advances to needy *raiyats*, forced out by the pressure of population from densely inhabited localities, and thus enabling them to buy ploughs and cattle and seed, and build homesteads. This was probably necessary at starting a new settlement. As matters progressed, and if the venture was successful, new settlers had to pay a *salami* or fine to the grantee before he assigned them lots in his grant. In many instances, the chief capital taken to the work of reclamation was the labour of those who accompanied the grantee as a leader in whom they had confidence. Where the waste has been wholly reclaimed and the land fully occupied, we find persons occupying the double position of landlord and tenant, paying rent for an entire lot, cultivating part, and subletting part to persons who perhaps again repeat the process. In the case of persons called 'talúkdars,' no difficulty appears to have arisen, the word 'taluk' carrying with it a definite kind of meaning, and being found as well in the old Regulations as in Act X of 1859. With the *howladars*, however, the state of the case is not so clear. Are they talúkdars? Do they hold an undertenure in the vague sense in which the word has hitherto been used? If so, what is its nature, and what are its incidents? Are they *raiyats* entitled to acquire a right of occupancy; and, if so, what becomes of the middlemen below them and the actual cultivator of the soil at the bottom. Act X supplies no answer to these questions, and the Courts have not yet settled them. The *howla* interest has come by custom to be regarded as heritable, transferable, and permanent so long as the rent is paid,

but subject to enhancement. The Government, in settling some of its own estates, has treated the *howladars* as the occupancy raiyats, and has declared that they are at liberty to make their own arrangements with the persons holding under them without interference on the part of the Settlement Officers."

The Aymadars of Midnapore.

§ 394. "Persons in an apparently similar position are to be found in other districts under various appellations, such as *jangalburi raiyats*, *mandals*, *aymadars*. The origin of all is probably similar, though the exact rights accorded to each by custom may vary in different districts. In Midnapore the Settlement Officer found certain *aymadars*, who were receiving from *raiyats* subordinate to them rents one hundred per cent. higher than those which they were paying to Government. Some of these *aymadars*, who would not agree to the terms offered them by the Settlement Officer, were put aside, and the settlement was made with the tenants immediately below them. Litigation ensued, and these *aymadars* were declared by the Civil Court to be *raiyats* having a right of occupancy. . . . . In parts of Midnapore bordering on the Jangal Mahals, there is a class of persons termed Mandals, who came into existence in the following manner:—The zemindar granted a tract of waste land to a substantial raiyat, termed an *abadkar*, who undertook to bring it under cultivation, paying the zemindar a stipulated lump sum as rent. This *abadkar*, partly by the labour of his own family and dependents, and partly by inducing other *raiyats* to settle under him, gradually reclaimed the greater part of the grant and established a village upon it, to which he usually gave his name; and, as the head of the settlement, he was called Mandal or Headman. The *zemindar* and the *mandal* from time to time re-adjusted the terms of their bargain, but the *zemindar* never interfered between the *mandal* and his under-tenants. In Settlement proceedings of 1839, these *mandals* were declared to have only the rights of *sthani* or *khudkasht raiyats*, and not to be entitled to any *munafa* or profit; but, though not exactly recognized as *talúkdars*, they gra-

The Mandals of Midnapore.

dually acquired rights superior to those of ordinary *khud-kasht* raiyats ; and, as they were left to make their own terms with the raiyats settled by them, they must have had a very considerable profit besides what they obtained from any land cultivated by themselves. Their *mandali* right became transferable by custom ; and, when at settlement they came into immediate contact with Government, though not recognized as regular *talúkdars*, they were held entitled to the consideration which in Bengal has usually been accorded to the first reclaimer of the virgin soil. The Government in Settlement proceedings deducted fifteen per centum from the gross *jama* in their favour, and, after some demur, they accepted this as a sufficient recognition of their *status*."

Difference between reclaiming leases in Estates Permanently Settled in 1793, and similar leases in other Estates.

§ 395. "In considering the position of persons of the class described in the preceding paragraphs, it is important to point out that there are important differences between persons who obtained reclaiming leases in estates permanently settled in 1793, and persons, who have since that time obtained similar leases in estates either permanently settled under more modern rules, or still the subject of temporary settlements. The Settlement of 1793 was based on the assessment of the land then in cultivation ; and the possible receipts from land then waste, but which might afterwards be brought under cultivation, were not taken into account. Indeed, the reclamation of this waste land, which in 1793 was computed to form one-third, or (according to others) one-half, or even more of the whole area of Bengal, was expressly pointed out to the *zemindars* as a source of future increase of income. The waste land being thus as it were held free of revenue by the zemindars—seeing that the amount of revenue payable by them depended upon the *then* cultivated lands and would be in no way affected by the waste being cultivated or not cultivated—they naturally did not take much account of Government revenue in granting reclaiming leases. All the rent that they obtained by such grants was clear gain, subject to no deductions. Naturally they could afford to

give, and they did give, such leases at very favourable rates—rates which left a large and increasing profit to their immediate lessees. The Government subsequently became fully alive to the importance of taking the waste land into account before any estate was permanently settled, and finally it was laid down as a general rule that no estate should be permanently settled, in which the actual cultivation amounted to less than eighty per centum of the culturable area. At the same time Government took into its own hands large tracts of waste land not included within the limits of the permanently settled estates of 1793, and the grant of reclaiming leases in these tracts was regulated by a reasonable regard to the interests of the State, the incidence of the Government revenue being carefully taken into account. When estates not included in the Permanent Settlement of 1793 are now settled, the Government usually takes as revenue seventy per cent. of the gross collections. Allowing ten per centum as collection expenses, there remains twenty per cent. to be divided between the zemindar and the reclaiming lease-holder. In the permanently settled estate of 1793, there is ninety per cent. of the profits to be divided: or even if the Government revenue be distributed over the entire area of the estate, it comes to as little as ten per cent. in many places, thus leaving eighty per cent. to be divided."

§ 396. "Turning to the case-law we find it decided (1) that, if a person takes land and at once sublets it, he will be a middleman and will not under the present law acquire a right of occupancy in such land; (2) that if a raiyat, who has acquired a right of occupancy in land, sublets such land, he does not by so doing forfeit his right of occupancy; but (3) he cannot by so doing alter the nature of his holding and convert it into an under-tenure. Applying these principles, it will appear that the reclaiming lease-holder, who never himself cultivated and who sublet before he had held for twelve years, never was a *raiyat* with a right of occupancy. He was and is a middleman; but what are the rights of a middleman is not laid down in

Effect of the Case-law upon the status of this class.

the law, and must be very uncertain. If such lease-holder reclaimed and cultivated part of his lot and let the rest of it, are his position and his rights different in respect of the two portions? Can he be a *raiyat* with a right of occupancy as to the former portion—unable to put off this character and convert himself into anything else but a *raiyat*—and as to the latter portion a middleman with undefined rights and liabilities?"

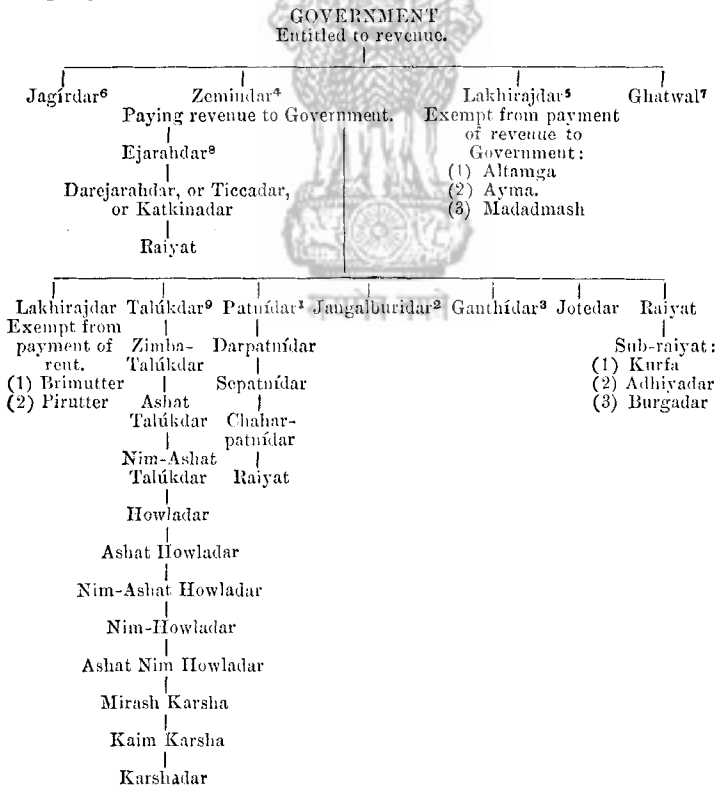
§ 397. "After the fullest consideration of the whole subject, it appears to us impossible to discover any principle of distinction between *raiyats* and tenure-holders or undertenure-holders, which will hold good universally or even in the large majority of cases. If cultivation be taken as the test whether the interest of a particular tenant is a tenure (or under-tenure) or a *raiyati* holding, a *talúkdar*, tenure-holder or undertenure-holder may cultivate land forming part of his *taluk*, tenure or under-tenure, while the person commonly called a *raiyat* may have sublet his entire holding and may not himself cultivate a single square foot. It is impossible, therefore, to say that, under all circumstances, the person who cultivates is a *raiyat*, and the person who does not cultivate is a tenure-holder. If the receipt of rents from persons in the actual occupation of the land be considered the essence of a tenure-holder or undertenure-holder, then we find *raiyats* also subletting and receiving rents from their tenants in actual occupation. If hereditability be tried, the *raiyat's* interest, the *raiyat's* holding is heritable as well as the *taluk*. Is transferability the test? The *raiyat's jama*, independently of Act X of 1859, is commonly transferable by custom. Is salability for its own arrears set up as the true distinction? The landlord of his own option brings *raiyats'* holdings to sale in execution of decrees for rent, while a tenure or under-tenure is not subject to the special law for the sale of under-tenures for the recovery of arrears of rent due in respect thereof, unless it is so salable by the title-deeds or established usage of the country. If the quantity of rent paid by the tenant be supposed to be the point of

No clear line of distinction in the present law between Raiyati Holdings and Tenures or Under-tenures.

distinction, then in Rungpore the rent of a jote varies from one rupee to half a lakh of rupees; while in other districts the rent of many *taluks* is but a few rupees. It is true that a tenure-holder or undertenure-holder is not liable to enhancement upon the grounds applicable to a *raiyat* having a right of occupancy; but this distinction stops here, for the existing law does not define the grounds upon which the rent of a tenure or under-tenure can be enhanced."

Table of Tenures in the Lower Provinces of Bengal.

§ 398. From the description just given, it will be evident that it is not possible to construct any very systematic Table of tenures and holdings in the Lower Provinces of Bengal. The following Table may, however, be useful in helping to form an idea of the subject:—



§ 399. As to Bahár, the Rent Commissioners say in their Report:—"Bahár differs from Bengal in two important respects. The *first* point of difference is that, while rent is commonly paid in money in Bengal, such money-rent having no direct connection with the quantity of produce, gross or net, it is paid in many districts in Bahár either actually in kind or in the commuted value of a fixed portion of the gross produce.[4] One direct and necessary

Points of difference between Bahár and Bengal.

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[4] See *ante*, pages 510, 513, 516.

[5] See *ante*, page 517, *note*.

[6] See *ante*, page 8, *note*, 167, *note*.

[7] *Ghât* means 'a landing place,' 'the terminus of a ferry on either side of the river,' 'a mountain pass.' *Ghâtwal* is a person in charge of a ferry or of a mountain pass. A *ghâtwali* tenure was granted for the purpose of keeping the mountain passes against the Marattas and other marauders. As to these tenures, see Reg. XXIX of 1814.

[8] See *ante*, pages 615, 616.

[9] See *ante*, pages 512-513.

[1] See *ante*, pages 617-618 *note*. The derivation of the word 'Patní' is according to Wilson uncertain. Mr. Harington says, it may be rendered "settled or established," which Professor Wilson pronounces *very questionable*. There is a word 'pattan' which I have met in several districts, used of settling with, letting to, a tenant, which is doubtless connected with Mr. Harington's explanation.

[2] See *ante*, page 519, *note*.

[3] *i.e.*, the holder of a *ganthí*, as *jotedar* means the holder of a *jote*. The interest, which is termed a *jote* in the district of Rungpore, is called a *Ganthí* in the district of Jessore and the Twenty-four Parganas, a *Jumma* in Jessore and other districts, a *Thicka* in part of the Twenty-four Parganas, a *Chuk* in the Sunderbuns, and an *Etmam* in the district of Chittagong.

[4] Under the *Agore Batai* system, the crop is actually divided and the landlord's share made over to him. Under the *Danabandi* system, the *raiyat* agrees to pay the landlord the market-value of a certain proportion of the produce; the crop is valued at each harvest and rent is paid in money according to this valuation. For further information, see letter No. 1130 of 21st August 1858 from the Commissioner of Patna to the Secretary to the Board of Revenue, the following paragraphs of which are important:—

"The second amendment which I propose has also regard to this class. It is of the utmost importance to the *raiyat* that it should be settled between his landlord and himself before he commences his cultivation, how the produce in which they have a joint interest is to be dealt with. Under one system (Agore Batai) the landlord employs men to watch his share of the crop when it approaches maturity, and when it is ready, cuts and carries it himself. In a more common variety of the same tenure, the crop is cut and threshed by the *raiyat* under the superintendence of the *zemindar's* servants, and the pro-

result of the Bahár system is that the landlords get the full benefit of every rise of prices, and enhancement on

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duce divided on the threshing floor; but it is also matter of arrangement between the parties in this case whether the landlord shall have the straw or only the grain, and whether it shall be delivered at the threshing floor of the *raiyat's* village or at some other place more convenient to the *zemindar*.

"In the Bhaolí and Danabandi tenures, which in the districts of Shahabad and Bahár are more common than any others, there is even more room for dispute. In 1849, and again in consequence of a dispatch from the Court of Directors in 1851, these tenures formed the subject of a voluminous correspondence. I append three of the most interesting letters which were written on that occasion, in order that those members of the Legislative Council, who are not acquainted with the controversy, may become acquainted with its bearings and be made aware of the importance of the subject. It will be seen from a perusal of these papers how very necessary it is that the contract between the landlord and his tenant in these Danabandi leases should be accurately defined. With this view I would propose that, in addition to the amendments in Section II which I have suggested above, the following provisions should be adopted either in the form of a new section or as a pendant to Section II.—'If the tenure be of the kind termed Bhaolí or Danabandi or any similar tenure in which the *raiyat* engages to pay the landlord the market-value of a certain proportion of produce, the patta shall also specify the market and the month, of which the average rates are to govern the contract, and the date on which the rent shall be considered due.'

"It may very probably be thought by those who have had no experience in this part of the country that payment in kind, or the mixed payments which form the peculiarity of the Bhaolí tenures, should be discouraged as much as possible, and should not be sanctioned by the Legislature, but this would be a very great error. A large portion of the land of this Province is entirely dependent on rain for its fertility. In good seasons it yields heavy crops, in bad ones next to nothing; and bad or indifferent seasons are more common than good ones. The *raiyats*, having no capital and being an improvident race, would be ruined by one or two bad seasons, if they had to pay fixed money-rents. Under a Bhaolí or Batai system, on the contrary, where the rent is proportioned to the produce, they can always rub on, and if they have not much opportunity of making money, they are tolerably secure from ruin. These tenures are therefore very popular, and, when the landlord is a just man, are perfectly satisfactory to all parties. Any attempt to abolish them would create great discontent. The only complaint is that, owing to the defects of the law, the *raiyat* who holds under these tenures is now practically at the mercy of his landlord.

"In Bhaolí cases all my informants here are agreed on the necessity of compelling the production of the Danabandi or estimate papers. In order to render this intelligible, it may be necessary to explain the process of a settlement of accounts under the Bhaolí system. When the crop is ripe, the patwarí, the gomashta, the *amín*, a *jarib kush* or measurer, a *salís* or arbitrator, a

the ground of increase in the value or price of the produce is a stern reality to the *raiyats* of Bahár. The *second* point is that, while in Bengal the raiyats are the stronger and the landlords the weaker party, in Bahár it is just the reverse, the raiyats being (save in some exceptional places) in a depressed condition and incapable of maintaining against their landlords the rights given them by law. It is possible that there is some connection in the nature of cause and effect between these two points of difference. The Bahár system is really a *Metayer* system, with most of its worst features and few of the advantages enjoyed by tenants of this class in Continental Europe. The European Metayer is usually secure in the possession of his land, and is certain at least of half the gain resulting from any improvements which he makes by his own labour or capital. His landlord furnishes half the plough-cattle in some places, and in others half the seed. In many places a house is kept up for him. Thus he receives considerable assistance towards producing the crop in which he and his landlord are sharers. The Bahár raiyat, on the contrary, gets nothing but the bare land ; his possession is insecure and he has no incentive to improvements, while the petty oppressions practised in collecting a rent

The Bahár system a bad Metayer system

Impoverished condition of the cultivating class in Bahár.

navisinda or writer, and the *jet raiyats* of the village with the *raiyat* himself proceed to the field in which the crop is growing. The *salis* first makes an estimate of the produce ; the *amín* then makes another. If the two estimates agree, the matter is considered settled. If they differ, the *raiyat* cuts a cottah where the crop is thinnest ; the *zemindar's* people cut another, where it is heaviest. The produce is threshed out, mixed together and weighed, and the produce of the whole field is estimated from this sample. A memorandum of the result, called a Danabandi, is made out by the patwarí and his writer, and signed by those present. The raiyat is then at liberty to cut and store his grain. The patwarí next prepares a paper called a 'Behri,' showing the amount of grain in the possession of the *raiyat* and the respective shares of the malik and the *raiyat*, and sends for the malik's share, which the *raiyat* either pays in grain or money, as may have been agreed upon. If the agreement is to pay in money, the gomashta writes to the amlah of the surrounding villages for the nirk, or market-rate, which is returned on the back of his letter, and an average is then struck. It will thus be seen the accounts of the estimate of the crop and its weighment form the chief evidence in these Bhaolí cases, and that a jamawasil account is of comparatively little use.

in kind leave him too often less than half the crop, the whole cost of producing which has fallen upon him alone. Then the *ticcadari* or farming system, under which the landlords, who should protect their tenantry and take an interest in their welfare, make them over to be ground down by *ejarahdars* or farmers, exercises the most pernicious influence on the condition of the cultivating class in that part of the country."

Diversity of well defined Tenures in Upper India.

§ 400. As a natural consequence of the different course pursued in dealing with the North-Western Provinces, there is now to be found in these Provinces a much greater diversity of well-defined tenures than in Bengal;[5] and the greater number of them date from a period antecedent to our rule. To give a complete and accurate account of them all would lead me far beyond the limits of this work, and would indeed scarce be possible with the materials at my disposal. The following brief description of some of the most important of them may however be useful: The *talúkdars* of the North-Western Provinces and Upper India correspond, as has already been pointed out, to the old *Zemindars* of Bengal, and had a somewhat

The Talúkdarí Tenures of the North-Western Provinces.

[5] Mr. Colebrooke said in a Minute of 1813:—"The tenures are less various and complex in the Upper Provinces." . . . . "The intricate claims and pretensions, extending through a long gradation of tenure, from the *sadr* or *pargana zemindar* to the village one and to the subordinate talúkdar, dependent or independent, which occasioned much perplexity and embarrassment in Bengal, are unknown to the Western Provinces." But either this observation was made because (as is very probable) the state of things was not understood, or (which is possible) many tenures which were then in existence have since disappeared. Bengal does not now, to my thinking, present greater complexity than the North-Western Provinces. The Marquis of Hastings, in a Minute of the 31st December 1819, said with reference to the Upper Provinces:—"A general regulation, that would be efficient for the protection of the *raiyats*, could hardly be framed, were their tenures simple and uniform in different districts. So far from this being the case, there is often extraordinary diversity in the rights of individuals inhabiting the several villages within the same districts. . . . . A sweeping arrangement which shall level these distinctions, or which, on the other hand, shall apply to all villages this graduated scale, because it obtains in some, must involve a violation of those prescriptive rights which equity and policy should be anxious to preserve uninjured under the British sway."

similar origin. Some of them (and these have been termed *pure Talúkdars*) are descended from military leaders and other persons who formerly held a superior rank in the country. Others again (and these have been termed *impure Talúkdars*) have come into existence at a later period and under the Mahomedan rule, having been originally mere collectors of the Government revenue, and subsequently, by the favour of those in authority or in consequence of the weakness and decay of the Empire, having acquired an hereditary interest. The nature of this interest was not very well defined, and probably was not of the same kind or extent in all parts of the country. In some cases the *Talúkdar*, while claiming an hereditary right to settle for the revenue[6] and so stand between the Government and the village *Zemindars*, urged no pretension to a property in the land and admitted the rights of the Village *Zemindars* as the immemorial occupants of the soil and entitled to give, sell or mortgage their lands at will. In other cases, the *Talúkdars* set up extensive claims to the property of the villages included within their taluks on the plea of sale, gift or mortgage executed in their favour by the original zemindars.[7] The mistake committed in Bengal of creating both alike absolute proprietors of the soil and ignoring all other rights was now carefully avoided, and it was pointed out to Settlement Officers that the question to be judicially disposed of in each case was whether a village was exclusively the property of the

[6] It may be observed that the mere fact of selecting any particular set of persons as the class with which the settlement is to be made is certain to have, as a result, the enlargement of the rights of that class at the expense of the rest of the community—See Mr. Holt Mackenzie's *Minute*—§§ 337-338, 349 *and* 355—Mr. Shore's *Minute of 8th June* 1789, § 173—*and* Maine's *Village Communities*, pp. 149—151.

[7] "When one of the Village zemindars was employed by the ruling power to manage the villages in his neighbourhood and to collect the revenue as a *talúkdar* or farmer, he appears to have engaged in a constant struggle for the extension of his property, and, as he generally had the hand of power and a preponderating influence with the Amín, the various villages comprising the *taluk* or farm were too frequently converted by force or fraud into one estate" —Carnegy's *Land Tenures of Upper India.*

Talúkdar, or other persons possessed therein heritable and transferable properties independent of the will of the *Talúkdar*. In the former case the settlement was made with the *Talúkdar*. In the latter case the village *Zemindars* or persons possessing similar rights were admitted to settlement, and the *Talúkdars* received a fixed allowance, generally of 22½ per cent. on the revenue collections.[8]

§ 401. The Village System was in existence in the Upper Provinces when they came under our dominion.[9] Under that system the proprietors or *village zemindars*

[8] It has been contended by some that, as in Bengal everything was sacrificed to the proprietary right of the *zemindars*, so in the North-Western Provinces we went into the opposite extreme, and restored and fostered the village system in many instances at the expense of proprietary rights fairly belonging to the *talúkdars*, as having been acquired by purchase or other just means. In Oudh we attempted to establish the village system, but changed our policy after the Mutiny. In many of the districts of the North-Western Provinces the holders of villages belonging to *talúkdars*, which had been broken up at the Settlement, acknowledged the suzerainty of the *talúkdars* as soon as our authority was subverted. This conduct amounted, as Lord Canning wrote, almost to an admission that their own rights were subordinate to those of the *talúkdars*—that they did not value the recognition of these rights by the ruling authority—and that the *talúkdarí* system is the ancient, indigenous and cherished system of the country. This being the case in our older provinces, where our system of Government had been established for more than half a century, during twenty years of which we had done our best to uphold the village occupant against the interest and influence of the *talúkdar*, Lord Canning decided that we should retrace our steps in Oudh, and accordingly the *talúkdars* of Oudh were declared to possess a permanent hereditary and transferable proprietary right, subject to any measure which the Government might think proper to take for the purpose of protecting the inferior zemindars and village occupants from extortion and of upholding their rights in the soil in subordination to the *talúkdars* (*Letter No.* 6268 *of* 10*th October* 1859 *from Secretary to Government of India to Chief Commissioner of Oudh*). In a subsequent communication it was remarked that "it is obvious that the only effectual protection which the Government can extend to these inferior holders, is to define and record their rights and to limit the demand of the talúkdar as against such persons during the currency of the settlement to the amount fixed by the Government as the basis of its own revenue demand—See *The Oudh Estates Act, I of* 1869. Mr. Carnegy traces to five sources the proprietary titles thus confirmed by the British Government, *viz.* (1) usurpation, (2) purchase, (3) grant, (4) reclamation of waste, and (5) gift.

[9] See Lord Moira's *Minute of* 21*st September* 1815, § 82 : and *ante*, p. 420.

were in general so numerous a body that a settlement with them all would have been highly inconvenient. We, therefore, continued a practice, which existed before our time, of selecting one amongst the sharers whose name was entered in the public accounts as the person responsible for the collection and payment of the revenue. The proprietor, who is thus a party in his own name to the contract with Government for the payment of the revenue, is called the *Sadr Malguzar* or *Lumberdar*, while the co-sharers or proprietors who are not parties in their own names are called Pattídars.[1] Under the existing law, the settlement is to be made with the proprietor, or if he have transferred possession to a mortgagee or vendee, then with such mortgagee or vendee. Where there are several proprietors, the settlement is to be made with them all jointly or with their representatives elected according to custom. When several persons possess separate heritable and transferable proprietary interests of different kinds, the Settlement Officer is to determine (1) which of such persons shall be admitted to engage for the payment of the revenue, due provision being made for securing the rights of the others; and (2) the manner and proportion in which the net profits of the estate shall be allotted to the several persons possessing such separate interests.[2]

Pattídarí Tenures—Lumberdar, Pattídar.

[1] See s. 2, Act I of 1841. *Sadr* means 'chief' and *Malguzar* means 'payer of revenue.' *Lumberdar* is derived from the English word 'number'—the natives interchange the letters *n* and *l*—and *dar*, a holder, *i.e.* having a number in the Collector's Roll. *Pattí* is a share—one of the many shares into which the village has been split up by the operation of the laws of inheritance, &c. *Pattídar* means any holder of a share, but has in practice been limited as above. In a *Makmúl* or perfect *pattídarí* tenure the lands are held in severalty by the proprietors, who are all jointly responsible for the revenue. In a *námakmíl* or imperfect *pattídarí* tenure, part of the land is held in common—and the profits of this go first to meet the revenue—and the remaining part is held in severalty. When one of the co-sharers fails to pay his quota, the others have to make it good. This accounts for the origin of a practice, which had to be stopped by legislation in Bengal (see clause 2, section 63 of Regulation VIII of 1793), namely, of demanding the rents of absconded *raiyats* from those that remained. See, as to the *pattídarí* tenure, Mr. Holt Mackenzie's *Minute*, §§ 576—589; and Lord Moira's *Minute* of 21st September 1815, §§ 80—97.

[2] See sections 43, 44 and 53 of Act XIX of 1873.

Bhaiyachára Tenures.

§ 402. The *Bhaiyachára*[3] tenure, which is to be found chiefly in Bundlekund, is similar to the *pattídarí* tenure, save in some few particulars. The village is divided into *thokes*, and each *thoke* is subdivided into *behrís*. The *asamí* or cultivator pays the *behrízar*, who in his turn pays the *thokedar*, who again pays the *lumberdar*, or *mokhia* as he is called in Bundlekund. When any *asamí* fails to pay his quota, the *behrízar* makes good the difficiency by a fresh assessment on all the *asamís*, made upon the same principle as regulated the first assessment. In the event of the failure of a whole *behrí*, the difficiency is levied in a similar manner from the *thokes*. All the *khudkasht raiyats* in a Bhaiyachára village are descendants of the original proprietors, and the only tenants are the *paikasht raiyats* of the neighbouring villages. The original settlers were sufficiently numerous to enable their descendants to bring the whole of the land of the village under cultivation without calling in the aid of strangers, and the minute subdivision of property brought about by the operation of Hindu Law has created a large number of petty proprietors, who all enjoy equal rights and privileges. The original assessment having been adjusted with reference to the quantity of land in cultivation at the time, the equality of allotment was disturbed by increase of cultivation in some *behrís* or decrease in others. It is customary from time to time to rectify the inequality thus created by a fresh distribution of shares. The operation of this custom has led to very considerable dissension, those who have extended the cultivation being naturally unwilling to transfer the fruits of their labours to their less industrious brethren. Where there is a custom that the land or the amount of revenue payable by each sharer shall be periodically re-distributed or re-adjusted, the Settlement Officer may enforce such custom.[4]

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[3] *Bhaiyachára* is derived from *Bhai*, *Bhaiyá* = brother, and *áchára* = institution: or according to others, from *bhaiyá* and *chár* = four, indicating, according to native idiom, that all *pay alike*.

[4] Section 47 of Act XIX of 1873.

§ 403. Sir Edward Colebrooke, in his Minute[5] of the 12th July 1820, gave the following 'short review' of the tenures of the villages in the Western Provinces:—"(1) Villages, the property of which belongs entire to one person. The whole of the proprietary villages in Rohilcund are of this description, all trace of any more ancient tenure having been lost in the successive revolutions of the Rohilla conquest and of the Vizier's Government. In such of these villages where, in the process of death and descent, the property has vested in any number of representatives of such single proprietor, the apportionment of the shares of each person is a question of law, which can be at any time adjusted in the Courts, notwithstanding a settlement of the village entire with any fewer number than the whole of the heirs. The nature of these estates is the same, whether they consist of a single village or of any number of villages. (2) *Pattídarí* villages. The principle on which the settlement of such villages should be made is the same, however various the number or extent of the *patties* may be. The arrangement is certainly more simple when the *patties* are few and of equal proportions; for instance, two halves, three thirds, or four quarters; a half and two quarters, a third and four-sixths, two quarters and four-eighths, or any other number of homogeneous shares; but the most complex detail of fifty or more dissimilar shares might be as readily kept in the *Tehsildar's* office as it now is in the *Patwarí's* accounts. (3) *Bhaiyachára* villages. The only distinguishing feature between these anomalous tenures of Bundlekund and the minutely subdivided *pattídarí* villages of the Doab, is the occasional re-partition (to which by the custom of the tenure they are liable) of the proportion of assessment. As the whole of the thokes and behrís in the aggregate are deemed responsible for the aggregate assessment, instead of considering, as in pattídarí villages, each division answerable for its proportion of the assessment, and

Sir Edward Colebrooke's Account in 1820 of the Tenures in the Upper Provinces: (1) *Villages belonging to a single owner;*

(2) *Pattídarí Villages;*

(3) *Bhaiyachára Villages;*

[5] III *Revenue Selections*, 165—167.

liable to be sold for its own default, the insufficiency of any division to the discharge of the proportion originally affixed on it is made up by a re-partition on all the divisions, and the proportional assessment is accordingly liable to variation. (4) Villages of which there are no proprietors. Some of these villages are to be met with in every district; but they are principally in Rohilcund, where some entire *parganas* are thus situated, in consequence of the Rohilla Government having reserved to itself the proprietary sovereignty on the expulsion of the original *zemindars*. The settlement of these villages has hitherto been made with the *mokuddums* or *Purdhans;* and the only objection of which I am aware against perpetuating the settlement with them is, that the creation of a proprietary right in them may militate with other rights in other persons, and nominally with the privileges of the rest of the inhabitants of the village, among whom they have hitherto been no more than *primi inter pares*. In this class may also be included the villages appertaining to Government by purchase on their exposure to sale for arrears.

(4) Villages having no Proprietors

§ 404. Of the villages originally *pattídarí* and *bhaiyachára*, many have already, under the operation of the system introduced by the British Government, assumed the character of the first description of villages, or villages belonging to a single proprietor; and with regard to such of them which have thus changed their nature under public sales, it is apprehended that no retrospective legislation could now re-establish the former tenure. They were understood at the time of sale to have been sold as the exclusive property of the engaging party, on the principle introduced from the Lower Provinces at the cession, and Government could not, without incurring the charge of a breach of faith, attempt now to restrict the value of the purchase by explaining their intention to have been to sell no more than the undefined right, be it greater or less, which the engaging party might have held in the estate. But in all private sales to which Government is not a party, it can never be too late to explain away the

Pattídarí and Bhaiyachára Villages converted by the Revenue Sale Law into Properties of Single Owners.

misconception, under which the purchaser from a party possessing actually a mere fraction of the estate has, in consequence of that party being single in the engagements with Government, been construed into the sole proprietor of the entire estate. From this review of the landed tenures, it would be evident that in all proprietary estates, whether of an entire pargana held by a Raja or of one or more villages held by a single proprietor, or of individual villages held in joint-tenancy, no recourse can now be had to a *raiyatwarí* settlement,[6] under the pledge which Government gave at the first acquisition of these provinces to make the settlement in all practicable cases with the proprietors. The fourth class of villages are, of course, the only ones in which a *raiyatwarí* arrangement could be now adopted, in the event of its being deemed preferable to the present settlement with the *mokuddums*. I must, however, confess that, for my own part, I doubt the expediency. In these estates there is only one description of peasantry known to our Regulations—tenants-at-will—who, whether *khudkasht* or *paikasht*, are left to make the best terms they can with the *zemindar*. But in practice it will be found, that in these estates the influence of the *mokuddums* and other heads of the Village Communities is still sufficient in the Upper Provinces to oppose a check to the discretion of the landholder, and very frequently to dictate the terms to him. A short enactment, declaring the resident tenants to be not removable as long as they continue to pay the same rent, which they have paid during the last five years, or in the last year preceding the year in which the settlement with the *zemindar* shall begin to be permanent, would secure against all possible events, even in these estates, the benefit of such permanency to every class of the agricultural community."

Raiyatwarí Settlement how far feasible.

Both Khudkasht and Paikasht Raiyats tenants-at-will.

Their protection recommended.

§ 405. Lord William Bentinck, in his Minute of the 26th September 1832, expressed the following view as to the *Pattídarí* tenure:—"I feel quite satisfied after mature reflection on this branch of the subject that the *pattídarí*

[6] *i. e.*, a settlement made with the *raiyats* direct.

Lord William Bentinck's View of the Pattidari Tenure.

is the original and natural tenure of all the lands in the country, the only proprietors known being the *raiyats* (which term comprises the whole agricultural community), and that the *zemindari* or *talukdari* tenure is adventitious and artificial, being, generally speaking, a creation of the Mogul Government, and the *talúkdar* or *zemindar* (I am not speaking of the village *zemindars* or *maliks*) himself being originally neither more or less than a contractor with Government for its revenue. These people, in the permanently settled provinces, have been declared by law to be proprietors of the soil, and it has been argued by the opponents of the Permanent Settlement that, by this recognition, all the rights of the real proprietary classes of the country were destroyed. But there is reason to believe that, in Bengal at least, all that constitutes the value of such rights had been obliterated long before the introduction of that measure, and though perhaps it may have been practicable, and more consistent with equity to assign to a different class the advantages arising out of a limitation of the Government demand, it can hardly be contended that the agricultural community were placed, and by that Act, on a worse footing subsequently, than previously, to the formation of the perpetual settlement. The worse effect fairly imputable to the measure as regards that body is, that it may have rendered more difficult the restoration of any rights which might at one time have belonged to them."

Three classes of Raiyats according to Lord William Bentinck's View in 1832.

§ 406. "I am of opinion that throughout the country there are three descriptions of *raiyats*. The *first* class I consider as being to all intents and purposes proprietors of the lands which they cultivate; the *second* as having been originally tenants-at-will, but acquiring in course of time a prescriptive right of occupancy at fixed rates; and the *third* as mere contract cultivators. The result of the investigation instituted by my orders into the privileges of the different kinds of cultivators, and other matters connected with the fiscal administration of the country, was, as stated by the Sadr Board, that in most *zemindari* estates

composed of single villages, the *raiyats* are mere tenants-at-will; but that in some of the large *zemindarí* estates, there are hereditary *raiyats* in villages, who seem to be connected with the land and the parties to whom they pay rent, as individuals in *pattídarí* estates (where there was no superior *zemindar*) were with the Government, before the enactment of the British Regulations. Notwithstanding this opinion, I have little hesitation in declaring my conviction that there is very generally all over India a description of *raiyats* having a proprietary title to the lands cultivated by them. These *raiyats* are termed *mírasdars*, *mírasí*, *maurasí*, *khudkasht*, *kadím*, and have other designations. Those resident *raiyats* again who may acquire a sort of possessing title by prescription are called *chappurband*, *jamai*, *jadid*, and by other appellations. In what the privileges of this latter class of cultivator consisted, and by what means he became entitled to those privileges, are questions not easily answered in the abstract, and seem to depend for their solution on evidence to be adduced in each individual case." "I fully concur in the justness of the following observations contained in the Resolution of Government, dated the 1st of August 1822, 'where the *raiyats* may be merely contract cultivators, holding from year to year without any permanent obligation or tie, His Lordship in Council would not be disposed to introduce any change; for the system which attaches to the land various permanent interests independent of any contract between the parties, though it cannot without cruel injustice be destroyed, is not one desirable to establish.' Entertaining this conviction, I need hardly add that I entirely differ from the proposition laid down in the note recorded by Mr. R. M. Bird on the rights of resident *raiyats*, *namely*,—'that all resident cultivators are entitled to have their rent fixed, without reference to the term of their residence;' for I am of opinion that it should always be borne in mind, that though there may be cultivators who have proprietary right or rights of occupancy, it does not follow that all cultivators have such rights; and that

All Raiyats have not Rights of Occupancy.

on the other hand, though there may be *zemindars* who are merely contractors for the revenue, there may be other *zemindars* who are entitled to be considered as proprietors also. The greatest care should be taken to discriminate between the different classes as well of *zemindars* as cultivators, and to avoid confounding the *malguzar* of later years with the hereditary *zemindar*, and the mere agricultural labourer (or individual who, having settled in the village as a stranger many years ago, has ever since continued to cultivate at the discretion of the *zemindar*) with the hereditary raiyat, whose ancestors perhaps first broke up the soil and paid the revenue or rent of the land direct to the servants of the State."[7]

A Distinction between Old and New Raiyats.

§ 407. Mr. W. W. Bird had in a previous Minute observed as follows:—"As to conferring on the *raiyats*, who have no such permanent right or interest in the lands, the privilege of retaining them so long as they continue to pay a certain fixed rent or rate of rent, the good policy, and even the equity of such an arrangement, has often been called in question;" and he cited with approbation an extract from a Minute recorded by Mr. A. Ross in the year 1826 on the rights of *raiyats*, in which the same view of the question was taken. Referring to these observations, Lord William Bentinck said:—"I am strongly disposed to refrain from creating rights among the agricultural classes which had no previous existence. Much has been said, of late, as to the inutility of the class of persons who are rent-owners in contra-distinction to the cultivating community; but where, as in India, there is so little general intelligence and foresight, and so much poverty, were large

The Policy of conferring Permanent Rights on New Raiyats considered.

[7] One of the Rules laid down for Settlements by this Minute was "All parties to be secured in the enjoyment of whatever rights and privileges they may be in possession of, or establish a claim to; but no new rights to be created, and all cultivators, who hold as mere tenants-at-will, to be left to make their own bargains as heretofore."

"It is quite a mistake to suppose that every Asami, who takes land in a village, should join the community on the same footing as his neighbour." *Letter to Resident at Indore—Thomason's Dispatches*, Vol. II, p. 197.

classes of men thrown entirely on their own resources and removed from all connection with their superiors, to whom they had been accustomed to look up for aid, the consequences might be very prejudicial to their own interests, as well as to those of Government. It was observed by a former Government, that the question of distributing the new property arising out of the limitation of the Government demand, a property before unknown, or of comparatively insignificant amount, was one than which in the whole circle of political science there was scarcely any more important in its relation to private interests and to the public weal; and an opinion was expressed of the impolicy of frittering away the net produce of the land among a multitude of needy cultivators. In the Provinces under temporary settlements it is unquestionally competent to the Government to concede to the actual cultivators much of the profit arising out of the limitation of the Government demand by fixing their payments. Those cultivators would appear to have the right of paying the revenue of the State directly to Government without the intervention of any middleman in all cases, where the right of the superior may not rest upon a basis unquestionably more solid than that of the cultivators themselves; but where, on the other hand, no rights have hitherto attached to the cultivators, and they have been considered as tenants-at-will, neither justice or policy requires that Government should interfere with them and their superior, and attempt (what must be an extremely delicate and difficult operation) to fix the precise limit to which the demand of the latter on the former should be confined. Fixed rates on certain classes of soil would seem, independently of other objections, to be unjust, if intended to regulate the demand between the landlord and tenant. If intended only to regulate the demand of Government on the *malguzar*, the sole objection would be the difficulty of fixing the rate with fairness and on proper *data*. Sir Thomas Munro has distinctly laid down the rule, that all that Government should fix is their own

Interference between Landlords and Raiyats, who are mere tenants at-will, undesirable.

demand upon the *raiyat*[8] for revenue, while the rent which the *raiyat* shall demand from his cultivating tenant must vary according to seasons, crops, demand for particular produce, and numerous other details too minute for the Government to meddle with. There seems, indeed, no reason why the Government should interfere to regulate the wages of agricultural more than that of any other description of labor. All that is essential to the protection of the interests of the common cultivating tenantry is, that a distinct record be kept of all contracts and agreements that may be entered into between them and the landlord, whether such agreements be yearly, or for terms of years. The interchange of written engagements, in addition to the register, should also be insisted on where an increase is demanded."[9]

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[8] *i. e.*, in the sense in which Lord William Bentinck defined him, *ante* p. 726.

[9] The following extracts will show how the rights of the cultivators in another province were regarded by one of the greatest revenue authorities. "It is most important to separate the under-tenantry into—*first*, subordinate proprietors; *second*, non-proprietary tenants at fixed rates; and *third*, tenants-at-will."

"A comprehensive view of the rates paid by non-proprietary cultivators may be of the greatest use in determining what are the 'established rates of the *pargana*' referred to in section 10, Regulation LI of 1795, if indeed any rates can be called universally applicable. In doing this, great care will be necessary, and great judgment in classifying the several castes of cultivators, qualities of soil, or descriptions of crops which regulate the rates."—*Memorandum on Landed Property in Joupoor. Thomason's Dispatches*, Vol. II, p. 128.

"The third class or tenants-at-will require no lengthened notice. Cultivators from other villages (*paikasht asamís*), who temporarily cultivate certain fields, are of this class; so, too, are the temporary occupants of the *sir* lands of a *zemindar*, and cultivators of lower classes, who are entirely dependent on the *zemindars*, and claim no rights but what he allows them.

"The cultivators of the second 'class,' commonly called *maurasi*, *chapparband*, *khudkasht*, &c., are those who, in the words of clause 7, section 15, Regulation VII of 1799, and clause 7, section 32, Regulation XXVIII of 1803, have 'a right of occupancy only so long as a certain rent or a rent determinable on certain principles according to local rates or usages be paid.' This right is not transferable, and it terminates in such lands as the tenant may from any cause cease to cultivate. There is no provision of the law which declares these rates unalterable. All the clauses of the Regulations in which they are mentioned (*vide* para. 134 of Directions of Settlement) describe them

§ 408. On the vexed questions of enhancement of rent, ejectment and subletting, the following passages will show the views entertained, by very high authority some thirty years ago with respect to different classes of *raiyats*:—"The Lieutenant-Governor cannot doubt that a *proprietor has the right under certain circumstances to raise the rents both of hereditary privileged cultivators and of tenants-at-will;* the former only according to established usage and the *pargana* rates, the latter *according to his will and pleasure.* The former cannot be ousted so long as he pays according to established usage, the latter may be ousted at the close of the year, when the crop has been removed, if the proprietor chooses to oust him. It is most difficult to determine what is "the established rate of the *pargana* to which reference is made in section 10, Regulation LI, 1795."[1] "On mature deliberation the Lieutenant-Governor does not perceive how the right of a *maurasi raiyat* to sublet his land can be denied. He has a *right of occupancy so long as he pays according to the pargana rate for the land in his occupation.* If from any cause he does not cultivate the land himself, he is

Opinion as to Proprietor's power of Enhancement in 1851.

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as altering with the circumstances of the parganas. Rents in India, as everywhere else, are *liable to variation according to the general economical principles which govern the relation between landlord and tenant.* The only legal proviso is, that in no particular instance should a rate be demanded in excess of that which is usual or established. The desideratum is an equitable mode of assessment. Section 6, Regulation IV, 1794, clause 8, section 15, Regulation VII of 1799, and section 9, Regulation XXX, 1803, especially declare all disputes regarding rates cognizable by the Zillah Court; and in Regulation V, 1812, a course is prescribed according to which the demand is to be made, wherever a higher rate is assumed than has formerly been paid.

"In these Provinces, the settlement is of too late formation to admit of the establishment of any consistent course of judicial procedure in such cases, but in the Lower Provinces the process is well understood and of frequent occurrence. The class of cases is there sometimes called '*jamma nishast.*' The principle to be observed in deciding them has been laid down by the *Sadr Diwání Adálat* in several cases."—*Letter on the rights of under-tenants in Jounpoor to Secretary to the Sadr Board of Revenue, N. W. P., dated 27th March* 1849—*Thomason's Dispatches*, Vol. I, p. 476.

[1] *Letter No.* 2351 of 30*th June* 1851 *to Secretary to Board of Revenue, N. W. P.*—*Thomason's Dispatches*, Vol. II, p. 131.

at liberty sooner than throw up any portion of his land to provide for its cultivation by others. He continues responsible to the *malguzar* for the rent of his land, and so long as he pays it, the *malguzar* cannot interfere with him. *If he sublets to a great advantage a presumption exists that the rent he pays is below the pargana usage, and the malguzar may sue for re-adjustment and increase of rent; but he* cannot set aside the *maurasi raiyat,* and collect direct from the under-tenant. That would virtually be to oust the *maurasi raiyat* contrary to the conditions of his tenure, which are continued cultivation and punctual payment of the equitable rent."[2]

§ 409. In order to show one of the views entertained half a century ago as to the classification and rights of the *raiyats*, I shall reproduce the account given in 1832 by a Civilian to whose work[3] I have already referred. According to this writer, the agricultural community in Bahár, Benares and the Western Provinces was divisible into eight classes : — (1) Occupant proprietors, *zemindars*, *pattídars* or sharers : (2) Hereditary farmers of the revenue of extensive tracts of country, *talúkdars :* (3) *Purdhans*, *mokuddums* and hereditary *raiyats :* (4) cultivators whose interest in the soil was doubtful, or depended upon the will of others, *paikashts* and those classes of *raiyats* who entered upon land formerly under cultivation, but deserted by the ancient occupant proprietors : (5) Hereditary ploughmen, Village artizans and servants : (6) Government farmers of land, the settlement of which had been refused by *zemindars*, &c. : (7) *Katkinadars* or under-farmers, *i. e.* under (6) : (8) Those who claimed under assignments from Government either the proprietary title in the land and the revenue or the revenue only. As to the rights and privileges of some of these

Classification of the Agricultural Community of Bahár, Benares and the Western Provinces in 1832.

[2] *Thomason's Dispatches*, Vol. II, p. 216.

[3] "*A Memoir on the Land Tenure and Principles of Taxation in the Provinces attached to the Bengal Presidency*" by a Civilian. The author is generally supposed to have been Mr. N. J. Halhed. I have hitherto quoted the work briefly as "*Land Tenure*" by a Civilian.

classes, he says:—"The *mokuddumi* rates of assessment vary from two-fifths of the produce of *mykari*, or grain crop, to one-fifth; and the money-rates for *zabti* (or crops not being grain, and of the better description, such as sugarcane, tobacco, oil-seeds, and so forth), also vary from one-eighth to one-third less than those paid by common *raiyats;* and an abatement, for ploughman's allowances, of one-eighth of the whole of the grain produce, is almost universally made. Hereditary *raiyats* pay something more than the mokuddums, and rather less than common *raiyats*, over whom their acknowledged property in their lands seems to be the principal superiority they enjoy. They possess the privileges of letting out the water of wells dug by them on their own lands. There are few instances to be seen of an hereditary *raiyat* paying more than one-half of grain produce in kind. They very seldom pay so high a rate; two parts out of five is the usual rate. Some hereditary *raiyats* have *kamherahs* allowed them, in which case the ploughman's share is deducted, in the first instance, from the whole produce; if there are no *kamherahs*, and the *raiyat* has heretofore had them, the eighth share is appropriated by them."

Rates for Mokuddums.

For Hereditary Raiyats.

§ 410. "The rights of the class composed of common *raiyats* and *paikashts*,—that is to say, non-resident cultivators, are doubtful, as depending, in no small degree, on the will and caprice of others. The paikasht, or non-resident, is circumstanced somewhat similar to the English farmer; he farms land in which he possesses no proprietary right, under engagements verbal indeed, but quite as binding, in the eyes of the people as the most formally engrossed lease. He is seldom desirous of extending his interest beyond the agricultural year, commencing in October, at all events, longer than is necessary to enable him to scrape together the means of acquiring land. If there is any to be had in his own parish, local attachments form very prominent features in the character of the agricultural classes in this country, and induce

Description of the Paikasht Raiyat.

the individuals composing them to prefer high rates and bad land in the vicinity of their homes to low rates and good land at a distance. Certain prospects of the greatest advantage are often found insufficient to induce them to leave the paternal home, to settle elsewhere, if they can by any means keep life and soul together. Famine and absolute starvation, intolerable oppression, and the utter destruction of their dwellings, will sometimes force them to settle elsewhere, but the most trivial grounds for disgust in the new house will send them back to their deserted habitations. The love of home opposes a great obstacle to the cultivation of waste lands, and to the formation of new settlements in the forest tracts, and compels *malguzars*, who have much paikasht cultivation, to bestow many privileges and favors on the cultivators whom he has induced to engage for land, which a common resident *raiyat* may not look forward to. The rates are, in general, very low; two-fifths of grain produce, and two-thirds of what a common *raiyat* would pay in money for *zabti* produce are the most prevalent rates. The *malguzar zemindar* of *pahi* cultivated estates are always anxious to induce *paikashts* to reside in them, and, with that intent, often build houses, and dig wells for them, in addition to every other advantage which they may enjoy as non-residents. If they can be induced to settle, they are presumed to have acquired a right in the land they cultivate co-extensive with that of common *raiyats*, otherwise, they are simply farmers of the land, and the proprietary right rests in the *zemindar malguzar*, from whom they hold the lease."

Common Raiyats.

§ 411. "Common *raiyats* are those who were originally *paikashts*, but have been induced to settle, or who, having fled from their ancient habitations, have been persuaded to reclaim waste land, or to enter upon fields deserted by their occupants, and to reside upon the estate. On their first arrival, they are generally well treated, and, in some instances, enjoy peculiar advantages in respect to the rates of tax imposed, but are soon brought upon an equality with the old residents, or, which most frequently happens,

are reduced a grade or two below them. If the land they may occupy has been the property of an hereditary *raiyat*, they must give it up on his return to claim his right. If they will not cultivate the description of produce which their land is fit for, the *malguzar* and the *purdhan* will give it to another cultivator better able, or more willing to do it justice; but such procedure is considered a very harsh stretch of power. Public opinion, therefore, prevents it from being generally resorted to. Uninterrupted succession and occupation for two or three generations confers a prescriptive right on the descendants of common *raiyats* in the fields they till; but as there is no instance on record of a transfer of it by sale, and as a failure to pay the usual quota of land-tax will sanction dispossession, it would appear to be rather a right of conditional occupancy than of exclusive ownership in the soil. Still, common *raiyats* are not to be considered, under the practice of the country, as tenants at sufferance, and liable to be ousted from year to year by a *malguzar*, because another offers a higher rate. The acts of tillage and occupancy convey, by ancient law and custom, a right to hold their fields, provided always that they cultivate the crops which their land ought, in reason, to produce, and pay the fixed quota of land-tax, which is leviable from them, according to the rank they hold in the agricultural community, on each description of produce, subject, however, to the saving provision in favour of those absent hereditary raiyats, who, on returning to their estate, shall claim their interests in the land."

Sub-proprietors or Inferior Proprietors.

§ 412. Subordinate to the proprietors with whom the settlement is now made, there are various classes of sub-proprietors or inferior proprietors whose rights are recorded in the *Record of Rights*, and the protection of which is part of the duty of Settlement Officers. This protection is usually afforded by the formation of a sub-settlement on behalf of the proprietors with them, when their interest extends to the whole *mahal* or estate, and is heritable and transferable. They are bound by this sub-settlement to pay to the superior proprietor, with

whom the settlement is made, an amount equal to the Government revenue together with the share of the profits of the *mahal* to which the Settlement Officer has declared the superior proprietor to be entitled. Occasionally a *settlement* is made with the inferior proprietor, the only difference in this case being that he pays the amount into the Government Treasury, whence his share of the profits is paid to the superior proprietor.[4] Where the subordinate rights are not of such a nature as to entitle their possessor to settlement, the protection may be afforded by a sub-settlement or in such other way as shall maintain the sub-proprietors in the enjoyment of, or of an equivalent to, their rights. When these rights are to receive from the tenants any money-payment or portion of the agricultural produce, this is accomplished by assigning in lieu thereof the proprietary right in a certain portion of the *mahal*, the profits of which are, in the opinion of the Settlement Officer, equivalent to such payment or portion. Inferior or sub-proprietary[5] rights are known by various names in different parts of the country. They are traceable to purchase; to relationship or connection with the original stock; and to former proprietorship lost by force or under the pressure of necessity, the ex-proprietor having retained the whole or a portion of his lands on more or less favourable terms under the new proprietor. What happened in the case of proprietors came also to pass in the case of sub-proprietors, under whom was thus formed a further class of sub-proprietors in the second degree, and occasionally this quasi-subinfeudation extended to the third and fourth degree.[6] The following sub-proprietary titles are found in the Province of Oudh, and several of these are also commonly found in the dis-

Some sub-proprietary Tenures.

[4] Sections 54 and 55 of Act XIX of 1873.

[5] In what immediately follows I have borrowed very largely from Mr. Carnegy's little work on *Land Tenures in Upper India*.

[6] Just as the principle of the Patní tenure in Bengal was carried down to *dar-patnis*, or *patnís* in the second degree (dar = within or under); *sepatnís*, or *patnís* in the third degree (*se* = three), and even still lower.

tricts of the North-Western Provinces—*viz.*: (1), Pakhtadári; (2), Dídárí; (3), Sír; (4), Nankár; (5), Shankalap; (6), Birt; (7), Baikitát; (8), Baghát; and (9), Biswí. The first seven are heritable and transferable. The Baghát tenure is subject to special conditions, and the Biswi tenure is altogether contingent. The term *pakhtadarí* has come into existence under British rule. In former times when an ex-proprietor entered into an engagement for the revenue of his village at a *fixed* amount, he was said to hold *pakká*.[7] He was responsible for the loss and received the profit, and this whether he collected himself or with the aid of the Government officials. When he merely engaged to collect and pay into the Government Treasury, receiving a commission on the collections and having no interest in the profit or loss, the arrangement was termed *kachchá*. It was our policy to consider that person to be in possession of a village, who was responsible for the loss and received the profit. Thus the *pakhtadar* or person who held *pakká* came to have certain rights, which we admitted and acknowledged, though restoring the former proprietor,[8] and the term *pukhtadarí* came to be applied to an intermediate tenure between the proprietor and the cultivator. *Pakhtadarí Tenure.*

§ 413. In the case of transfers, voluntary or involuntary, it was a common practice for the transferree to assign a portion of the land in perpetuity to the former proprietor for his subsistence, and this was called *Dídárí*. The assignment, which was usually in writing, might be of one or more villages or merely of a few fields. When a whole village is held under this tenure, the sub-proprietor invariably enjoys all village privileges and dues. *Dídárí* grants were in most cases originally rent-free, but were sometimes assessed with a low quit-rent termed *barbasti*. The *Dídárí Tenure.*

[7] *Pakká* means 'ripe,' 'mature,' 'complete,' 'settled.' *Kachchá* means 'unripe,' 'immature,' 'incomplete,' 'unsettled.'

[8] According to one view the *pakhtadar* was always an *ex-proprietor*, and the antithesis in the use of *pakká* and *kachchá* lay in the existence or non-existence of *rights*, the term *mastajir* being always applied to strangers, who were never said to hold Pakká.

land, which was retained by a proprietor in his own possession and cultivated with his own ploughs was termed Sír.[9] When a proprietor parted with his property, he not unusually kept possession of his Sír land, at first perhaps without payment of rent : but afterwards rent was certain to be levied from him, generally however at a lower rate than that paid by his neighbours. Sub-proprietary *Sír* originated also in grants to the junior members of the proprietary family. *Nankár*[1] was an assignment of land or revenue for subsistence, consisting sometimes of one or more entire villages, sometimes of a portion only of a village. It was made in some instances to proprietors, in other instances to persons having no proprietary right, such as Kanungoes, Mokuddums, Chaudhrís, Kazís, who were generally however servants of the State ; and it was doubtless in this capacity that the allowance was made to Zemindárs. Sub-proprietary Nankár is usually an assignment like *Dídárí*, but differing from it in this, that not *land*, but a portion of the rental in *money*, was the subject of the assignment. Sometimes a fixed sum was given, and sometimes a fractional share of the *then* rental. In the latter case, however, the item remained fixed and not subject to enhancement or abatement. The amount is either paid to the recipient, or he is allowed an equivalent remission from the rent of any land held by him as a cultivator. A *Shankalap* tenure consisted either of a whole village, or of lands forming a portion of a village. In the former

Sír land.

Nankar Tenure.

Shankalap Tenure.

[9] *Sír* is the Sanscrit word for a plough. Sír land may now be created by continuous cultivation for twelve years by the proprietor himself with his own stock or by his servants, or by hired labour ; see section 5, Act XIX of 1873. In Bengal it is called *Nijjote* (own cultivation), *Khas-Khamár* or *Khamar*.

[1] *Nankár* is derived from *Nan*=bread and *Kar*=business—See *Appendix* 10 *to* Mr. Shore's *Minute of 2nd April* 1788. Nankar is sometimes improperly confounded with *malikana* which was allowed to *proprietors* only. When a proprietor was removed from the management of his estate, *malikana* was allowed to him, but nankar was usually withdrawn. " Malikana is the unalienable right of proprietorship, but nankar depends upon fidelity and attachment to the State and a due discharge of the public revenues "—*Answers of Gholam Hosein Khan*, *Appendix No.* 16 *to* Mr. Shore's *Minute of 2nd April* 1788 : *see also* Lord Moira's *Minute of 21st September* 1815, §§ 124—132.

case, a sum was paid down by way of fine when the deed was executed, under which the village was granted as a subtenure at favourable rates.[2] In the latter case the poorer outlying or uncultivated lands were made over for a money consideration. A portion of these was to be cultivated subject to the payment of a rent gradually increasing until a stipulated maximum was reached in a certain number[3] of years. The rest was left rent-free for the village site, groves, gardens and similar uses.

§ 414. Birt[4] tenures are of two kinds, *purchased* and *conferred*. The former generally originated in an assignment for money by a proprietor, who wished to have waste brought into cultivation, or was compelled by necessity to raise money on his cultivated land. This tenure is always sub-proprietary, held under the proprietor who stands between the holder and the Government. It is heritable[5] and transferable, and the annual rent is fixed in perpetuity. *Birt Tenure.* Sometimes part of the land was to be held rent-free and the rest of it was to be subject to enhancement. *Conferred birt* tenures were originally eleemosynary, being sometimes in the nature of life-pensions, and according to usage resumable at the donor's pleasure. In our first dealing with these tenures, no distinction was drawn between the two classes. *Baikitát*[6] is a tenure similar to *birt*, but is *Baikitát.*

[2] This is very similar to a *patní taluk* in Bengal.

[3] Somewhat similar to the *Jangalburí* (*buri*=cutting) tenures of Bengal. For a year or two no rent was asked. Then a low rent was paid, and this gradually increased (*rassadí*) as a greater quantity of land was brought under cultivation.

[4] *Birt*, from the Sanscrit *vritti*, means 'maintenance,' 'support.' Purchased *birt* tenures are similar in their origin to *patní taluks*, and scarcely differ from the first kind of *Shankalap* tenures. In one other respect this tenure, as it exists in Goruckpore at least, resembles the *patní taluk* of Bengal in this, namely, that the proprietor or superior landlord is entitled to a fine on every transfer by sale, gift or inheritance, and the formality of his consent to all such transfers—See *Report of the Board of Commissioners to* Lord Minto, *dated 5th July* 1808, § 12.

[5] As to a *Miſi Birt* tenure being heritable, see *Mahendra Singh* v. *Jokha Singh and others*, decided by the Privy Council, XIX W. R., p. 211.

[6] From *Bai* = sale, and *Kíta* = a share, piece. It may be observed that all these tenures have their origin in a practice common not only to different

generally limited to small patches of land containing one or two fields. *Baghát*, gardens, orchards, groves belong either to the proprietors, or ex-proprietors, to the holders of intermediate tenures, or to tenants. The title of all except the last extends to the land as well as to the trees.

Baghat. The rights of tenants[7] in orchards planted by them depend upon the arrangements made with the proprietors or sub-proprietors under whom they hold. Generally no rent is taken, and the tenants are repaid for their labour by being entitled to eat the fruit, gather the dry wood, and cut down a tree occasionally for home use, such as roofing a house or making farming implements, the landlord being entitled to claim fruit on festivals and to fell an occasional tree when he requires wood. *Biswí*[8] is a tenure which had its origin in mortgage. When a whole village or fractional portion of a village was mortgaged under native rule, the mortgagee usually obtained possession, and was admitted to engage with Government for the revenue. When he obtained possession, but was not admitted to engage for

Biswi. the revenue, he deducted the interest on the loan from the rental of the land and paid the difference, termed *parmsáná*, to the mortgagor, who was responsible for the revenue. When according to our rules redemption was barred, the settlement was made with the mortgagee as proprietor. In the case of lands less than a fractional share of a village, which under native Government always remained attached to the parent village, the *parmsáná* was

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parts of India, but to the East and West, *viz.*, the practice of raising money by parting with a greater or lesser fragment of what constitutes the highest proprietorship or aggregate of rights in land in the particular community. A perpetual lease at a fixed rent granted for a sum of money paid down was thus a form of alienation which came naturally into use in both societies.

[7] In Bengal a distinction is made between trees that are *swarúp*, *i.e.*, planted by the tenant, and those that are *pororúp*, *i.e.*, planted by others before he came on the land. He may cut down and sell the former, but not the latter, *i.e.*, according to the usage of some localities.

[8] *Biswí* is derived from *Biswa* = a twentieth part, but usually applied to the twentieth of a bígha. No doubt the calculation of the *parmsáná* was made in old times as so many twentieths; and the name remained, although the principle of calculation was altered.

paid in the same way to the mortgagor; and when redemption was barred, the mortgagee, *biswádár*, became the holder of an intermediate title, the *parmsáná* or quit-rent being generally made equal to the Government revenue *plus* five per cent. Mâfi[9] grants were made by proprietors to Brahmins, Bhats, Fakirs and such like for religious services or through religious veneration. They were hereditary, though not originally transferable. Even when transferred, they were not resumed, and so usage made them transferable in course of time. *Marwat* grants were grants of a little land rent-free as pensions to the heirs of retainers killed in the service of the proprietor. *Mafi Tenures.* *Marwat.*

§ 415. *Jagírs* were grants of lands to retainers still in service in lieu of wages. When granted by the Emperor, they were assignments not of the land, but of the revenue,[1] and were made as an appendage to the dignity of *mansub*, a kind of nobility conferred for life, and revocable at the Emperor's pleasure. The *Mansubdár* was supposed to command a body of horse. There were sixty-six grades of the rank, varying according to the number of horse. This number was however merely nominal, and the personal pay of the Mansubdár, though regulated thereby, was *Jagírs.*

[9] *Máfi*, *máfi* means 'forgiven,' remitted—*i.e.* the rent or revenue of which was remitted, these grants being generally rent or revenue-free. The term is not, that I am aware of, used in Bengal, where land granted to Brahmins is called *Bruhmuttar* and land granted to an idol is called *Deeuttar*. *Piran*, from *pir* = a 'saint,' is land granted to a (Mahomedan) holy man for his support, or for keeping up the tomb of a deceased saint.

[1] It is important to bear this in mind. That the ownership of the soil was not in the sovereign is proved by a variety of arguments. One of these is remarkable, being drawn from the fact that the Emperors purchased land when they wanted it. Aurangzíb purchased the parganas of Lúndí, Pâlan, &c. in the vicinity of Delhi. Akbar purchased lands for the forts of Akbarabad and Illahabad; Shah Jahan for the fort of Shah Jahanabad; and Alamgír for the fort of Aurangabad and for mosques. When the Jagírdars got possession, they paid *malikana* to the zemindars. There is a native Hindu saying that "the land belongs to the zemindar and the revenue to the king;" and according to Mahomedan law the sovereign has a right of property in the tribute or revenue: but he, who has the tribute from the land, has no property in the land (see authorities quoted in *Appendix* No. 12 to Mr. Shore's *Minute* of 2nd April 1788).

distinct from that which he received for the effective horse which he was obliged or allowed to maintain. *Jagírs*[2] were of two kinds, conditional and unconditional. *Conditional* Jagírs were granted generally to the principal servants of the Emperor in order to meet the expenses of a particular office; and these were held only so long as office was retained. *Unconditional* Jagírs were independent of any office, and were personal grants for the maintenance of a dignity, a suitable number of attendants and the effective troops which the *mansubdár* or *jagírdar* was bound to have in readiness. These grants were for life only. If the lands produced more than the *Mansubdár's* allowance, which was always fixed, he was bound to account for the surplus (*taufir*). There were few jagírs in Bengal. In Bahár a large number were created in the time of Sháh Alam and of his immediate predecessor during the anarchy and decline of the Mogul Empire. In many instances, owing to our want of information, persons claiming by right of inheritance succeeded to *jagírs*, contrary to the constitution of the Empire; and thus what was originally a mere life-grant has become an estate of inheritance.

[2] There were no hereditary dignities in the Mogul empire. See, for a full account of these Jagírs, Mr. Shore's *Minute on the Rights and Privileges of Jagírdars, dated 2nd April* 1788, from which the above account is taken.

CHAPTER XXVIII.

Landholding, and the Relation of Landlord and Tenant in India—The Rent Act of 1859.

§ 416. On Saturday the 10th October 1857, Mr. E. Currie moved[3] in the Legislative Council of India the first reading of a Bill "*to amend the Law relating to the Recovery of Rent in the Presidency of Fort William in Bengal*," which afterwards became Act X of 1859. Describing the provisions of the Bill in the form in which it was originally introduced, he said:—"It declared that all resident[4] *raiyats* or cultivators had a right of occupancy in the lands held or cultivated by them, so long as they paid the rents legally demandable from them. These sections contained nothing more than what had been the law since the time of the Permanent Settlement; but, under that law, the only remedy open to the *raiyat* was by a regular suit in the Civil Court, and to refer a poor cultivator to a regular suit against his landlord, under the present practice of the Courts, was almost tantamount to refusing him any remedy at all. As the *raiyat* was to have the right of demanding a *patta*, it was but just that the landholder should have the right of demanding a *kabuliyat*, or written engagement for the payment of his rent by the tenant. By the present law, a condition to the exercise of the powers of distraint or summary suit was that the landlord should have tendered *pattas* to his *raiyats;* and this tender he might make by affixing a general notification in his *kachahri* intimating that the

Introduction into Council of the Bengal Recovery of Rent Bill by Mr. E. Currie in October 1857.

Outline of the provisions of the Bill.

[3] See *Proceedings of the Legislative Council of India*, Vol. III, page 436 and following pages.

[4] This was altered before the Bill became law.

pattas were ready for delivery. This law, which was intended for the protection of the *raiyat*, he believed had, in practice, been altogether a dead letter. He had provided that, when the landholder tendered a *patta* to a *raiyat* and the *raiyat* refused to receive it, he might sue him for a *kabuliyat*, and that the possession of a *kabuliyat*, or of a decree adjudging the delivery of one, should be necessary[5] to authorize a landlord to exercise the right of distraint. The Bill further provided penalties for exactions in excess of rent payable, and withholding receipts for rent paid, and also for extortion of rent by imprisonment or other duress. It also took away the power now possessed by landholders of compelling the attendance of their *raiyats* for adjusting rents, or for any other purpose. This power had been very generally complained of as being used as a means of oppression ; and it seemed to him to be inconsistent with the general principles of our administration. Then followed rules according to which the landholder was to proceed when he wished to raise his rents, and then a provision allowing *raiyats* to resign their lands when unable or unwilling to hold them any longer. Many Bengal officers had urged that a provision like this was very much required. From the want of it, an unfortunate *raiyat* might be literally bound to the soil, if it should be the interest of the landholder so to bind him."

Proposed improvement of the Law as to Distraint.

§ 417. "The next part of the Bill related to distraint. The Council had, probably, seen a pamphlet called *Punjum Outrages*—Punjum, or the fifth, meaning Regulation V of 1812, which was the law of distraint and replevin. It could not be denied that the existing law of distraint bore very hard upon the tenant. Unless, within five days from the date of attachment, the tenant gave security that he would bring a suit to contest the demand against him within fifteen days, his property was liable to be sold, and as there was no intervention of any

[5] This provision was afterwards struck out.

public officer between the attachment and the sale, it not unfrequently happened that the first intimation which the tenant received of the distraint was on the very day of sale. Then, the whole business of sale and of taking security to stay the sale was in the hands of certain Commissioners, who were paid by a small commission on the proceeds of the property sold. The average receipts of these Commissioners were, in some districts, not more than one rupee per month, and in none were they more than ten rupees per month. It was quite unnecessary to say that agency so remunerated could not be depended upon." . . . . . "He would greatly abridge the power of distraint. At present, a tenant of any grade—the proprietor of a *patní taluk* for instance—might have his household goods distrained, if he happened to be in arrear. For this there was no possible necessity. He had restricted the liability to distraint to the case of actual cultivators, and the subject of distraint to the produce of the land in respect of which the arrear was due." . . . . . "But the Bill had been designed primarily and chiefly for the correction of abuses which, under the operation of the existing law, had sprung up in Bengal, and the correction of which was loudly called for. It did not appear to him necessary to defer any longer remedial measures in this division of the Presidency because of the present unsettled condition of the other. If it should be thought proper, the operation of the Bill might be limited in the first instance to Bengal, and extended to the North-Western Provinces at some future period, with any modifications which the circumstances of those Provinces might be thought to require."

Subsequent Progress of the Bill.

§ 418. The Bill was read a second time on the 31st October 1857, when the only two points discussed concerned the probable loss to the revenue from the reduction of stamp-duty upon statements of claim under the Bill, and the proposal to transfer the jurisdiction in Rent cases to the Revenue Authorities including Deputy Collectors. On the 14th November 1857, the Bill was referred

to a Select Committee, consisting of Mr. (since Sir Barnes) Peacock, Mr. D. Eliott, and the Mover. Mr. H. B. Harington was added to the Select Committee on the 5th December of the same year; and Mr. H. Ricketts on the 8th January 1859. The Report of the Select Committee was presented by Mr. Currie on the 26th March 1859; and on the 9th April following the amended Bill was considered by a Committee of the full Council. Mr. Ricketts on this occasion moved the introduction of the following new section:—"If in a suit for enhancement or for diminution of a *raiyat's* rent the evidence produced by the parties shall fail to show what rate of rent is equitably assessable on the land in the *raiyat's* possession, in such case the Collector shall proceed to ascertain the market-value of the average gross produce of the land, and shall declare *two-fifths* of the ascertained value to be the rent payable for such land. Provided always that it shall be competent to the Court to declare a sum less than two-fifths of the value of the gross produce to be the rental payable, if there are any special circumstances, owing to which the cultivation of the land must necessarily be attended with more than ordinary expense. When the rent of a *raiyat's* holding has been ascertained as above provided, it shall not, unless on special grounds, be again liable to question for a period of twelve years." This amendment was however negatived, Mr. Currie arguing that an inquiry into these *special circumstances* must involve elements of much greater doubt and difficulty than would be found in an inquiry as to the prevailing rate, and that when the proportion of the produce was to be commuted into a money-rent to be paid under all circumstances, two-fifths would be found greatly too high. Mr. Peacock again objected to the jurisdiction being transferred from the Civil Courts, and on this point there was the only important debate, which marked the passage of the Bill through the Council. On the 16th April 1859, the Bill was read a third time and passed, Sir Charles Jackson and Mr. Peacock voting against it.

New Section for settling Rent moved by Mr. Ricketts.

§ 419. Assents and dissents were subsequently read and recorded. Mr. Peacock's dissent was based upon his objections to the transfer of jurisdiction to the Revenue Authorities, and the probable loss to the stamp revenue.[6] Sir Charles Jackson's dissent was based on similar grounds.[7] The first ground of Mr. Currie's assent[8] was :—" Because the Bill defines and settles several important questions connected with the relative rights of landholders and tenants, which have remained undefined and unsettled from the commencement of legislation in the Presidency, and of which a definition and settlement have been long considered to be eminently desirable and necessary." On the 29th April 1859, Lord Canning, then Governor-General, gave his assent to the Bill, and, " as several assents and dissents " had " been recorded upon the passing of " the " Bill," he deemed it " respectful to the Legislative Council to state the reasons " for which he assented to it. " I believe," he wrote,[9] " that the Bill will confer a great practical benefit upon the agricultural population of Bengal. I find that the Bill is objected to, not on account of the substantial alterations of the law which it effects between landlord and tenant, but because it gives the original jurisdiction in cases arising between landlord and tenant, to the Courts of the Revenue Officers, and takes away original jurisdiction from the regular Courts of Civil Judicature, and I find that this objection rests chiefly upon two grounds. . . . . I have to observe, that no one doubts that it has long been desirable that the important questions connected with the relative rights of landlord and tenant dealt with in this Bill should be settled : that *no objection is suggested to the nature of the settlement which the Bill contemplates ;* and that the Bill is a real and earnest endeavour to improve the position of the *raiyats* of Bengal, and to open to them a prospect of freedom and independence which they have not hitherto enjoyed, by clearly defining their rights

Assents and Dissents recorded.

Lord Canning's Remarks in giving his Assent to the Bill.

[6] *Proceedings of the Legislative Council of India*, Vol. V, page 303.
[7] *Id.*, page 305. [8] *Id.*, page 309. [9] *Id.*, pages 334-335.

and by placing restrictions on the power of the zemindars, such as ought long since to have been provided." Four and twenty years have passed since these words were written, and the experience of these years has not justified the observation as to the rights of the *raiyats* being clearly defined by the measure, which was the subject of this encomium.

Scope of Act X of 1859.

§ 420. Act X of 1859 contained provisions both of substantive and adjective law. It attempted to settle the relations between *zemindars* and *raiyats* by a few rules dealing with questions which had assumed particular prominence, and it provided a procedure for the trial by Revenue Officers of questions arising between landlords and tenants. No attempt was, however, made before passing the Act to ascertain by evidence or otherwise the then existing relations between *zemindars* and *raiyats*, and the rights which had survived long years of oppression or had grown up under British rule. Under these circumstances it is not surprising that the remedies applied to patent mischiefs produced others scarcely less formidable than those which they were designed to remove. The following are the main lines of the Act :—

Its Main Lines.

I.—The abolition of the *zemindars'* power of compelling the attendance of their *raiyats :*

II.—A small class of tenants to be entitled to hold at fixed rates of rent :

III.—A Right of Occupancy, entitling the *raiyat* to hold his land as long as he pays his rent, to be acquired by twelve years' continuous cultivation or holding :

IV.—Provision for settling rent or enhanced rent by the agency of the Revenue Courts :[1]

V.—A reformed attempt to bring about the interchange of *pattas* and *kabuliyats* between landlords and tenants :

[1] This was necessary once it was declared that any class of tenants was entitled to hold their land as long as they paid their rent—such rent not being a fixed rent.

VI.—An attempt to compel the delivery of receipts for rent, and prevent exaction of excess rent :

VII.—The amendment of the Law of Distraint :

VIII.—The transfer of original jurisdiction in suits between Landlords and Tenants from the Civil to the Revenue Courts. The Chief Civil Court of the district retained a limited appellate jurisdiction :

IX.—Provision for the registration of transfers of permanent transferable interests in land intermediate between the Zemindar and the cultivator

§ 421. The abolition of the *zemindars'* power of compelling the attendance of the *raiyats*—a power which had been formally declared in 1799,[2] and had been oppressively exercised for sixty years—had the effect of stopping much duress and other forms of coercion. This was the result more especially in the districts in the neighbourhood of the Presidency, in which, soon after the passing of the Act of 1859, the Subdivisional System was introduced or extended, so that there was a Magistrate's Court within easy reach of every cultivator, some fifteen to twenty miles being the longest distance which an injured *raiyat* had to travel in order to seek justice. A more efficient police was at the same time introduced ; and collusion between the *zemindars* or their agents and the officers of police was rendered more difficult by the vicinity of the Magistrate. Much also was due to the spread of education and the enlightenment arising from closer contact with higher civilization in the Presidency-town. In districts more distant from the Presidency, or which have not yet been broken up into smaller areas for purposes of Civil and Criminal Jurisdiction, the effect of the legislative provision, which took away on paper the *zemindar's* power of compelling the attendance of his *raiyats*, has been less felt ; and there are possibly many rural villages in Bengal at this moment, where this provision has never been heard of.

Abolition of Zemindars' power of compelling the attendance of the Raiyats.

[2] See *ante*, page 582.

But even here the express abolition of the power has made the *zemindars* and their agents more careful of transgressing the law, at least too openly or too boldly, because a single case of violence or wrongful restraint may have the effect of bringing a case into Court, the result of which will be to open the eyes of the *raiyats* to the real state of the law, and the *zemindar's* want of coercive authority. Altogether there can be no doubt that the express abolition by the Legislature of a power inconsistent with liberty has had the effect of materially diminishing the pressure, which the *zemindars* can now put upon the *raiyats* for the purpose of compelling agreement to their terms regarding rent or other matters.

A certain class of Tenants declared entitled to hold at fixed Rents.

§ 422. We have seen that at the time of the Permanent Settlement, a small class of *mukarraridars* and *istemrardars*[3] were protected from enhancement and declared entitled to hold at fixed rents. These persons either then were or afterwards became *talúkdars*. We have also seen that a certain class of *raiyats*—termed *khudkasht kadími raiyats* or resident and hereditary cultivators, who had a prescriptive right of occupancy in consequence of having been in possession of their lands for more than twelve years before the decennial settlement—were in 1822 granted a certain protection even against purchasers at sales for arrears of revenue.[4] Speaking generally, these two classes were now slightly extended and protected from enhancement. The Act declared that no dependant *talúkdar* or other person possessing a permanent transferable interest in land, intermediate between the proprietor of an estate and the *raiyats*, who holds his taluk or tenure *at a fixed rent, which has not been changed since the time of the Permanent Settlement*, shall be liable to any enhancement;[5] and further that *raiyats*, who hold lands at *fixed rates of rent, which have not been changed from the time of the Permanent Settlement*, are entitled to receive *pattas* at those rates.[6] Fully alive

[3] See *ante*, page 719.
[4] See *ante*, pages 662—665.
[5] Section 15.
[6] Section 3.

to the difficulty under which these classes of tenants must labour in carrying their proof back to the end of the last century, the Legislature came to their aid with what is called *The Twenty Years' Presumption*, by enacting that whenever it is proved in any suit under the Act that the rent, at which a *taluk* or other tenure or a *raiyat's* land is held, has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that such *taluk*, or tenure, or land has been held at that rent from the time of the Permanent Settlement, unless the contrary is shown, or unless it be proved that such rent was fixed at some later period.[7] Under these provisions the *talúkdar*, tenure-holder or *raiyat*, who seeks the protection afforded by the Act, must plead that he has held at a fixed rent, or (in the case of a *raiyat*) at a fixed rate of rent, since the Permanent Settlement. He will then discharge the burden of proof laid upon him, and be entitled to the benefit of the Twenty Years' Presumption, upon showing that his rent or the rate of his rent has not been changed for twenty years before the institution of the suit. The landlord may, thereupon, rebut the presumption by showing either (1) that the rent or rate of rent was changed during this period of twenty years, or (2) that the *taluk*, tenure or holding was created, and, therefore, the rent fixed, at a time subsequent to the Permanent Settlement. These provisions have always been unpopular with the *zemindars*, who say that they have assisted persons to obtain a right of holding at a rent fixed for ever, who under the literal provisions of the law are not entitled thereto. If this have occurred in any considerable number of cases—and my experience does not lead me to believe that it has—the only observation that is suggested is that the Zemindars must have kept their books very carelessly or have been very negligent in managing their cases and producing their evidence. Purchasers at Revenue Sales, no doubt, labour under great

The Twenty Years' Presumption.

[7] Sections 4 and 16 combined.

difficulty in rebutting the presumption ; but they do not belong to a class, whose claim to much sympathy will be very readily admitted. I have myself long thought that these provisions alone in the Act deserve Lord Canning's encomium.

Right of Occupancy to be acquired by Twelve Years' continuous Cultivation or Holding.

§ 423. We have seen[8] that the right of the *zemindar* to eject his *raiyats* was doubtful from the beginning. In the case of *khudkasht raiyats*, who in popular estimation enjoyed a prescriptive right of occupancy, an eviction for other cause than non-payment of rent was no doubt regarded as an act of oppression. In the case of other *raiyats*, who had been in more modern days admitted to cultivate without paying a *salami* and obtaining a grant of any of the local tenures, the *zemindar's* right to evict existed both in law and in fact. As long as the *zemindar* could evict the *raiyats* or any class of *raiyats*, he had it in his power to exact the highest possible rent, for he could say :—" Pay the rent I ask, or quit." The Bengalies, like the Irish, are a peculiarly home-keeping race, unwilling to leave their native villages and submitting to any exaction rather than do so. So long then as the *zemindar's* power of eviction remained doubtful, or rather, so long as he could in practice evict any tenant, who would not pay the rent by him demanded, his power to rack-rent was absolutely unlimited, as soon as, in consequence of the increase of population, he could always find a tenant to replace upon his own terms the tenant who would not agree to these terms. In order to remove all doubt as to the *zemindar's* power of eviction, or rather in order to define and limit that power, it was enacted that *every raiyat who has cultivated or held land for a period*

[8] See *ante* pages 529—531 *note*, and 682—83 *note*. In the Madras Presidency it has recently been decided (in a case to be found in 6 Madras High Court Reports, 164) that a zemindar can evict a *raiyat* on the expiry of the term of his *patta*, if he refuses to pay an increase of rent demanded of him. In this case the *raiyat* had been *thirty* years in possession ; yet Holloway, J., held, that he had no right of occupancy, referring to the provision of Act X, as giving in Bengal a right, which otherwise would not have existed.

of twelve years[9] *has a right of occupancy in the land so cultivated or held by him, whether it be held under patta or*

[9] The section in Mr. Currie's Draft Bill originally stood thus :—"Every *resident raiyat* and cultivator has a right of occupancy in the land held or cultivated by him, whether it be held under *patta* or not, so long as he pays the rent payable on account of the same."—The reasons for altering the draft are thus stated in the report of the Select Committee :—"The laws in force speak of *khudkasht raiyats* as possessing rights of occupancy, and in some places the word '*khudkasht*' seems to be considered synonymous with 'resident.' 'Resident' was, therefore, the word used in the original Bill. But it has been pointed out to us by the Western Board that residency is not always a condition of occupancy ; and it appears that, after much inquiry, it was prescribed by an order of the Government of the North-Western Provinces in 1856, as most consistent with the existing practice and recognized rights, that a holding of the same land for twelve years should be considered to give a right of occupancy. We have followed this precedent, and altered the section accordingly." The fact really was that a *prescriptive right of occupancy* had been spoken of in the Regulations and in official papers ever since the time of Mr. Shore's Minutes ; but the term of prescription had never been settled. It was accordingly settled in 1859, when the period of twelve years was taken, by analogy to the period of limitation for the recovery of immovable property. A very full account of the whole question will be found in a note by Mr. (afterwards Sir W.) Muir, the Senior Member of the Board of Revenue of the North-Western Provinces, dated 29th May 1863. The rule adopted in 1859 will be found in the unfinished draft of a Revenue Code, which was one of Mr. Thomason's latest works. His reputation as a Revenue Officer will make the following extracts from this Code interesting to all who take an interest in the subject :—"Occupants by prescription are those who have an inherent right to occupy certain lands either at a fixed rate of rent, or a rent varying according to the usage of the *pargana*. This right is heritable, and cannot be infringed by the *Malguzar*, so long as the occupant by prescription continues to pay the rent of his land as it falls due. Occupants by prescription cannot free themselves from the responsibility attaching to them for payment of rent to the *Malguzar*, otherwise than by the surrender to him of their right of occupancy. The right therefore is not transferable without the consent of the *Malguzar*, nor can the land be mortgaged or sublet by the occupant without the consent of the *Malguzar*, so as to relieve the occupant from responsibility for the rent. The entry of the name of the transferree in the village records on the application of the occupant, and the consequent reception of rent by the *Malguzar* from the transferree, knowing him to be such, shall be considered sanction on the part of the *Malguzar* to the transfer. The transferree shall then be considered possessed of all the rights of the original occupant. An occupant by prescription is permitted, at any time before the commencement of the agricultural year, to surrender to the *Malguzar* the whole, or any portion, of the land which he occupies. Such surrender of a part does not weaken his right to the continued occupation of

not, *so long as he pays the rent payable on account of the same.* The holding of the father or other person from whom a *raiyat* inherits is deemed the holding of the *raiyat* within the meaning of this provision. From the operation of the rule were excepted *khamar*, *nijjote* or *sir* land belonging to the proprietor of an estate or tenure and let by him on lease for a term, or year by year, and (as respects the actual cultivator) lands sublet for a term or year by year by a *raiyat* having a right of occupancy. The Right of Occupancy carried with it two privileges:—(1) the *raiyat* could not be evicted except for non-payment of rent, and this only through the Court: (2) his rent in case of dispute was to be fixed by the Court. He could under certain circumstances claim abatement. His rent could not be enhanced except through the Court and after service of notice. In case of dispute, where no question of abatement or enhancement was raised, the rent previously paid by him was to be deemed to be fair and equitable.

§ 424. The direct effect of the twelve years' rule, thus declared by the Legislature, was that a large number of

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the rest on the same terms as before. A *Malguzar*, who considers that an occupant by prescription pays less rent than is fairly due from the land according to the *pargana* usage, is competent to sue for increase of the rate of rent, provided that, any time before the commencement of the agricultural year, he gives notice to the occupant of the rent which he intends to demand in the following year. This notice must be dated and attested by two credible witnesses, and a copy must be lodged before the commencement of the agricultural year, with the *patwarí* of the *Mahal*, and with the *Tehsildar* of the *pargana* or the Collector of the district. Occupants-at-will are entitled to occupy the land only till the expiration of the agricultural year. At the close of the agricultural year the right of occupancy ceases, and the land is then at the disposal of the *Malguzar*, unless there be then on the ground a crop, which the occupant had sown without opposition from the *Malguzar*. In that case the occupant is entitled to occupy the land till the crop be removed. Uninterrupted occupancy-at-will for twelve years at the *pargana* rates, or at less than the *pargana* rates, becomes occupancy by prescription. Leases of land granted for a period by Malguzars to occupants by prescription, do not necessarily alter the right of occupation possessed by the lessee. On expiration of the lease, the inherent right of occupancy revives, unless it be specially surrendered."—*Thomason's Dispatches*, Vol. II, pp. 343-4.

Operation of the Twelve Years' Rule.

tenants, who before the Act were mere tenants-at-will and so liable to be rack-rented, at once acquired a protected tenure; and the *zemindars* could no longer legally raise their rents, unless upon the grounds permitted by the Act; and (if the tenant objected) after proving those grounds in Court. Here also the knowledge, which the *raiyats* obtained of the right given them by the Legislature, varied much in the districts; and in many places there are thousands of *raiyats*, who at this present day know nothing of the Act of 1859, or what it intended to do for them. The *Zemindars*, on the contrary, being more educated and having early learned the provisions of the law, have, especially in Bahár, taken steps to evade its provisions by changing the land occupied by the *raiyats*, so as to prevent continued occupation of the same land by the same cultivator for the statutory period of twelve years. In so far as the Act has protected a considerable class of *raiyats* who are now alive to their rights, it has done good. In so far as it has tended to the disturbance of those who had, or might have, acquired protection under its provisions, it has done harm. But the greatest mischief caused by its provisions has yet to be told. The Act made no mention, took no account, of any of the local tenures which are to be found in the country—the *jotes* of Rungpore, the *guzastha* tenures of Bahár, the *ganthí* tenures of Jessore, the *chuks* of the Sunderbuns, the *Ayma* and *Abadkari* holdings of Midnapore, the *Jangalburi* tenures of the *Twenty-four* Parganas, the *Howlas* of Backergunge, the *Etmams* and *Tappas* of Chittagong. Under the Act the holders of all these interests, most of whom had paid large fines upon the creation of their tenures, and many of whom had obtained what in popular estimation was an heritable interest at a fixed rent—were nothing more or less than *raiyats* having a right of occupation, entitled indeed to the protection accorded to the tenant who had paid nothing upon entry and had entered but twelve years ago, but entitled to nothing more, and so liable to enhancement. The *Zemindars* saw the advantage given them by the levelling

provision of the law; and in the result so far as all these tenure-holders were concerned, the Act, instead of defining and settling, grievously unsettled rights, which but for its provisions would have been exempt from interference beyond the payment of a few *abwábs* upon the zemindar's marriage, or the birth of a son, or other important occasion, which according to the ideas of the people justified the demand of a benevolence.

Provisions for settling the Rent payable by Raiyats having a Right of Occupancy.

§ 425. As soon as the Legislature declared that all *raiyats*, who had cultivated or held land for twelve years, have a right of occupancy in that land, so long as they pay the rent payable on account of the same, it became necessary to provide for defining and settling the rent so payable. It was accordingly enacted that in case of dispute the rent previously paid by the *raiyat* shall be deemed to be fair and equitable, unless the contrary be shown in a suit under the provisions of the Act. Every *raiyat* having a right of occupancy was declared entitled to claim an abatement of the rent previously paid by him, (1) if the area of the land had been diminished by diluvion or otherwise; (2) if the value of the produce or the productive powers of the land had been decreased by any cause beyond the power of the *raiyat;* or (3) if the quantity of land held by him had been proved by measurement to be less than the quantity for which rent had been previously paid by him. No under-tenant or raiyat holding or cultivating land without a written engagement, or under a written engagement not specifying the period thereof, or whose engagement had expired or had become cancelled in consequence of a revenue sale, could be made liable to pay any higher rent than the rent payable for the previous year, unless a written notice were served upon him before the end of the agricultural year specifying the higher rent claimed and the ground of enhancement. This provision as to notice is applicable to all tenants, and was substantially reproduced from the Regulation of 1812.[1]

Such Raiyats entitled to Abatement of Rent on what grounds.

Notice necessary in all cases for the purpose of Enhancement.

[1] See *ante*, p. 612.

The tenant upon whom this notice has been served is allowed to contest his liability to pay the enhanced rent demanded, either by complaint of excessive demand of rent, or in answer to a suit for the recovery of arrears at the enhanced rent.

Grounds on which a Right-of-Occupancy Raiyat is liable to Enhancement.

§ 426. The following are the grounds upon which a *raiyat* having a right of occupancy is liable to enhancement of the rent previously paid by him :—

(1)—that the rate of rent paid by such *raiyat* is below the prevailing rate payable by the same class of *raiyats* for land of a similar description and with similar advantages in the places adjacent :

(2)—that the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the *raiyat :*

(3)—that the quantity of land held by the *raiyat* has been proved by measurement to be greater than the quantity for which rent has been previously paid.

First ground—Rate below rate for similar lands in places adjacent.

In respect of the *first* of these grounds of enhancement, the words "prevailing rate" and "payable by the same class of *raiyats*" to some extent limit the application of the rule, and prevent competition from affecting the rate of rent payable by *raiyats* having a right of occupancy.[2] All that the rule comes to in its present shape is really this, that one *raiyat* of this class can be made to pay as high a rate as another *raiyat* of the same class. It affords no means of raising the rate of rent payable by the class generally.[3]

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[2] These words do not occur in section 7, Regulation XLIV of 1794, which speaks of "the established rates of the pargana for lands of the same quality and description."

[3] "The present case is that of a raiyat having a mere right of occupancy.—It is a mistake to suppose that such a raiyat has any interest in the land, which gives him a right to a share of the rent. He has merely a right to occupy the land in preference to any other tenant so long as he pays a fair and equitable rent"—*per* Peacock, C. J., in *Hills* v. *Isshore Ghose*. And again—"His right of occupancy gives him a right to occupy at a fair and equitable rate; but, when an alteration in the rent is to be made in consequence of an increase in the value of the produce, he is not entitled, in strictness, to have it fixed at a lower rate than that which a tenant not having a right of occupancy

Third ground—Quantity of Land held by raiyat more than rent was previously paid for.

The *third* ground of enhancement,—namely, that the quantity of land held by the *raiyat* has been proved by measurement to be greater than the quantity for which rent has been previously paid,—can scarcely be said to be a ground of enhancement in the more accurate acceptation of the term. Certainly the enhancement to which the first two grounds are directed, and the enhancement which is obtainable under the third ground, are essentially different. In the former case, the rent itself, the rate, is increased—in the latter case the rate is not increased, the raiyat is merely made to pay rent for additional land which he obtained by error in the first instance, or subsequently by encroachment or alluvion. In any of these cases it is reasonable that the raiyat should pay additional rent for the additional land. There is, however, a class of cases in which there has been neither encroachment nor alluvion ; and to which the application of the rule is not very satisfactory. I mean cases in which the raiyat did not take and has never held his land by measurement, *i.e.*, so many *bighas* at so much per *bigha*. His holding is known and usually described by the name of some one who formerly held it, as for example, "Fakir Das's jumma"; and, if the quantity of land included in it is ever stated, it is "by repute" and not as an essential part of the description. Very frequently these *jummas* are described by their boundaries, and here the usual rule of the description by boundaries prevailing over that by quantity should govern. Land was not usually let to *raiyats* by measurement: and the rule would perhaps be properly restricted to cases in which it had been so let, or in which there was clear evidence of additional land, not included in the original holding, having subsequently come into possession of the *raiyat* by encroachment or alluvion.

would give for it." Sir Henry Ricketts, in a communication dated 1876 and to be found amongst the printed papers, says that, as far as he can recollect, in all the discussions in preparing Act X, and in all the suggestions received from all parts of the country, there never was mention made of any considerable advantage to occupancy-raiyats beyond protection against causeless dispossession.

§ 427. The *second* ground of enhancement is the most important of the three,—*viz.*, that the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the *raiyat.* There are here really two grounds of enhancement, created by separate and distinct causes. "Increase of value" means "increase of money-value."[4] Now, an increase of money-value or price may be the result of a *general* cause affecting the country or province equally, or of a *special* cause affecting merely the particular locality. As money-rents are in these provinces paid in silver, an increase in the quantity of silver in the country and a consequent decrease in the value of silver is a *general* cause affecting the whole country. Produce grown in the vicinity, and produce of the same quality grown at a distance, fetch exactly the same price in the same market; but the seller of the produce grown in the distant place really receives as much less as the carriage to market costs, which expense does not fall upon the seller of produce grown in the vicinity. If the former sold the produce on the spot where it was grown, the price would be actually so much less. Now, if a market were opened near to the distant place, or a railway, increasing the facility of carriage to good markets, were constructed, either of these causes might produce an increase of price, but this would be a *special* cause affecting only the particular locality. The rise of the price of agricultural produce, which has been brought about by general causes of late years, has in all probability mainly contributed to the present importance of the question of enhancement. A rise of the price of agricultural produce means that more silver is given for

Value of produce or productive powers of land increased.

Value means money-value or price.

Increase of price may be caused by general or special cause.

Rise of price of agricultural produce.

[4] The word 'value,' when used without adjunct, always means in Political Economy *value in exchange*, or, as De Quincy calls it, *exchange value*. Mr. Mill uses 'price' to express the value of a thing in money, and 'value,' or 'exchange value,' to express its general power of purchasing, the command which its possession gives over purchaseable commodities in general. Upon any revision of the law the term 'price' will doubtless be substituted for 'value.'

the same quantity of produce—let us say rice, for example—than previously. This may be brought about in two ways. *First*, the quantity of silver in the world or in the country may have been increased, and the value of silver in relation to rice will therefore be lessened, or, in other words, a greater quantity of silver is given in exchange for the same quantity of rice than previously. *Secondly*, there may be a greater demand for rice than before, owing either to increased demand for exportation, or to there being more persons in the country requiring to consume rice than there were previously. Let us now suppose that rice is grown on certain land—that the price of rice is Re. 1 per maund in 1870, and Rs. 2 per maund in 1880—and that the quantity of rice produced continues to be the same. The landlord who gets Re. 1 rent in 1870, gets the equivalent of one maund of rice; while in 1880 he gets the equivalent of only half a maund of rice. If one maund of rice represented in 1870 the proportion of the produce of a *bigha*, which the landlord was entitled to receive, he is entitled to receive the same proportion in 1880, but the price of the maund of rice is then Rs. 2, and the landlord is therefore entitled to receive Rs. 2 as rent. If the rise of price be due to the depreciation of silver, and if the landlord's sole source of income be money-rents, his income will really be reduced to half, for the same quantity of silver will purchase only half the quantity of all commodities. If the rise of price be due to increased demand, he will not be so badly off, for, though his silver will purchase only half the quantity of rice, it will purchase the same quantity of other commodities, unless their relative values also have changed, and that is a matter with which this inquiry is not concerned.

Increase of the productive powers of the land.

§ 428. The case of an increase of the productive powers of the land and the case of a rise of price effected by some *special* cause are in the same category. Where the increase of the productive powers of the soil is due to the raiyat's agency, he is properly allowed to enjoy the fruits of his industry or the profits of his capital, and is protected from

enhancement of rent. Where the Legislature has compelled the carrying out of large public schemes of improvement, it has compelled the *raiyat* to contribute to the expense; or, if the *zemindar* has had to pay in the first instance, it has given him the means of recouping himself. If the *zemindar* desires to effect improvements out of private funds, he can contract with the *raiyats* for an increase of rent before he expends his money. Where the cause of the increase is an accident, *e.g.*, a railway, a fertilizing inundation, a change in the condition of the land caused by some river or *khal* altering its course, the *raiyat* may contend that these fall within the chances of profit and loss, of which he took the risk in agreeing to pay a regular annual money-rent. The defect in the law, as a precise rule, is, that while it assumes that the *raiyat's* rent is not to be enhanced on the ground of an increase in the value of the produce or the productive powers of the land effected by the agency or at the expense of the *raiyat* himself, it does not declare whether, when such increase has been effected wholly by the agency or at the expense of the landlord, the latter is or is not to receive the whole benefit of the increase—or whether, when the increase has been effected by a cause to which neither landlord nor tenant has contributed, the benefit is to be shared, and if so, in what proportions.

Attempts of the Courts to construe and apply these Enhancement Provisions.

§ 429. In two important cases an attempt was made by the Calcutta High Court to construe and apply these enhancement provisions of the law. In the case of *Hills* v. *Isshur Ghose*[5] it was held that the *raiyat* was merely entitled to the wages of his labour and to the profits of his capital according to the usual and ordinary rate of agricultural capital—that the *zemindar* was entitled to the overplus of the value of the produce after these deductions, and could enhance to the full limit of this overplus. In other words, the *raiyat* was treated as a capitalist farmer and the strict rules of English political economy were applied to him.

[5] W. R. Special Number, 1862-64, pp. 48, 131, 148.

In the case of *Thakurani Dasi* v. *Bisheshur Mukherji*,[6] it was decided that, in cases of enhancement on the ground of the value of the produce having increased, the enhanced rent should be calculated so as to bear to the previous rent the same proportion that the increased gross value of the produce bears to the previous gross value. It has been generally supposed that the case of *Isshur Ghose* was overruled by that of *Thakurani Dasi*, and that the rule laid down in the former case has no longer any operation. The former rule certainly covers much wider ground than that propounded in the latter case, which applies only to cases of enhancement on the ground of increase in the value of the produce, and where the rent is a customary rent; but it does not appear that any attempt has ever been made to apply it since the decision of *Thakurani Dasi's* case. Indeed the number of items which enter into the calculation of outgoings, value of produce and cost of production, and the amount of evidence necessary in order to make any thing like an accurate calculation of these items, would preclude the rule of *Isshur Ghose's* case from ever becoming one of practical application. Most persons who understand the subject have thought the principle thereby enunciated hard and unjust to the cultivator, and many have expressed a decided opinion that, however applicable it may be to competition rents and capitalist farming, it is not fair and equitable when applied to the circumstances of these provinces and the condition of the people of Bengal. It may be observed that Mr. Justice Trevor, who with Mr. Justice Elphinstone Jackson may be said to have founded the doctrine of proportion, was of opinion that, if the landlord in *Isshur Ghose's* case had been an auction-purchaser under the Sale Law of 1841 or that of 1845, which gave the power of *enhancing at discretion*, the decision might have been a sound one. No one, however, now advocates the principle of this case, or supposes that it

[6] B. L. R., Sup. Vol., F. B., 202.

can be practically or properly applied. It certainly had one beneficial effect in that it caused people to discuss the theory of rent applicable to India, and enter upon the practical consideration of a most difficult subject with more definite ideas than had previously been common amongst officials or landlords.

Case of Thakurani Dasi—Rule of proportion.

§ 430. The rule laid down in the case of *Thakurani Dasi*, as has already been observed, is not one of general application. It applies only where the value of the produce has been increased otherwise than by the agency or at the expense of the *raiyat*, the productive powers of the land and the cost of production remaining the same. Then it applies only where the previous rent was a customary one, *i.e.*, a rent fixed according to the rate commonly payable by the same class of *raiyats* for similar land in places adjacent and representing a share of the gross produce calculated in money. The rule was expressly guarded as having no application to tenants holding under written engagements in which the rent was based on data inconsistent with the presumption of the rate being a customary one. The formula derived from the rule is this—

$$\left.\begin{array}{l}\text{Former gross value of produce on average of 3 or 5 normal years}\end{array}\right\} : \left\{\begin{array}{l}\text{Present gross value of produce on average of 3 or 5 normal years}\end{array}\right\} :: \text{Former rent} : \left\{\begin{array}{l}\text{Enhanced rent.}\end{array}\right.$$

The first three terms of this proportion must be proved by evidence before the fourth can be calculated: but the difficulty of proving *when* the rent was previously fixed and what was at that time the gross value of the produce is practically so great that the most experienced officers have pronounced the rule to be unworkable, and the *zemindars* have confirmed this verdict by giving up all attempt to work it in their own interests. The expense of producing the necessary evidence in each of many hundred or thousand cases is further an almost insuperable difficulty to its general application. One proprietor is said to have spent a lakh of rupees in enhancement litigation without much practical result, before the inutility of the present law had been demonstrated. The

Provisions as to Enhancement have failed.

net result then has been that while a large number of *raiyats* have under the provisions of the Act of 1859 received protection from eviction and therefore from rack-renting, those provisions of the Act have completely broken down by which the Legislature undertook to provide for the adjustment of rents in cases in which the zemindars were conceded to have a reasonable claim to enhancement. This is, no doubt, a just cause for dissatisfaction, but the measure of the supposed resultant damage is very much diminished by the suspicion that rents had already been raised at least in some parts of Bahár and Bengal above the rates which a purely agricultural community should be required to pay.

Provisions as to Patta and Kabuliyats.

§ 431. The next object of the Act of 1859 was to bring about the interchange of *pattas* and *kabuliyats* between the *zemindars* and *raiyats*. This had been tried so often and so persistently, and had failed for such obvious reasons, that it cannot but excite some surprise that the legislators of 1859 should have thought fit to make a fresh effort in this direction. The Act provided that every *raiyat* is entitled to receive from the person to whom the rent of the land held or cultivated by him is payable, a *patta* containing the following particulars :—(1) the quantity of the land, and the number of the fields, when they have been numbered in a Government survey : (2) the amount of annual rent : (3) the instalments in which such rent is payable : (4) any special conditions of the lease : and (5) when rent is payable in kind, the proportion of the produce to be delivered and the time and manner of delivery. Every person granting a *patta* is entitled to receive a *kabuliyat ;* and the tender to a *raiyat* of such a *patta* as he is entitled to receive entitles the person to whom the rent is payable to receive a *kabuliyat.* So far as regarded pre-existing tenancies, these provisions failed almost as completely as the provisions of 1793 ; and the Rent Commissioners recommended their omission from the consolidating and amending Bill. They say in their Report :—" The experience of the Registration Offices indi-

cates that writing is commonly used in the creation of *new* tenancies, and we think it more advisable to leave the adoption of writing to its natural growth, which will no doubt be encouraged by the spread of education amongst the cultivating classes than to force upon the people a law fashioned according to Western rather than Eastern ideas. Closely connected with this point is the omission from the Draft Bill of any provisions similar to those of the existing law as to *raiyats* being entitled to *pattas*, and landlords being entitled to *kabuliyats*, and the procedure for enforcing the rights so declared. . . . Very little use has been made of these provisions by those for whose benefit they were intended. This observation is more particularly concerned with their use as a means of reducing to writing the conditions regulating the relation of landlord and tenant."

Omission of the law as to Pattas and Kabuliyats and suits for obtaining them recommended by the Rent Commissioners.

§ 432. "There is, however, another purpose for which they might have been used, that is, as a means to obtain an authoritative settlement of some essential question connected with the tenancy and in dispute between the parties thereto—the rate of rent, for example, or the quantity of land held by the tenant. The landlord may contend that the *raiyat* holds twenty bighas of land, while the *raiyat* declares that he has but fifteen. Year after year the contention is renewed. The landlord threatens a measurement, which the *raiyat*, afraid of a venal *Amín* and a varying pole, desires to avoid. A bribe to the *gomashtah* or compliance with some petty cess defers the final settlement of the question for a year; and the following year it arises again, perhaps deterring the *raiyat* from going to his landlord's *kachahrí* to pay his rent, lest he should be subjected to a demand, the justice of which he will not admit. Or some fields in the *raiyat's* holding are by him maintained to be second class rice land and assessable with the prevailing or usual rate for land of this class, whilst the landlord avers that they are first class rice land and should pay a higher rent. At every rent day the point is discussed; and in a country where any discussion is prone to

beget a wrangle, seldom conducted with a seemly choice of expressions, an amount of irritation is kept up, which is not in harmony with the friendly relations which should exist between a landlord and his tenantry. It is very desirable that facility be afforded for the ready settlement of questions like these, which are constantly arising in this country, more especially in consequence of the absence of boundaries and fences and the want of an exact survey upon an uniform standard. It might have been thought that the landlord in the first case could easily have the question settled by tendering a *patta* and demanding a *kabuliyat* for twenty bighas ; and the landlord in the second case by tendering a *patta* and demanding a *kabuliyat* for the field as first class rice land : but if the land turned out to be nineteen and a half bighas instead of twenty, or one of the fields was found to be of some middle class kind of land, the suit, according to the decision of the highest tribunal in India, must fail and the parties be sent away, the real question in dispute unsettled, and their feeling roused and embittered by litigation. Thus these provisions of the existing law have become ineffectual for the only purpose for which the people cared to use them and for which they might have been beneficially used. While omitting what has been found useless in practice, we have endeavoured to supply the want thus indicated by experience. The Draft Bill accordingly allows either landlord or tenant to sue for the determination of any such questions which may arise between them. A copy of the decree passed in the case will have all the effect of a *patta* or *kabuliyat* upon the point which the parties themselves wish to have determined."

Provisions as to Receipts for Rent, and Penalties for Exaction.

§ 433. The attempt to compel the delivery of receipts for rent and the penalties against exactions were not more successful than previous similar attempts had been. The *raiyats* do not care to go into Court as complainants against those whose power they dread ; and whose resources can make the result of even a true case doubtful. By way of sanction to the provision abolishing the zemin-

dar's power of compelling the attendance of the *raiyats*, it was enacted that, if payment of rent, whether the same be legally due or not, is extorted from any under-tenant or *raiyat* by illegal confinement or other duress, such under-tenant or *raiyat* shall be entitled to recover such damages, not exceeding two hundred rupees, as may be deemed a reasonable compensation for the injury done him by such extortion ; and it was further provided that an award of compensation under this rule shall not bar or affect any penalty or punishment to which the person practising such extortion may be subject by law. The Indian Penal Code, which was passed in 1860, further made wrongful restraint and wrongful confinement criminal offences. All these provisions combined had undoubtedly some effect in checking oppression and lawlessness, their mere existence in the statute-book being a distinct declaration and warning to those engaged in the collection of rent, that the Government of the country was aware of, and would not tolerate, their malpractices. By way of amending the Law of Distraint, it was declared that "the produce of the land is held to be hypothecated for the rent payable in respect thereof," or in other words, that, in order to recover the equivalent of his *share* of the produce, the *zemindar* may distrain the whole. The right of distraint was limited to the recovery of rent (1) due by *cultivators*, and (2) due not longer than one year ; and no distraint was allowed for any sum in excess of the rent payable for the same land in the preceding year, unless a written engagement for the payment of such excess had been executed by the cultivator. Before distraint the landlord was required to serve the alleged defaulter with a written demand and an account exhibiting the grounds on which demand was made. Having distrained, he was bound to apply within five days to the proper officer in order to have the property sold. When standing crops were distrained, the cultivator was declared entitled to reap or gather and store them. In these and other ways the law was amended on paper ; and if the provisions of the

Amendment of the Law of Distraint.

law had been attended to and strictly followed, there would have been no hardship to the cultivator, while the landlord would have had a ready means of realizing rent improperly withheld. But experience has shown, that the amended Distraint Law has failed, and has been perverted into a means of oppression, through an utter disregard of all the provisions by which the Legislature sought to prevent the abuse of the power of attaching the crop. In those districts in which the subdivisional system has multiplied Subordinate Magistrates and Munsifs, in which the *raiyats* have come to have some knowledge of their rights, and in which therefore the provisions of the law cannot safely be disregarded with impunity, distraint has fallen into desuetude. Elsewhere landlords have exercised the *power*, giving no heed to the provisions intended to prevent its abuse. They have attached the cultivator's crop, and have taken no steps to have it brought to sale, forbidding him to reap it, until he complied with the demand made upon him, or the crop rotted on the ground, or was destroyed by birds and lost, after which they have sued him for that rent, of paying which they have deprived him of the means. So satisfied were the Rent Commissioners of the complete hopelessness of all attempts to guard the power of distraint from abuse, that they recommended its total abolition.

Continued abuse of the Power of Distraint.

§ 434. We have seen that one of the chief grounds upon which any opposition was offered to the Act of 1859 in Council was that it transferred the trial of cases between landlords and tenants from the Civil Courts to the Revenue Courts. Those who based their opposition on this ground argued that the Civil Courts were more properly fitted than Revenue Officers could from their antecedents and training possibly be, to try the questions which arise in this class of cases. Into the merits of this controversy it is now unnecessary to enter, because ten years later, in 1869, the jurisdiction was re-transferred to the Civil Courts.[7] This change was strongly opposed by the

Jurisdiction in Rent-Cases transferred to the Revenue Courts in 1859:

[7] By Act VIII of 1869 of the Bengal Council.

landlord class, who complain of the delay of the Civil Courts, and the difficulty of satisfying the more formal procedure and more regular proof required in these Courts. The complaint of delay was in many districts well-founded, and steps have recently been taken to expedite the trial of rent-suits. The objection to formal procedure and the necessity of producing legal proof, is not however one which commands much sympathy. Men, who have long been accustomed to enforce their demands without law, or rather in defiance of law, may think it strange and unreasonable that they should no longer be permitted to realize their debts or effectuate their claims otherwise than through the established tribunals and according to the ordinary procedure, but impartial rulers know, and the Bengal Zemindars themselves have furnished proof of, the danger of giving any class, in order to the enforcement of its rights, special powers or privileges denied to other classes in the community and to other civil rights. To this generality of this observation one exception may however be properly made. The settlement of rents and the decision of claims to enhancement are not subjects which can be successfully dealt with by the Civil Courts, because the questions to be solved depend upon facts and inquiries and knowledge not easily or readily reducible to the usual forms of evidence. Such questions can best be solved by experts, who, while they arrive at the soundest conclusions, may find it difficult, if not impossible, to give the reasons for their decisions.

And re-transferred to the Civil Courts in 1869.

Civil Courts not well fitted to deal with questions of Settlement of Rent and Enhancement.

§ 435. Finally, the Act of 1859 provided that all dependent *talúkdars* and other persons possessing a permanent transferable interest in land intermediate between the *zemindar* and the cultivator, shall register in the office of the *zemindar* or superior tenant, to whom the rent of the *taluk* or tenure is payable, all transfers of such *taluks* or portions of them, by sale, gift, or otherwise, as well as all successions thereto, and divisions among heirs in cases of inheritance. Every *zemindar*

Provision for the Registry of Transfers of Intermediate Tenures.

or superior tenant is required to admit to registry and otherwise give effect to all such transfers, when made in good faith, and all successions and divisions. If a *zemindar* or superior tenant refuse to admit to registry or otherwise give effect to any such transfer or succession, the transferree or successor may make application to the Collector, and the Collector shall thereupon proceed to inquire into the case, and, if no sufficient grounds are shown for the refusal, shall pass an order enjoining the *zemindar* or superior tenant to admit to registry and otherwise give effect to such transfer or succession. No *zemindar* or superior tenant is however required to admit to registry or give effect to any division or distribution of the rent, payable on account of any such tenure, nor shall any such division or distribution of rent be valid and binding without the consent in writing of the *zemindar* or superior tenant.[8] On this subject the Rent Commissioners say in their Report :—"The registration of transfers of tenures and under-tenures in the *sarrishta* of the superior landlord, is a subject which has on more than one occasion received the attention of the Legislature. Since the earliest times a record has been kept in the Collectorate of the transfers of revenue-paying estates, in order that Government might be apprised as to who is the person for the time being liable to pay the revenue. When *patní* tenures were created, their incidents were in many respects assimilated to those of revenue-paying estates. We may take, for example, the liability to sell for arrears, the avoidance of incumbrances by such a sale, and (further which is pertinent to our present subject) the registration of transfers. The proprietor was required, upon a fee being paid and security

Observations of the Rent Commissioners on the Registration of Transfers of Tenures and Under-tenures.

[8] These provisions merely reproduced the customary law. It may be observed that if these provisions were properly carried into effect, they would supply valuable materials for an effective system of registration, and transfer by registration, of intermediate tenures. And the same system might be introduced in respect of revenue-paying estates by means of the Collectorate Registers.

being given, to register all transfers, and otherwise give effect to them by discharging the transferrer from personal responsibility and accepting the engagements of the transferree."

§ 436. "Act X of 1859 required all dependent *talúkdars* and other persons possessing a permanent transferable interest in land intermediate between the *zemindar* and the cultivators to register in the *sarrishta* of the *zemindar* or superior tenant, to whom the rents of their *taluks* or tenures were payable, all transfers of such *taluks* or tenures or portions of them by sale, gift or otherwise, as well as all successions thereto and divisions among heirs in cases of inheritance. The *zemindar* or superior tenant was further required to admit to registry, and otherwise give effect to all such transfers when made in good faith, and all such successions and divisions; and if he refused to do so, an application could be made to the Collector, who was empowered to inquire and, if he saw fit, make an order of registration. Act VIII (B.C.) of 1869 reproduced so much of these provisions as required the tenant on the one hand to register, and the landlord on the other hand to admit to registry; it omitted any provision for compelling the landlord to admit to registry, no doubt because it was thought unnecessary to make any such express provision, when the cognizance of all cases arising out of the relation of landlord and tenant was transferred from the Revenue to the Civil Courts. The right being declared, the Civil Court could afford a remedy. When a *patní* tenure was sold in execution of a decree, and the purchaser did not within one month register his purchase, the *zemindar* was empowered to send a *sazawal* and attach the tenure; and so also, if a purchaser at a sale for arrears of rent failed for one month to furnish security when required by the *zemindar*. In other cases, however, the landlord had no means of compelling the transferree to register; and non-registration in the case of private transfers soon became usual. Two causes contributed to this. First, the

Failure of the former law, because Landlord had no means of compelling the Registration of Transfers except in a few cases.

landlord was by law entitled to a fee upon registration of the transfer of a *patní* tenure; and the payment of such a fee was customary in the case of other tenures and under-tenures. The payment of this fee was avoided by not registering the transfer. Secondly, the habit of holding land *benami* was facilitated by secret private transfers. Persons unacquainted with the customs of this country may ask how the transfer could be kept secret when the transferree has to pay the rent. The answer is to be found in a practice very prevalent in this country. Rent is ordinarily received from any one who brings it, but the receipt is granted in the name of the person, whose name stands in the landlord's books. Thus a receipt may be given in the name of a man who died forty years ago, the payment being stated therein to be made *marfat, guzrat,—i. e.*, by, or through, the person who actually brought the money. This practice, which appears to us to be a very mischievous one, constantly leads to litigation, when a balance of rent remains unpaid after the sale of the tenure, or when for other purposes it is necessary to ascertain the real owner of the tenure."

§ 437. We have seen that the Act of 1859 expressly provided for the rights of three classes of tenants only, (1) certain tenure-holders declared entitled to hold at fixed rents, (2) certain *raiyats* declared entitled to hold at fixed rates of rent, and (3) *raiyats* entitled to a right of occupancy. We have seen that this classification was by no means exhaustive, and that there were many rights and interests in land, which could not be brought within the first two classes, and to bring which within the third class would have seriously prejudiced vested interests, which were in the understanding of the people entitled to respect and protection. The Act, therefore, was not a complete Tenancy Act; it had no pretensions to be a Code of the mutual substantive rights of landlords and tenants. Yet it contained no saving clause, no provision that it was not intended to affect any custom or customary right not inconsistent with, or not expressly, or by necessary impli-

Mistake of not inserting in the Act of 1859 a Provision saving Customary Rights.

cation modified or abolished by its provisions. It was indeed said by the High Court in one case that the Act did not take away the right of any *raiyat*, who had a right by grant, contract, prescription or other valid title to hold at a fixed rate of rent; but the principle of this observation was not understood throughout the country; the Act was regarded as containing the whole law on the subject, with a portion of which it dealt; and—while it gave rights and protection to persons who had no other claim than that of having occupied land and paid rent for twelve years—by totally ignoring a large class, who had rights before and without the Act, it reduced to the same category old *raiyats*, *maurusi* or hereditary cultivators and new *raiyats*, *ghair-maurusi* or non-hereditary tenants. The *zemindars* exclaimed against the infringement of their proprietorship involved in converting tenants-at-will into protected tenure-holders. The twelve-year occupants had scarcely knowledge enough of the boon conferred upon them to be grateful for it; while the *maurusi raiyats*, the *guzastha* tenure-holders, the *jotedars* and *aymadars* and *ganthidars* were indignant at being put on a level with the creations of yesterday—new men in the village who had earned their rights by no labour of reclamation, by no money paid as *salami*.

CHAPTER XXIX.

Landholding, and the Relation of Landlord and Tenant in India—Government Khas Mahals.

§ 438. The word 'mahal' means an estate, an area of land separately assessed with a certain amount of revenue. It is also used of other sources of revenue besides land, for example, the *abkari mahal* or Excise Department. Khas means 'peculiar,' 'private,' 'own.' A *khas mahal* is an estate in the possession of Government, who either lets it in farm, or collects rents direct from the *raiyats*, or, where such exist, from the holders of intermediate tenures. Estates have come and still come into the hands, or under the management, of Government in various ways. A *zemindar* may refuse the settlement offered him by the Revenue Authorities, in which case he receives *malikana*, or an allowance in recognition of his title as *malik* or proprietor. Islands thrown up in the Ganges and the large navigable rivers of the Bengal Delta are by law the property of Government, if the stream between them and the main land is not fordable. If it is fordable, these alluvial formations belong to the riparian proprietors. Then there are large tracts of waste land, which have never been settled, and still, therefore, belong to Government.[9] Further, the estates of minors, females and other persons disqualified under the Court of Wards' Act for the management of their own property, are brought under the care and management of the Revenue Officers. In all

Meaning of the term 'Khas Mahal.'

How Government becomes possessed of Khas Mahals.

[9] All waste land included *within the limits* of estates, for which the Decennial (afterwards the Permanent) Settlement was concluded became the property of the proprietors of those estates; but Government in 1819 asserted its title to all tracts of waste land not so included—See Reg. II of 1819.

these estates, and especially in estates which are the absolute property of Government, there was a great opportunity of introducing and successfully working one or more of those schemes for ameliorating the condition of the peasantry and making the tillers of the soil self-reliant and independent, which have been tried in other countries under less favourable circumstances and in the face of serious obstacles. The experience obtained upon the Government estates by a few experiments of this kind would have afforded more practical light in dealing with the great question of the land-laws than an hundred minutes written in the retirement of the closet, and propounding likely theories with a facile pen on cream-laid foolscap. Unfortunately, however, the English view of landlord and tenant, and the English principle of rent had a preponderating influence, and Government took up the position of a mere landlord, calling legislation to its aid to give it special powers and facilities as such.

§ 439. I shall quote a few of the directions given from time to time for the management of *khas mahals* in order to show how Government has exercised its own rights as landlord. In certain Rules issued in 1850, we find the following passages :—"Other *talúkdars* and *raiyats* are liable to assessment at the *market-rate*,[1] that is, at the rate current in the neighbourhood, but if the rent paid for three years previous to the possession of the Government can be ascertained, and it should not appear that such rent has been without cause reduced below the market-rate, then a lease should be granted to each raiyat at such rent for three, five, or twenty years, as may be deemed desirable, with a distinct engagement that during the term of the lease, he will not be required to pay any addition to the specified rent, whatever kind of produce he may cultivate. It is to be borne in mind, that if they have hitherto held at rates below the market-rate and increase is to be levied, it is

Instructions issued by Government for the management of Khas Mahals.

[1] Which is very different from the *Pargana Rate*.

necessary that notice of the increased demand be served on or before the month of Jeyt, under section 9, Regulation V of 1812. It has not been an unusual practice to oust a *raiyat*, who, on this notice, '*i.e.* of enhancement,' being served, failed to enter into an engagement to pay the enhanced *jama;* but dispossession of the tenant is not justified by the law. Having been served with the notice under the law alluded to, if he remain in possession of the land, *he must pay the enhanced rent demanded.*"[2] . . . . . "Should an arrear remain due at the close of the year, if *the defaulter be a mere raiyat having no transferable interest in the soil, he may be summarily ousted* and his lands given to another; but if he have a transferable interest, that interest should be brought to sale under Act VIII of 1835."[3] . . . . . "The above rules respecting *raiyats* are also applicable to *talúkdars* and renters of other denominations. Under section 25, Regulation VII of 1799, the same process is applicable to *raiyats*, *jotedars*, dependant *talúkdars*, under-farmers or other descriptions of under-tenants. As with *raiyats*, care must be taken to observe the necessary distinction between those who have and those who have not an interest transferable by sale."[4]

Enhanced Rent.

Summary Eviction, if Rent not paid.

§ 440. In the Settlement Rules, we find the following instructions given to Settlement Officers in 1850:—"Especially it behoves a Settlement Officer not hastily to conclude that what may appear to him an appropriate assessment actually is so. Fertility of the soil is not the only circumstance which regulates the power of land to pay rent. The demand for labor, as affected by the thinness or denseness of the population, the salubrity of the climate, and the plenty or scarcity of good culturable soil in the vicinity, must all be considered; and in *raiyatwarí* assessments, such as are frequently necessary in Bengal, the most

Instructions to Settlement Officers in 1850.

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[2] *Rules for the management of the Khas Mahals, dated 19th November* 1850; *Rules* 19, 20.

[3] *Id., Rule* 38.

[4] *Id., Rule* 39.

minute attention to local advantages and disadvantages is often indispensable. Inferior land, advantageously situated, will be found paying higher rent than better land in a less favorable position. Land in the middle of a plain, in every respect the same as land at the edge of the plain, may be found paying double the rent of the latter. Trespassing cattle do not reach it. Land near the village may be found paying higher than land of the same sort at a distance from the village. No attempt should be made to remedy these necessary discrepancies; the only practicable uniformity would be the reduction of all to the lowest rate: thus in the case instanced above, in order to establish uniformity of rate, it would be necessary to reduce all the rates to the rate paid by the land much exposed to the trespassing of cattle. The system of settlement followed in the Western Provinces, is entirely inapplicable to the *raiyatwarí* assessment of small Mahals, the collections of which are to be made by Government Officers from the cultivators. In Bengal, Settlement Officers have not only to distribute the newly assessed *jama* in each *mauza* of a *pargana*; they have to determine what shall be paid by each individual *raiyat* for the land he holds. To introduce an average uniform assessment with which all would be satisfied, might be to sacrifice fifty per cent. of the rental; but it is desirable to reduce the amount of the variations to the smallest possible extent; variations founded on no sufficient cause should of course be disallowed. . . . . The Settlement Officer must, by a careful inquiry into the details, ascertain the causes which give rise to the inequalities, reduce the demand where it presses too heavily, and raise it where it is too low; and where good and sufficient cause is found for any considerable variation from the ascertained average rate, state that cause succinctly and clearly in that part of his settlement proceeding set apart for discussions respecting rates."[5]

§ 441. We find the following directions also in the Settle-

[5] *Rules for Settlement, dated 26th December* 1850.

ment Rules :—" The term for which *pattas* should be granted in Government *mahals* and in *mahals* held *khas* in consequence of the recusancy of the proprietors must depend on circumstances. To use the words of the Honorable Court, the object to be kept in view is to afford full encouragement to the spirit of improvement. By the orders of Government, dated 28th November 1837, such leases should be for three, five, ten or twenty years, as may be deemed most advisable ; and the lessee should be made clearly to understand that during the term of the lease, he would not be required to pay any addition to the specified rent, whatever kind of produce he may cultivate. When the *raiyats* are substantial, and the land in such a state that no further improvement is to be looked for without the outlay of capital, leases should be long in order to encourage outlay. When the land is overrun with *jangal*, and much labour is necessary to clear it, leases should be long. When the *raiyats* are poor, and there is evidently neither the inclination nor power to improve, leases should be of limited duration. When there is any intention of farming a *mahal*, with a hope that the farmer will improve, leases to the *raiyats* should not extend beyond the current year, for which period all *raiyats* under all circumstances have a right to demand that *pattas* should be given to them. The above rules, of course, do not apply when *raiyats* have a right of possession at fixed rates, but no cultivators can claim such a privilege except those protected by section 26, Act I of 1845."[6] Then we have a direction impressing the necessity of care in proceedings taken in order to enhance :—" When enhancement of rent may be imposed by a Settlement Officer, he must be careful in resumed *mahals* to cause the notice required by Regulation V of 1812 to be served on the *raiyats*, otherwise the owner, should he engage, will be unable to recover the rents, which are the foundation of his settlement."

Directions as to the Grant of Pattas in Government Estates.

Instructions as to Enhancement.

§ 442. We find in another set of *Rules for the Manage-*

[6] Which Act applies only to *Purchasers* at Revenue Sales.

ment of khas mahals the following instructions as to the distinction between the position of *khudkasht* and *kadímí raiyats* and other *raiyats* :—"The claims of *khudkasht* and *kadímí raiyats* should be carefully respected. Should cultivators of this class be found holding lands at lower rates than other *raiyats* occupying lands of a similar description, their rents should not be raised without considering their right to continued occupation at the rent heretofore paid. Some of these *raiyats* having now paid since twelve years previous to the Decennial Settlement, they have a lien on the soil *beyond wages of labour and profits of stock*.[7] By prescription they have a proprietary interest; to raise their rents is to deprive them of that proprietary interest. They are entitled to a full investigation of their rights under the resumption laws before being subjected to any enhancement. Other *talúkdars* and *raiyats* are liable to assessment at the *market-rate*,[8] that is, at the rate current in the neighbourhood." . . . . "In dealing with mere *raiyats* it is desirable not to interfere with their possession till it becomes *necessary to dispalce them*. Should an arrear remain due at the close of the year, if the defaulter be a mere *raiyat* having no transferable interest in the soil, he may be summarily ousted, and his lands given to another."[9]

Directions as to the Distinction between Khudkasht, Kadimí and other Raiyats.

§ 443. The existing *Settlement Rules* for the Lower Provinces of Bengal contain the following directions :[1]—"After the measurements and classification of land have been completed and recorded, the duty of the Settlement Officer will be to assess the rents which shall be recorded as demandable under Bengal Act VIII of 1879—*first*, from the *raiyats*; *secondly*, from the under-tenants. By section 2, Regulation IX of 1833, so much of Regula-

Existing Directions for Settlement Officers in the Lower Provinces.

[7] English Theory of Rent.

[8] This is a competition rent.

[9] Rules 36 and 38.

[1] See *Rules for the Guidance of Officers engaged in the Administration of the Revenue Department in the Lower Provinces of Bengal*—Vol. II, issued by the Board of Revenue in December 1881, pages 96–98.

tion VII of 1822 as prescribes that the amount of revenue to be demanded shall be calculated on an ascertainment of the quantity and value of actual produce, or on a comparison between the cost of production and value of produce, was rescinded. Referring to this provision, the Board remarked on the 12th November 1833, that the only safe and practical foundation for the calculation of the public revenue was the rent actually paid by the several tenants of whatever class or description, and that when it was found impossible to obtain this information in the estate under settlement, the rent paid for land of the same quality and under similar circumstances in the adjoining estates was the best criterion. Since these instructions were written, however, circumstances have changed, and owing to the rapid development of the country, and the difficulty which besets the attempt to raise the rents which are paid by *raiyats*, it is frequently found that neither the rents which are actually paid on the estate under settlement, nor those paid in adjoining estates, approach to what is fairly and equitably demandable under existing circumstances. In such cases the rents to be recorded as demandable in the settlement proceedings cannot be determined by comparison with the rents actually paid."

Rate prevailing in the Vicinity not a sufficient Test for Government Rent.

§ 444. "Too great care cannot be taken in conducting the inquiries on which the selection of rates is founded. A mistake must be injurious either to the Government or to the *raiyats*. The inquiries made, whether on the estate or in neighbouring estates, should be recorded with such particularity as to show the reasons which guided the Settlement Officer in the selection of the rates, and to enable the sanctioning authorities (who have no opportunity of seeing the land or holding local investigations) to form their own opinion on the propriety of the rates. For instance, in distributing the land into different sorts, it should be mentioned with reference to what standard the classification has been made; whether, that is, with reference to the land in the village under settlement, or to that in the *pargana*, or to that of the estate generally.

Careful Inquiries necessary that the Interests of Government or of the Raiyats may not suffer.

The Board has had occasion to notice that the date on which rates are fixed are very inadequately set forth in Settlement Reports. In some cases it has been thought sufficient to justify the rates proposed by comparison of their average incidence with the average incidence of rates for all classes of lands in adjoining estates or villages. This may prove altogether fallacious. The rates proposed to be adopted must be justified much more precisely."

§ 445. When Act X of 1859 was first passed there was some doubt as to whether its provisions were applicable to rent payable to Government and the enhancement of such rent. This doubt was soon set at rest, and it was decided that Government was in no better position than other landlords, and was equally with them subject to the provisions and procedure of the Act. It was in consequence thought desirable to legislate specially in the interests of Government. The first step in this direction was taken in 1868, when an Act[2] was passed by the Bengal Council, which provided a special procedure for the recovery of arrears of rent due from the tenants of Government estates or of estates or tenures belonging to private individuals, but in charge of Government Officers. The main element of this special procedure is that, unless the person from whom the arrear of rent is claimed can satisfy the Collector upon a summary inquiry that it is not due, he must pay, and the Collector has jurisdiction to compel payment—the only remedy given to the tenant, if dissatisfied, being a civil suit to recover back the money.[3] The second step taken in the interest of Government was in 1879, when an Act[4] was passed by the same Council to define and limit the powers of Settlement Officers. This Act provides that in settlement proceedings

Special Legislation for the Recovery of Arrears of Rent due to Government.

Settlement Officers' Act of 1879.

[2] Act VII of 1868, and now see Act VII of 1880 of the Bengal Council.

[3] It is right to say that no hardship has resulted from the operation of these provisions so far as concerns arrears of rent at the former rate. The accuracy with which Government accounts are kept is a guarantee against error.

[4] Act VIII of 1879 of the Bengal Council.

in the territories under the administration of the Government of Bengal the rent recorded as demandable from each *raiyat* shall be in accordance with the general rates sanctioned or subsequently approved for adoption in such settlement by the Revenue Authorities from time to time empowered in that behalf by the Lieutenant-Governor."

Grounds on which Settlement Officers may record higher rents as demandable from Right-of-Occupancy-Raiyats.

§ 446. The Act then proceeds to enact "that the Settlement Officer may, on some one or other of the following grounds and not otherwise, record a higher rent as demandable from any *raiyat* having a right of occupancy than the rent which was previously paid by him, *viz.* :—

(1.) That the higher rent so recorded is calculated on rates which are not about the prevailing rates payable by the same class of *raiyats* for land of a similar description and with similar advantages in the surrounding neighbourhood :

(2.) That the enhancement is not greater than is justified by the increase which has taken place in the productive powers of the land otherwise than by the agency, or at the expense, of the *raiyat* since the rent of the *raiyat* was last fixed ·

(3.) That the value of the produce of the land has been increased otherwise than by the agency, or at the expense, of the *raiyat* since the rent of the *raiyat* was last fixed ; and that such higher rent does not bear a higher proportion to the rent of such *raiyat* as last fixed than the normal price of produce at or about the time of the present settlement bears to the normal price of similar produce which prevailed at or about the time when such rent was last fixed.[5]

(4.) That the value of the produce of the land has been increased otherwise than by the agency, or at the expense, of the *raiyat* since the last previous settlement of the land was made ; and that such higher rent does not bear a higher proportion to that which would have been the rent of lands of a similar description and the same area,

[5] This follows the rule in *Thakurani Dasi's* case, *ante*, pages 762, 763.

according to the rates of such previous settlement, than the normal price of produce at or about the time of the present settlement bears to the normal price of similar produce, which prevailed at or about the time of such previous settlement, as recorded in the papers of such settlement, or as otherwise ascertained and certified by the Settlement Officer.

(5.) That the quantity of land held by the *raiyat* has been proved by measurement to be greater than the quantity for which rent has been previously paid by him."

§ 447. Whenever a higher rent has been recorded as demandable from any under-tenant or *raiyat* than the rent previously paid by him, the Act requires that "the Settlement Officer shall cause to be published a copy of the *jamabandi* or extracts therefrom, specifying in respect of each such under-tenant or *raiyat* the rent recorded as payable by him; and, in the case of a *raiyat*, the clause or clauses of the Act under which his rent is enhanced." The Act then provides as follows :—"Every under-tenant and *raiyat* shall be liable to pay the rent recorded as demandable from him under this Act, unless it shall be proved in any suit instituted by such under-tenant or *raiyat* to contest his liability to pay the same, that such rent has not been assessed in accordance with the provisions of this Act. No suit under this section shall be instituted otherwise than within four months after the publication of the *jamabandi*, or extracts as aforesaid, in the village in which the lands which are the subject of the suit or any part thereof are situated. In all suits instituted to contest the rent recorded as demandable under this Act the Court shall, if it modifies or sets aside such rent, proceed to determine the rent payable by the plaintiff in accordance with this Act, and if any arrears of rent at the rates determined by the Court are found to be due, shall make a decree in favor of the defendant," *i.e.* Government, "for such arrears, with such costs as may seem proper." The effect of these provisions is that the rent of tenants in Government estates may be enhanced on grounds somewhat different from

When Higher Rent recorded as demandable, Copy of Jamabandi to be published by way of Notice of Enhancement.

Tenant objecting to pay Enhanced Rent recorded as demandable has remedy by suit within four months.

those applicable to the tenants of private individuals ; and while the latter class of tenants enjoy the advantageous position of defendants in enhancement suits, the tenants of Government must either pay the enhanced rent demanded of them by the Revenue Officers or incur the expense of coming into Court as plaintiffs against the Government.

CHAPTER XXX.

Landholding, and the Relation of Landlord and Tenant in India—The Necessity for Fresh Legislation since the Act of 1859.

§ 448. The Act of 1859, as originally passed, had operation in the North-Western Provinces, as well as in the Lower Provinces of Bengal. Its provisions were soon, however, found to be unsuitable to the former Provinces; and important amendments were considered necessary in 1863.[6] Ten years later it was repealed so far as it was applicable to the territories under the administration of the Lieutenant-Governor of the North-Western Provinces, and an amending and consolidating Act was passed for those Provinces.[7] Under the provisions of this Act persons, who in *permanently settled districts* possess a permanent transferable interest in land intermediate between the proprietor of a *mahal* and the occupants, and who hold at a fixed rent not changed since the time of the Permanent Settlement, are entitled to continue to hold at such rent.[8] Tenants in districts or portions of districts *permanently settled*, who hold lands at fixed *rates* of rent not changed since the Permanent Settlement, have a right of occupancy at those rates and are called "*tenants at fixed rates*."[9] In the case of both these classes, when proof is given that the rent has not been changed for a period of twenty years before the commencement of the suit, it is to be presumed

The Act of 1859 unsuitable for the North-Western Provinces.

Fresh Legislation for those Provinces.

Tenants entitled to hold at fixed Rates.

[6] See Act XIV of 1863.

[7] "The North-Western Provinces Rent Act," XVIII of 1873. This Act does not apply to Oudh, the law for which province is to be found in Act XIX of 1868.

[8] Section 4.

[9] Section 5.

Twenty years' Presumption.

that the land has been held at that rent from the time of the Permanent Settlement, unless the contrary be shown or unless it be proved that such rent was fixed at some later period.[1] The rights of tenants at fixed rates are by law declared to be *heritable and transferable*.[2] Their rent is not liable to enhancement[3] except on the ground that the area of the land in their holding has been increased by *alluvion* or otherwise, and they can claim abatement on the ground that such area has been diminished by diluvion or otherwise.[4]

Ex-proprietary Tenants.

'Ex-proprietary tenants' are persons who lose or part with their proprietary rights in an estate or *mahal*, but who retain the *sír* land held by them in such *mahal*. The law gives them all the rights of *occupancy-tenants* in such *sír* land held by them at the date of losing or parting with their proprietary rights, and further enacts that their rent shall be four annas in the rupee less than the prevailing rate payable by tenants-at-will for land of similar quality and with similar advantages.[5] 'Occupancy-tenants' are those who have actually occupied or cultivated land continuously for twelve years; and to such the law gives a right of occupancy in the land so occupied or cultivated by them. The occupation or cultivating of his father or other person from whom a tenant *inherits* is deemed the occupation or cultivating of the tenant. No right of occupancy can be acquired (1) in land held from an occupancy-tenant, an ex-proprietary tenant, or a tenant-at-fixed rates; (2) in sír land; or (3) in land held in lieu of wages. When a tenant not having a right of occupancy holds under a written lease, the necessary period of twelve years does not begin to run until the expiry of the term of the lease.[6] A right of occupancy is not transferable by grant, will, or otherwise except as between persons who have become by inheritance co-sharers in such right. It descends however in the regular course of inheritance, as if it were land, but

Occupancy-Tenants.

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[1] Section 6. [2] Section 9. [3] Section 11. [4] Section 18.

[5] Section 7. See, as to Oudh, section 5, Act XIX of 1868, which gives a heritable but not a transferable right under somewhat similar circumstances.

[6] Section 8. The contrary is the law in Bengal.

no *collateral* relative of the deceased, who did not share in the cultivation of the holding during his lifetime, is entitled to inherit.[7]

§ 449. The rent of ex-proprietary or occupancy-tenants is liable to enhancement only (1) by a written agreement registered under the Registration Act or recorded before the village *patwarí* or the *kanungo*, (2) by order of a Settlement Officer passed under the law for the time being in force, or (3) by an order made under the Rent Act. Such last-mentioned order may be made when the rent has not been already fixed by an order of a Settlement Officer under the Land-Revenue Act, or by an order under the Rent Act, or where such an order has been made but the term thereof has expired—on the ground (1) that the rate of rent paid is below the prevailing rate payable by the same class of tenants for land of similar quantity with similar advantages; (2) that the value of the produce or the productive powers of the land have increased otherwise than by the agency, or at the expense, of the tenant; or (3) that the quantity of land held has been proved by measurement to be greater than the quantity for which rent has been previously paid. In the case of *ex-proprietary* tenants the enhanced rent, like the old rent, is to be four annas in the rupee below the prevailing rate for tenants-at-will.[8] The tenant may, under similar conditions as to previous orders fixing the rent, apply for abatement on the ground (1) that the area of the land held by him has been diminished by diluvion or otherwise; or (2) that the value of the produce or the productive powers of the land have decreased by any cause beyond his control. When the rent has been fixed by an order under the Rent Act, no order for enhancement or abatement may be made (1) until the expiry of ten years from the date on which such order took effect; or (2) until the revision (before confirmation) of the assessment of the district by order of the Local Government; or (3) until

Enhancement of Rent.

Abatement of Rent.

[7] Section 9.

[8] Section 13. See, for Oudh, section 32, Act XIX of 1868, which somewhat differs.

the conclusion of the period of the settlement of the District—whichever of the three events occurs first.[9] When the rent has been fixed by order of a Settlement Officer under the Land-Revenue Act,[1] or by an order under the Rent Act, the landholder may apply to enhance such rent during the currency of the term for which the rent has been so fixed on one of the following grounds and on no others: *viz.*—(1) that the area of the tenant's holding has been increased by alluvion or otherwise; (2) that the productive powers of the land have, *since the date of the order*, increased otherwise than by the agency or at the expense of the tenant. Similarly the tenant may apply for abatement of rent on one of the following grounds and on no others: *viz.*—(1) that the area of the land has been diminished by diluvion or otherwise; (2) that the productive powers of the land have decreased from any cause beyond his control.[2]

Determination of Tenant's Status.

Ejectment.

§ 450. Any tenant may have it determined by the Collector or Assistant Collector whether he is tenant at fixed rates, an ex-proprietary tenant, an occupancy-tenant or a tenant without a right of occupancy.[3] A tenant without a right of occupancy is a tenant-at-will. He is not, however, liable to pay rent in excess of that paid during the previous year, unless there have been an agreement to this effect recorded by the *patwarí* or *kanungo*.[4] Tenants at fixed rates, ex-proprietary tenants, occupancy-tenants and tenants holding under an unexpired lease can be ejected only in execution of a decree under the Rent Act. No such tenant can be ejected or his lease forfeited on account of any act or omission not detrimental to the land or inconsistent with the purpose for which it was let; or which by law, custom or special agreement does not involve the

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[9] Section 16. See, as to Oudh, section 33, Act XIX of 1868, which fixes the first of the abovementioned periods at *five years*.

[1] See sections 70, 71 and 72 of Act XIX of 1873.

[2] Section 17. See, for Oudh, section 19, Act XIX of 1868.

[3] Section 10.

[4] Section 21. There is no corresponding provision for Bengal.

forfeiture of the lease.[5] He may be ejected if a decree for arrears of rent remain unsatisfied at the close of the year, and he omit for fifteen days after notice to pay the amount due under such decree.[6] A tenant not having a right of occupancy, or a tenant holding over after the expiry of his lease, is entitled to a notice to quit; and, failing to contest his liability to ejectment, may be ejected.[7] Any tenant ejected under the Act is entitled to his growing crops or other ungathered products of the earth growing on the land at the time of his ejectment, and to use the land for the purpose of tending and gathering them.[8] He is also entitled to compensation for improvements made by him, in consequence of which the annual letting value of the land has been, and continues to be, increased.[9]

Way-going Crops.

Compensation for Improvements.

§ 451. The failure of the Act of 1859 in the territories under the Administration of the Lieutenant-Governor of Bengal, as well as in the North-Western Provinces, has long been admitted; but while the necessity of a legislative remedy for evils that are undoubted, and for complications that will not solve themselves, has been allowed, successive Lieutenant-Governors, amid the cases of administering a large and populous province, have shrunk from a task that is, beyond controversy, one of great magnitude and extreme difficulty. The enhancement provisions of the Act having become unworkable,[1] the landlords were prac-

Failure of the Act of 1859 in the Lower Provinces.

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[5] Section 34. These provisions are not in the Bengal Act, but the decisions of the Courts have in some respect supplied their place.

[6] Section 35.

[7] Sections 36, 37, 38, 39 and 40.

[8] Section 42. These very necessary provisions are wanting in the Bengal Act.

[9] Sections 44—47. See, for Oudh, sections 22—26 of Act XIX of 1868. Similar provisions are also wanting in the Bengal Act.

[1] It is a curious fact that in those districts (Nadia and Jessore) in which the enhancement provisions were most vigorously sought to be worked, the experiment was made with English capital belonging to Indigo-planting firms, the result being the ruin of a good many of them. These firms held considerable estates in *ejarah*, or *patni*, or similar tenure. The *raiyats* on these estates had long cultivated indigo upon a small portion of their holding at rates which originally were, or in course of time came to be, unremunerative. So long as

tically debarred from obtaining that share, to which they thought themselves entitled, in the increased profits resulting from rising prices and the general progress of the country. Any attempt on their part to obtain higher rents was promptly resisted in the Bengal districts. The *raiyats* in some places, having discovered that the power of the *zemindars* had been taken away, and that their landlords were no longer supported by special provisions of law, repeated the history of 1796,[2] converted their newly acquired liberty into licence, and combined together to refuse payment of all rent. The Government had imposed a cess or tax upon all persons interested in land as landlords or tenants, the proceeds of this tax being devoted to improve the means of communication, to construct roads and canals, and to carry out other works of general utility.[3] The collection of so much of this tax

Refusal of the Raiyats to pay rent in some places.

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they cultivated indigo, they were allowed to hold the whole of their lands at the former low rates of rent. Through causes, which it is here unnecessary to mention, they very generally refused to cultivate indigo any longer on the old terms, whereupon the Planters set the law in motion to enhance their rents. A large number of enhancement decrees were passed, but their effect in creating a general rise of rents cannot be exactly estimated, as full operation was not given to them, a sort of compromise being made in many cases by which the Planters gave up part of the increased rent on condition of the *raiyats* cultivating indigo.

[2] See *ante*, pp. 571, 574—575.

[3] We have seen (*ante*, p. 544) that it was contemplated at the time of the Permanent Settlement that, as progress and improvement took place, other taxation would be feasible in order to make up for the loss incurred by limiting the demand of the State upon the land. The above cess was imposed in accordance with this principle. The *zemindars* had done nothing towards improving the means of communication in the interior of the country, and Bengal was in this respect shamefully backward, as compared with other parts of India. In a pamphlet published some twenty years ago—entitled *The Land Question* and reprinted from the *Times of India*—a curious comparison was instituted between permanently settled Bengal, and the Bombay Presidency where the cultivators were substantially made peasant proprietors. It is shown that, while the incidence of the land-revenue in Bengal then was As. 14-10 pies per head of the population, in Bombay it was Rs. 2-10 per head—while the import duty paid through the Calcutta Custom House was An. 1-3 pies per head, that paid through the Bombay Custom House was As. 3-9 pies per head—whilst the inhabitants of Bengal paid As. 3 per head income-tax, the inhabitants of Bombay paid As. 5½ per head—whilst the former paid As. 3-8 pies

as fell upon the *raiyats* was entrusted to the *zemindars*, who were made responsible for collecting it and paying it into the Government Treasury with their own revenue. The law empowered them to collect it with, and in addition to, the rent. When the *raiyats* of some estates refused payment of rent, as has just been stated, their landlords were unable to collect the tax, for the payment of which to Government they were made responsible. This naturally was an apparently well-founded grievance. The *zemindars* as a class took it up and complained that, while they were responsible to Government for the payment of their revenue and the collection of this tax—a responsibility which was rigorously enforced, if they were not punctual to the day with their instalments—the Government and the Legislature did not afford them reasonable facilities for compelling payment by the *raiyats*.

The Road Cess and Public Works Cess.

Grievance of Zemindars.

§ 452. In the Province of Bahár, on the other hand, the condition of the agricultural population had become so miserable under a system of unrestrained rack-renting, aggravated by the existence of the worst possible class of middlemen, that the necessity of some remedy made itself imperatively felt by Government. The absolute resourcelessness of the people under the visitation of a famine caused by one of those failures of the crops, which occur periodically in every province of India, furnished practical proof of that which had for some time been suspected. In September 1878 the Bengal Government wrote thus:—"Nearly every local officer consulted is agreed that, while a system of summary and cheap rent procedure is required in the interests of both *zemindars* and *raiyats*, the most urgent requirement of Bahár is an amelioration of the condition of the tenantry." A Committee, consisting of the most experienced local officials and of representatives of the different local communities,

Miserable Condition of the Agricultural Population of Bahár.

Some Remedy imperatively necessary.

per head stamp and excise duties, the latter paid As. 5½ per head—finally that the statistics of the importation of gold, silver, copper and piece-goods showed that, for each rupee spent by the population of Bengal per head, the people of Bombay can afford to spend *three*.

The Bahár Committee.

was thereupon appointed to consider the condition of the Bahár peasantry and devise a remedy or remedies for the various evils which existed in the province. This Committee entered very earnestly into the performance of the duty entrusted to them, and sent in a valuable report. Meanwhile a Bill to amend the procedure in suits between landlords and tenants had been introduced into the Bengal Council. The Select Committee, to which this Bill was referred for report, came to the deliberate conclusion that piecemeal legislation was inadvisable, and that the whole subject of the relations between landlords and tenants in the provinces under the Bengal Government required reconsideration and revision. The result was the appointment of the Bengal Rent Commission in 1879—the preparation of a Digest of the existing law—a full consideration of the lines most suitable for reform—the preparation of a Draft Bill, and the submission in June 1880 of a Report upon the whole subject as concerned with Bahár[4] and Bengal. As the recommendations of the Commission have been considered by the Government of India and the Secretary of State; and a Bill based in part upon, and partly differing from, the Draft Bill of the Commission is at this moment before the Legislature, I feel myself at present precluded from entering into any discussion of the questions at issue. I may, however, here reproduce certain portions of the Report of the Commission, which deal with the subject of *Rent*, and *Enhancement of Rent*, as the principles here discussed have so far been generally accepted, and have not given rise to debate or argument."[5]

The Bengal Rent Commission of 1879-1880.

§ 453. The Commissioners say:—"By far the most difficult question presented for our consideration in prepar-

[4] The report of the Bahár Committee was submitted to, and considered by, the Commission.

[5] For the theory of Rent which follows above, whatever defects it may possess, I am responsible, my colleagues on the Commission having done me the honor to accept it as I wrote it. My object in reproducing it here is to invite criticism and discussion in other countries, where, as in India, there is a purely agricultural population to be dealt with.

ing an amended law of Landlord and Tenant for these provinces is that of the enhancement of rent. As soon as the Legislature recognized a right on the part of any class of tenants to be protected against arbitrary eviction by their landlords, it became absolutely necessary to provide by legislation some means whereby the rents payable by such tenants may be settled and determined. It has been contended by some very able authorities that the only safe means of settling rents is by the unfettered action of the principle of competition, and that any attempt on the part of the Legislature to set aside this principle, and substitute for it any other principle, must be mischievous in its consequences to the community concerned. It is no part of our present duty to examine what general truth there may be in this contention as applied to those countries, whence have been derived the data upon which the existing system of Western Political Economy is based ; but that this contention should not be accepted as applicable to the state of things in this country, and should not be allowed to influence our legislation upon the subject in hand, we entertain no doubt. In order to make the reasons for this opinion more easily intelligible, it is necessary to consider what rent is in these Provinces—and this is a subject of some difficulty, owing in part to the inherent ambiguity of language, when the same term is applied to several things, the substance of which depends upon different conditions. The theory of rent, first put forward at the close of the last century and revived some twenty years later by eminent Political Economists, is that *rent is what land yields in excess of the ordinary profits of stock.* It is assumed that no land will be cultivated, which will not yield the ordinary profit derivable from capital employed in other undertakings. If land yields less than this, capital will not be employed in cultivating it ; if it yields more, the excess will be appropriated by the owner of the land, who will otherwise withhold the use of this natural agent. As the prices of produce rise, the profit from

Enhancement of Rent the most difficult question for consideration.

Different Theories of Rent.

The Ricardo Theory.

capital employed in agriculture increases. Land, which in one year yields no excess over and above the ordinary profits of capital, may in the follwing year yield some excess, and so pay rent. Of all the land in cultivation that which is yielding no excess must necessarily be the worst—worst, *i. e.*, as regards inferiority of soil or situation, or proximity to markets, or facility of communication, &c. When such worst land begins to yield an excess to pay a rent, land of a still inferior class will be cultivated and will then be the worst land in cultivation, superseding what has just commenced to pay rent. Thus the worst land for the time being under cultivation is the standard for estimating the amount of rent which will be yielded by all other land that pays rent."

Examination of this Theory.

§ 454. "This theory pre-supposes capital, pre-supposes capitalist farming conducted with an immediate view to obtaining from capital invested in agriculture the ordinary rate of profit afforded by capital invested in other undertakings. It depends upon certain laws respecting profits, wages, prices, which, as one of the greatest Political Economists has pointed out, are true only so far as profits, wages, and prices are regulated by competition—only so far as the persons concerned are free from the influence of any other motives than those arising from the general circumstances of the case, and are guided as to those by the ordinary mercantile estimate of profit and loss. There are in these provinces no capitalist farmers. We do not include under this denomination persons who have embarked capital in producing for export silk, indigo, tea, or similar articles other than food. There is little or no capital employed in agriculture, unless we include under this term the commonest agricultural implements, the seed grain necessary to produce the next year's crop, the food necessary for the cultivator's subsistence till the next harvest, and it may be, a small stock laid by against the year of famine that is sure to come round in the cycle of seasons. The immediate object of cultivation is subsistence, not profit on capital.

There is no wages fund: there are no labourers paid from capital. There are practically no manufactures, no non-agricultural industries, no great cities of work, where a surplus rural population can find employment. To such a state of things, to a community so circumstanced, the theory of Rent propounded by Mr. Ricardo and other Political Economists of the same school has no application; and any adjustment of the relations between landlords and tenants in these provinces, based upon this theory, must, we apprehend, involve serious risk of error."

Theory of Rent propounded by the more modern Political Economists.

§ 455. "A more modern school of Political Economists, dissatisfied with the previous theory, would discard all reference to degrees of productiveness, would abolish the standard obtainable from the worst land under cultivation, as being misleading and practically useless to inform a disputing landlord and his tenants how much rent exactly each holding should pay; and would define rent simply as surplus profit—that is, *the excess of profit after the repayment of the whole cost of production, beyond the legitimate profit, which belongs to the tenant as a manufacturer of agricultural produce.* According to their analysis no landlord or tenant ever thinks of, or enquires after, the worst land under cultivation and which pays no rent, in order to ascertain what is the proper rent for any other land. But an intelligent tenant about to take land will carefully endeavour to inform himself—1*st*, as to the quantity and quality of the produce that he can fairly reckon on obtaining from the land; 2*nd*, as to the expenditure necessary to raise this produce; and 3*rd*, as to the price which this produce will realize when raised. In order to ascertain the *first* particular, he will consider the quality of the soil, the climate, the water-supply, the possibility of improvement by manuring or other means, &c. To inform himself on the *second* point, he will see if the soil is light and friable or heavy and stiff, and soon—whether his plough will require two horses or four—whether the manure necessary to good cultivation is to be had in the vicinity or

must be brought from a distance—what is the rate of wages for local labour, &c. With respect to the *third* item he will inquire as to the best neighbouring markets and the prices usually there current, and he will have to consider the distance of the land from the market and the cost of conveying the produce from the fields where it is grown to the mart where it can be sold. Having ascertained all these particulars, the intending tenant will be in a position to calculate the balance of profit which he may expect to have left to him after defraying the cost of cultivation, and this will determine the rent which he can pay for the use of the land. Thus rent depends upon the prices realized by agricultural produce compared with the cost of its production: or, in other words, rent exists because a selling price is found, which yields a surplus, an excess of profit beyond what the tenant requires. This theory is a very much more practical one than the former one, but it also proceeds upon the supposition that capital is employed, that money wages of labour are paid, that the produce is converted into money, that an account is kept of outgoings and incomings, and an accurate balance struck. It can have no proper application where all these circumstances do not exist."

§ 456. "Let us now see what is the state of things in this country, what are the conditions to which any possible theory of Rent must be fitted in order to make it suitable to the people. We know that, according to ancient and established usage, the dues of Government from the land in India have from time immemorial consisted of a certain proportion of the annual produce of every *bigha*. Such was the rule in the time of the old Hindu Rajas, when Government in all or most cases collected these dues direct from the cultivators. The Mahomedan Government retained this rule with some modifications of detail in carrying it into effect. It is not very material whether the proportion of the produce so taken by the State be called rent, or revenue, or a tax; nor is it necessary to our present purpose to determine whether the property in the

Conditions to which any theory of Rent must be adapted in India.

soil belonged to the State, or to the cultivators, or in coparcenary to both. Once land was cleared and brought completely under cultivation, this proportion of the produce was taken in every case. The *raiyats* cultivated for subsistence, not with any immediate view to profit. Whether more land should be taken into cultivation depended, not upon whether profits had risen, but upon whether the land already in cultivation was sufficient to raise food for the people. The State demand in no way depended upon profits, and was in no way regulated by any calculation of the total value of the produce and the cost of producing it. The proportion taken by the Government was determined by the Government itself; and, as the *raiyats* were well off or the reverse according as Government took less or more, and left them more or less, the well-being and comfort of the people depended upon arbitrary discretion exercised with despotic power. We know from history that while the earlier Hindu Rajas took only one-sixth, as much as a half was taken in later times; and, discretion continuing to be the measure of exaction, the very barest subsistence was in some places and on some occasions left to the cultivators of the soil. If any calculation was made for the purpose of fixing the Government demand, it was too often a calculation of what was the least that could be left to the cultivators to enable them to live and produce the next crop. There are some who think that 'custom,' even in those days and in the absence of law authoritatively promulgated by a Legislative Department of the State, regulated the share of the produce taken from the *raiyats*, but it has been well remarked that custom might equally well be pleaded in justification of every species of exaction and oppression. Our predecessors in fact (to quote the language of the Board of Commissioners of 1818[6]) do not seem to have admitted as a principle any other general limit to the Government demand than the amount which the cultivators could afford to pay, and the established Government share too often exceeded this limit."

[6] See paragraph 317 of the Report, dated 27th October 1818.

§ 457. "Mahomedan law recognized only two persons as having an interest in the soil, namely, the Government and the cultivator. There can be no doubt that the cultivators had rights in the land. What exactly these rights were has been warmly disputed ; and we shall not attempt to define them or fix their limits. The *raiyats* cultivated the land and paid *kheraj* to Government. This *kheraj* was a share, a proportion of the produce, which was paid either in kind or in the money which represented its commuted value which the Government itself fixed. As long as the *kheraj* was paid, the cultivators were left in possession of the land, though this possession as well as all the other terms of the relation depended upon the will of a despotic ruler. Failure to pay the *kheraj* had for its consequences punishment and the loss of all rights in the land. Such is the general outline of the relation between the two parties having an interest in the soil. Any attempt to express it in terms taken from a wholly different system of interests or rights, and embodying different collections of ideas, must fail to convey an accurate conception of the Mahomedan system and may be misleading. If it be asked—is *kheraj* rent or does it include rent? the answer must be in the negative, if by the term 'rent' is meant rent according to either of the theories of rent propounded by European Political Economists. It was no part of the Mahomedan system that any person should stand between the Government and the actual cultivators and intercept a portion of the *kheraj* paid by the latter : but partly from the difficulty, if not impossibilty, of collecting the whole of the *kheraj* by State agency, when the boundaries of the empire were enlarged by conquest ; partly from the fact that in some of the conquered provinces persons were found in possession of various rights superior to the cultivators, and it was difficult to get rid of these persons, while their services and local experience could well be utilized for the collection of the *kheraj ;* and partly from other causes which it is not here necessary to detail—there sprang up a middle class intermediate between the State

The Mahomedan System.

and the cultivators, and who as contractors or farmers, or having some pre-existent rights which the Mahomedan Government did not care to investigate or define, collected the *kheraj* of large tracts from the cultivators and paid it to Government. Being placed in a position of advantage,[7] the members of this middle class grew rapidly into importance, and in the decadence of the Mahomedan empire acquired considerable power. While using the whole authority of the State to exact by way of *kheraj* all that could be got from the cultivators, they used their utmost ingenuity to keep as much of this as they could for themselves, and send as little of it as possible to the Government treasury."

State of things how modified by the policy of the English Government.

§ 458. "Such was the condition of affairs to which the East India Company succeeded; and one of the first problems presented to the new English Government for solution was the settlement and definition of the rights of this Middle Class. How this great question was debated; how it was determined by declaring the *zemindars* who composed this class to be proprietors; and how the wisdom of this determination has ever since been questioned—are now portions of the constitutional history of the Anglo-Indian Empire. The zemindars, being thus confirmed in their position, continued to collect the *kheraj* from the cultivators and pay it over to the State. The terms of the settlement and the influence of English ideas worked, however, some important changes. In the first place, the Government limited and fixed for ever the amount of *kheraj* which it was to demand at the hands of the zemindars. The zemindars being declared to be 'proprietors of the soil,' 'landholders,' 'landowners,' it followed as a natural consequence from this and from the introduction of English ideas that the *raiyats* have come to be looked upon as their tenants; the payments made to them by the *raiyats* in kind or in money came to be regarded as rent; and the

[7] This must not be understood to convey the idea that all these persons were *novi homines*. Many of them were *Rajas* or otherwise men of position and family before the Mahomedan conquest.

payments made by the zemindars to the Government were termed revenue. When the governing race, with whom rested the executive power and the administration of justice, approached the subject of the relation of zemindars and *raiyats* with those ideas of the English law of Landlord and Tenant formulated in the Regulations and present to their minds, the result almost inevitable was that the former state of things underwent considerable change."[8]

§ 459. "That at the time of the Permanent Settlement the *raiyats* had rights was admitted then, and has never since been denied, at least by persons possessed of information on the subject. These rights were, however, very uncertain and indefinite.[9] That they were so is not surprising, when we reflect upon the arbitrary nature of the preceding Government, upon the want of exact rules of law, and the non-existence of a trained judiciary proceeding by fixed methods of enquiry and determination. The Government of 1793 were unable to ascertain and define these rights fully and accurately. The most able members of that Government felt and expressed their inability to do so with the means of information then at their disposal.[1] They were also apprehensive lest enquiries into these rights should excite suspicion in the minds of the zemindars, that the assessment of the revenue was not really meant to be permanent:[2] and they indulged a strong hope that

Raiyats had Rights at the time of the Permanent Settlement although they were not then fully ascertained or defined.

[8] To show the influence of English ideas we may refer to Mr. Shore, whose view of the position was so clear and able. Although he "admitted, on the ground of precedent, the right of the Government to interfere in regulating the assessment upon the raiyats," he objected "to the policy and propriety of this interference without evident necessity." "The regulation of the rents of the raiyats," he observed, "is properly a transaction between the zemindar or landlord and his tenants, and not of the Government; and the detail attending it is so minute as to baffle the skill of any man not well versed in it." —*Minute of the 18th June* 1789, para. 433.

[9] "With respect to the raiyats, their rights appear very uncertain and indefinite."—Mr. Shore's *Minute of the 18th June* 1789, para. 388.

[1] See the Minute of the Earl of Moira, dated 21st September 1815, paras. 143-144.

[2] "It may be urged that, unless Government intends to raise the revenues of the lands in future, any further knowledge of the value of them beyond

zemindars and *raiyats* would, like landlords and tenants in England, adjust all matters in dispute between them by contract. But, although the Government of 1793 did not then fully ascertain and define the rights of the *raiyats*, it saved these rights in express terms, and reserved to itself the power to ascertain and settle them at any future time at which it saw fit to do so.[3] The exercise of this power inherent in Government is of course in no way dependent upon this express reservation, the value of which consists in its being a deliberate recital and acknowledgment of the existence of such rights at that point of time. Whatever difference of opinion there may be as to the other rights which belonged to the *raiyats* in 1793—and at this distance of time it is natural that there should be differences of opinion about what, being then uncertain, was not at the period made definite, and much of the evidence of which has since perished in the lapse of nearly a century—we think that there can be no doubt as to one right—the right, that is, to have the proportion of the

And these rights were expressly saved.

Right to have proportion of produce payable by Raiyat determined by Government.

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what we at present possess is unnecessary ; and to demand the accounts of it would only tend to excite suspicions in the zemindars that the present assessment would not be permanent. The Court of Directors are themselves satisfied upon this point, and discourage the ideas of local investigation into the value of the lands, directing that when the tribute of each zemindar is fixed, he shall remain undisturbed in the administration and enjoyment of his estate, and be assured that, as long as he pays his stipulated revenue, he shall be subject to no scrutinies or interposition of the officers of Government, unless where a judicial process may become necessary to adjust claims between him and tenants, or talúkdars, or partners of the same zemindarí."—Mr. Shore's *Minute of 18th June* 1789, para. 473—See also *Revenue letter of 15th January* 1819, para. 31. It may be observed that the Court of Directors in 1819 admitted this to have been a mistake.—*See Revenue letter of 15th January* 1819, para. 38.

[3] First clause of section 8, Reg. I of 1793 : *Revenue letter of 15th January* 1819, para. 39, where it is said :—" It is also a circumstance which is not to be overlooked that, although so many years have elapsed since the conclusion of that settlement, yet no resort has been had to the exercise of the power we then expressly reserved of interfering for the purpose of defining and adjusting the rights of the raiyats. We conclude that the supposed difficulty or impracticability of the operation was the cause of this non-interference." See also *Revenue letter from Bengal, dated 17th July* 1818, paras. 146-148.

produce payable by the *raiyat* determined by Government. Such, beyond dispute, had been the practice of Hindu and Mahomedan sovereigns[4]; and the Government of 1793, though it created the zemindars 'proprietors,' using a term which seemed to convey the absolute disposing power of an English landlord, never intended to destroy this right or to abdicate the function cast upon it by the ancient law of the country.[5] The existence of any rights of possession in the *raiyats* would have been incompatible with an arbitrary power in the *zemindars* to fix the rents; and thus both the necessity of the thing and the ancient law of the land required that this power should be exercised by the Government."

§ 460. "We entertain no doubt that the raiyats of 1793 possessed substantial rights; but even if they had no

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[4] See *Fifth Report of the Select Committee on the Affairs of the East India Company*, p. 24.—"In point of fact the original amount seems to have been anciently ascertained and fixed by an act of the Sovereign."

[5] "In regard to proprietary right to the land, the recent enquiries had not established the zemindar on the footing of the owner of a landed estate in Europe, who may lease out portions, and employ and dismiss labourers at pleasure: but on the contrary had exhibited, from him down to the actual cultivator, other inferior landholders, styled *talukdars* and cultivators of different descriptions, whose claim to protection the Government readily recognized, but whose rights were not, under the principles of the present system, so easily reconcilable as to be at once susceptible of reduction to the rules about to be established in perpetuity. These the Directors particularly recommended to the consideration of the Government, who in establishing permanent rules were to leave an opening for the introduction of any such in future, as from time to time might be found necessary to prevent the raiyats being improperly disturbed in their possessions, or subjected to unwarrantable exactions. This, the Directors observed, would be clearly consistent with the true practice of the Mogul Government, under which it is a general maxim that the immediate cultivator of the soil, duly paying his rent, should not be dispossessed of the land he occupied; 'and this,' they further observed, 'necessarily supposes that there were some limits by which the rent could be defined, and that it was not left to the arbitrary determination of the zemindar.'" Here follows the passage quoted in the previous Note.—*Fifth Report.*

"We consider it equally a principle interwoven with the constitution of the different Governments of India, that the quantum of rent is not to be determined by the arbitrary will of the zemindar."—*Revenue letter from Bengal dated 7th October* 1815.

rights whatever, we think that Government could not consistently with the proper discharge of its functions, leave the settlement of what we shall now call the rents payable by the raiyats, to the uncontrolled influence of competition.[6] There is in these provinces no capitalist farmer

[6] The late Mr. John Stuart Mill defined *cottier tenure* as embracing all cases without exception in which the labourer makes his contract for land without the intervention of a capitalist farmer, and in which the conditions of the contract, especially the amount of rent, are determined not by custom but by competition. In a very instructive chapter of his work on Politica Economy, in which he draws a parallel between the tenure of land in Ireland and India, he says :—"The produce, on the cottier system, being divided into two portions, rent and the remuneration of the labourer, the one is evidently determined by the other. The labourer has whatever the landlord does not take ; the condition of the labourer depends on the amount of rent. But rent, being regulated by competition, depends upon the relation between the demand for land and the supply of it. The demand for land depends on the number of competitors, and the competitors are the whole rural population. *The effect therefore of this tenure is to bring the principle of population to act directly on the land, and not, as in England, on capital.* Rent in this state of things depends on the proportion between population and land. As the land is a fixed quantity, while population has an unlimited power of increase, unless something checks that increase, the competition for land soon forces up rent to the highest point consistent with keeping the population alive. *The effects therefore of cottier tenure depend on the extent to which the capacity of population to increase is controlled, either by custom, by individual prudence, or by starvation and disease.*"

"It would be an exaggeration to affirm that cottier tenancy is absolutely incompatible with a prosperous condition of the labouring class. If we could suppose it to exist among a people to whom a high standard of comfort was habitual ; whose requirements were such that they would not offer a higher rent for land than would leave them an ample subsistence, and whose moderate increase of numbers left no unemployed population to force up rents by competition, save when the increasing produce of the land from increase of skill would enable a higher rent to be paid without inconvenience—the cultivating class might be as well remunerated, might have as large a share of the necessaries and comforts of life on this system of tenure as any other : they would not, however, while their rents were arbitrary, enjoy any of the peculiar advantages which metayers on the Tuscan system derive from their connection with the land : they would neither have the use of a capital belonging to their landlords, nor would the want of this be made up by the intense motives to bodily and mental exertion which act upon the peasant who has a permanent tenure. On the contrary, any increased value given to the land by the exertions of the tenant would have no effect but to raise the rent against himself either the next year or at farthest when his lease expired. The landlords might have justice or good sense enough not to avail themselves

Such rents as are payable by the Raiyats to the Zemindars could not properly be left to be settled by competition, and have not been settled by Custom.

between landowner and the labourer; the produce of the land is divided between two classes, the landowners and the labourers, the latter sustaining the character of capitalist to the limited extent to which capital enters into the question at all. In such a state of things rents can be settled only by (1) custom, or (2) by competition, or (3) by law. Custom has not as yet settled rents in the Lieutenant-Governorship of Bengal, owing in part to the disturbing influence of our own legislation, especially the Revenue Sale Law; and their settlement cannot be left to the slow operation of a principle, which hitherto has failed, and of the future efficacy of which there is no present prospect. Then as to competition—while population is sparse and land is plenty; when the supply of cultivators is limited and the demand for them active—the *raiyats* have the best of the position, and can secure favourable terms. As population increases, the tables are gradually turned, and where the cultivation of the soil is the only means of subsistence, the ultimate effect of unrestricted competition must be that the landowners can dictate their own terms to the *raiyats*, who must either accept them or starve. The whole agricultural population are thus reduced to a

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of the advantage which competition would give them; and different landlords would do so in different degrees. . . . . The only safeguard against these uncertainties would be the growth of a custom insuring a permanence of tenure in the same occupant without liability to any other increase of rent than might happen to be sanctioned by the general sentiments of the community. . . . . When the amount of rent is not limited either by law or custom, a cottier system has the disadvantages of the worst metayer system. . . . . When the habits of the people are such that their increase is never checked but by the impossibility of obtaining a bare support, and when this support can only be obtained from land, all stipulations and agreements respecting the amount of rent are merely nominal. The competition for land makes the tenants undertake to pay more than it is possible they should pay, and when they have paid all they can, more almost always remains due." It would seem to follow that if custom or the habits of the agricultural population are not strong enough in such a community to keep rents within such a limit as will allow a reasonable standard of comfort for the cultivators of the soil, the Legislature ought to impose such a limit: and that, failing this, a state of wretched cottierism must be the result when the pressure of population has reached a certain point.

condition of misery and degradation which must seriously reflect upon the Government under which such a state of things has come to pass. The land of a country belongs to the people of the country: and, while vested rights should be treated with all possible tenderness, no mode of appropriation and cultivation should be permanently allowed by the Ruler, which involves the wretchedness of the great majority of the community, if the alteration or amendment of the law relating to land can by itself or in conjunction with other measures obviate or remedy the misfortune."

§ 461. "Whether then the question be examined in the light of the ancient constitutional law of the country, or with reference to the high duty and obligation devolving upon Government to promote the happiness and prosperity of the people, the conclusion is the same, namely, that the ruling power ought to determine the rents payable in these provinces by the *raiyats* to the *zemindars*. In this view the appropriate theory of Rent is, not that it is the surplus profit of capital applied to agriculture, or that it depends immediately upon, or is regulated by, the profits of capital; but that it is such a proportion of the produce of the soil, deliverable in kind, or payable in money, as the Government may from time to time determine shall be delivered or paid by the cultivators to the *zemindars* or those to whom the *zemindars* have transferred their rights. If it be asked on what principle Government should determine this proportion—what share shall be considered fair and equitable—our answer is—such a share as shall leave enough to the cultivator of the soil to enable him to carry on the cultivation, to live in reasonable comfort, and to participate to a reasonable extent in the progress and improving prosperity of his native land. When we come to apply this principle to the solution of the question before us, the first reflection that occurs to us is, that there is not presented to us a *tabula rasa*, on which we may inscribe a single rule or set of rules which shall be of uniform application. The progress of nearly a century has

Theory of Rent applicable to Bengal and Bahár.

In applying this principle, no single standard possible for all parts of these Provinces.

created relations of persons and conditions of things, to sweep away which for the purpose of establishing an ideal normal standard would involve an interference with vested rights and a disturbance of existing associations, which would irritate the feelings of those concerned, and render the remedy worse than the disease. Were we to set up any single average standard of comfort for the whole agricultural population of these provinces, we might find that, while it placed the Bahár *raiyat* in a position of ease calculated by the sudden change to engender sloth rather than energy, it fell short of the existing requirements of members of the agricultural community in some other parts of the country. The inequalities in existing rents are due to causes which have their roots in the past history of the best part of a century. The density or sparseness of population in different districts; the quantity of unreclaimed land available to meet the requirements of a growing community; the energy of particular landlords; the proximity or distance of Courts or Magistrates able to repress this energy, when it exceeded the bounds of law; the force of resistance offered by the *raiyats*, varying widely in different parts of the country; the indolence of other landlords; the frequency of Government management; the irregular incidence of famine; the unequal opening up of the country by railways and roads, in respect of which all districts do not yet enjoy equal facilities; the action of the great rivers—these and other causes have produced imparities, of which we think that account must be taken in any endeavour to settle rents or the enhancement of rents by legislation. We are therefore all agreed that existing rents should be taken as the basis of operation; in other words, that no attempt should be made to replace these existing rents immediately by any new and uniform standard; and that, apart from the usual and recognized grounds of abatement, there exists no necessity for reducing rents generally in any part of the country. At the same time we think that, in regulating future enhancement, regard may reasonably

be had to existing inequalities, and that landlords, who have already benefited more than other landlords by the favourable action of some of the causes above enumerated, are not entitled to an equal accession of advantage in the future."

§ 462. "This brings us to the important question—can a simple uniform rule be laid down for enhancement? We think this question must be answered in the negative. The subject has been fully considered by able and practical minds upon more than a single occasion; and none of these deliberations has produced any simple, practicable rule which, applied to all conditions and under all circumstances, will afford satisfactory results. In taking up the question anew, and seeking for such a rule, we have examined all that has been done by those who have preceded us in the quest, and have made what further search we could in the light of their knowledge and experience; and the ultimate conclusion at which we have arrived is that no such rule can be devised or formulated.[7] It would of course be possible to lay down some rule, which, like Draco's Penal Code, might be embodied in a single section and apply to all cases; but, when it came to be put into operation, it would work so much injustice to both parties that each would be equally eager for its repeal. The uncertainty of agricultural experience is very great in every country, but probably in no country is it so great as in India. This increases the difficulty of providing against fluctuations of season by average calculations; and the consequences of failure in those calculations is terribly aggravated through the absence of capital, by drawing upon which the agriculturist is in other countries enabled

No simple uniform rule of Enhancement possible.

Immense varieties in the subject-matter on which Rent depends.

[7] "Rents vary in every village, not merely with the diversities of soil and crops, but also with reference to the caste of the cultivators. The inference to be drawn is, therefore, that *no common rule can be laid down*, and that the failure of past attempts to settle the matter is chiefly to be attributed to the desire which the public officers have had to render that simple and uniform, which is in its nature various, and to their impatience of the detailed investigation by which alone accuracy can be secured."—*Resolution of Government of India, dated 1st August* 1822.

to tide over an abnormal succession of bad years, hoping to replace what is so consumed by increased energy when circumstances are more favorable. The fertility of land depends in India, as in other countries, upon the nature of the soil and subsoil; and there are in these provinces numerous varieties of both, well understood by the raiyats. In settlement proceedings all over India, from before Akbar's time down to the present period, we find these varieties mentioned and taken into account. Some soils are cultivated with much less labour than others; and this is a very important consideration, where so much has to be done by manual labour, where the race of cattle which supplements the exertions of man is deficient in muscle and vigour, and where the absence of capital and the nature of the country prevent the introduction and use of more effective agency. The rich alluvial *chur*[8] yields a bumper crop in return for the mere exertion of sprinkling the seed on its surface; while the stiffer soil of the higher *mâts*,[9] baked during the burning months when the heaven is as brass and the earth as iron, and scarcely moistened by the tardy rains, is with difficulty turned up by the straining oxen and the toiling ploughman to be ready in time for the rice seedlings, which one by one have to be planted out through the full expanse of every field." Assuming land to be unlimited in its supply, the average labouring family can in the former case cultivate more land and raise more produce than in the latter case. If half the produce be given as rent, it makes an enormous difference to those who have to subsist on the remainder, whether the half of a hundred measures be given or the half of three hundred. Where the size of the holding is not limited by the amount of labour necessary for cultivation, it may be limited by the pressure of population and the extent of uncultivated land still available. Thus, similar results are produced by different causes."

§ 463. "Then, we have differences in situation almost

[8] Alluvial land formed by a river.

[9] Plains.

infinite. Where rent is payable in money, part of the crop must be sold to obtain the coin with which the *raiyat* may discharge his liability. If the mart is near, the labour and cost of carriage are inconsiderable, and the *raiyat* can easily go to market when prices are most favourable; but these become a serious item, when the produce has to be carried over roadless plains and across unbridged *nullahs*[1] to a distant and uncertain staple. Some fields are near the village and the threshing floor, and no sooner is the crop ripe than it is garnered, while others lie in a distant *mât*, and their produce has to be carried on bullocks' backs or men's heads, many an ear falling by the wayside, to where it can be threshed and winnowed, and this perhaps after the thieving birds and hungry cattle, or it may be the wild hogs from the neighbouring *jangal* have sadly diminished the husbandman's profits, while he is waiting his turn for the busy oxen or the help of his neighbours. Here the water is deficient for the *amun* paddy, and there the *aus* is drowned by an unforeseen inundation. In one part of the country land is sufficiently plentiful to allow a fourth to lie fallow every year, while in another part the soil never gets rest, and there is no manure to keep up its strength, even the droppings of the cattle being collected and dried for fuel. In one *pargana*, the adult population are healthy and strong to labour; in another, the climate is so bad that one-third on an average are down with fever and ague, and the remaining two-thirds in various stages of convalescence lack the physical vigour necessary to successful toil. In one district the cultivators of the soil have to support but one set of landlords; in another, they have half a dozen or even more middlemen under different names and with various rights having come between the *zemindars* and the *raiyats*. These are some of the many causes upon which depend the numerous inequalities and variations in the subject-matter with which rent is concerned in these provinces. No simple rule of uniform

Differences of situation.

[1] Small rivers.

application can allow for all these: and, unless they are allowed for and taken into account in individual cases, there cannot be fair and equitable rates of rent, for, in order to be really so, they must be fair and equitable in the concrete as well as in the abstract. The conclusion then to which we feel guided upon the whole subject of settlement of rents and enhancement is, that the safest course for the Legislature is to lay down certain broad lines upon which the officers of Government (whether in the Judicial or Executive Department) shall proceed in this matter—at the same time providing certain positive checks, which experience has shown to be necessary in order to prevent sudden and great changes in the respective conditions of landlords and tenants in Bengal."

General conclusion upon the above premises.

§ 464. With reference to the ground of enhancement based upon an increase of the productive powers of the land, the Commissioners says:—"These powers may have increased (1) by the agency or at the expense of the *raiyat*, (2) by the agency or at the expense of the landlord, or (3) without the agency or expense of either. In the first case the *raiyat* is not liable to have his rent enhanced; such is the effect of the words 'otherwise than by the agency or at the expense of the *raiyat*.' If the *raiyat* has improved his holding, has rendered his land more productive by expending his labour or capital upon it, the benefit of the improvement will be his and his alone. Thus the law encourages thrift and industry by guaranteeing the enjoyment of their fruits to the persons who exercise these qualities. Between the second and third cases the present law makes no distinction, and it gives the whole of the increase to the landlord, except in cases of customary rents, in which the rule is limited by the principle of proportion enunciated in the Great Rent Case. In our Draft Bill we have given the whole of the increment in the *second* case to the landlord, for the same reasons for which the existing law gives it to the *raiyat* in the *first* case. As to the *third* case, it may fairly be said that, however just it may be to give the whole increase to the landlord,

Enhancement on the ground that the Productive Powers of the land have been increased.

Important to consider by what agency the increase has been effected.

when the whole of it is due to his agency or expenditure, the justice of doing this is not so apparent where the landlord has contributed nothing to bring about this increase, and in this respect he and the *raiyat* stand upon equal ground. If it be admitted that the *raiyat* has certain rights, has a certain interest in the land as well as the zemindar, why, it may be asked, should not the former as well as the latter participate in the benefit which accrues to the common property from external sources, over which neither has any influence or control? Accepting the justice of this argument, we have thought it reasonable and equitable in this case to divide the increment equally between the landlord and the tenant as a general rule. It may however be observed that, when the increment exceeds the old rent, the effect of one of the positive checks which we have provided, namely, that no enhanced rent shall be more than double the former rent, may be that the *raiyat* will receive more than half of the benefit."

§ 465. "In order to ascertain the measure of the increase, it is necessary to take some point of time in the past between which and the present the comparison may be made. The want of a definite rule on this portion of the subject has been greatly felt. We have provided that the present, *i. e.*, the increased productive powers of the land may be compared with the productive powers of the same land as they were when the rent was originally fixed, or as they were *at any subsequent time*. The first part of this rule requires no explanation and no comment. A comparison between the productive powers as they now are and the same powers as they were when the rent was first fixed is fair to both parties: but the principle cannot be left depending upon a rule so limited, because in a large proportion of cases the productive powers of the land at the time that the rent was fixed cannot be ascertained. It may have been so long ago that no living evidence is now forthcoming; or it may be that some such evidence is to be had, but that it is utterly unreliable, being merely oral testimony, given long

What point of past time to be compared with the present.

after about that which at the time received no particular attention, and partaking of the usual worthless nature of such evidence. In any such case, if the principle of comparison is to be put in force at all, it becomes necessary to compare the present with a point of time subsequent to that at which the rent was originally fixed. If the productive powers at such subsequent time were less than when the rent was first settled, the calculation will be to the *raiyat's* disadvantage, as the increase upon the original productive powers will appear greater than it really has been. If, on the other hand, the productive powers at such subsequent time were greater than they originally were, the increase will appear less than it really has been, and the *raiyat* will be benefited to the detriment of the landlord. As a matter of fact, we think that neither contingency is very likely to have happened in the great majority of cases, and that no great injury is likely to be done to either party. We are agreed that when enhancement of rent is allowed on the ground that the productive powers of the soil have increased, there ought to be a reasonable prospect that the causes to which such increase is due are likely to be permanent in their effect and not merely temporary and casual; and we have added to this ground of enhancement words to this effect."

Cause of Increase of Productive Powers ought to be not merely temporary or casual.

§ 466. As to the fourth ground of enhancement, *viz.*, that the value of the produce has increased, the Commissioners say:—"It appears to us that this ground of enhancement is altogether distinct from an increase in the quantity of the produce due to an improvement in the productive powers of the soil. We have in consequence entirely separated these two grounds. In stating this fourth ground, we have, in the first place, substituted the term 'price,' which is equivalent to money-value, for 'value,' which includes other values besides money-value. We have thus made the language more precise without altering what we understand to have been the intention of those who framed Act X of 1859. The price of agricultural produce has increased enormously in these provinces

Enhancement on the ground of Increase in the Prices of Produce.

during the last twenty or thirty years. This increase is due to two principal causes. In the first place, even while the relative value of the precious metals which are used for the coinage of a country remains the same, there is a constant tendency[2] for the money-value or price of agricultural produce to rise, as population increases and improvement progresses. The Province of Bengal has been rapidly progressive in every way during the last century of peace and security. Population has increased. A large and still expanding export trade has brought the demand of other countries to bear upon prices in addition to the enlarged demand of the province itself. In the second place, the coinage consists of silver, and the relative value of silver has been gradually decreasing. The price or money-value of produce has therefore risen. We are of opinion that the landlord should have a share in the increase of price due to the above two causes. It is not possible to separate the respective effects of these causes, and so calculate how much of the increase is due to each. The landlord ought, however, according to our view, to participate in the benefit arising from each. The first cause, *i.e.*, the general progress of the community, makes the land more valuable as a natural agent for the production of food. The increase of value, if not taken by the State—and the effect of the Permanent Settlement is that the State does not take it—must go to those, whom the law allows to keep all that interest in land which constitutes property in land. Now the persons, who in these provinces have this property in the land under the existing law, are the zemindars and the

Examination of Increase of Price.

[2] Political Economists lay down the proposition that while the rate of profit and interest has a downward tendency in a progressive community, rent (*i.e.* in their sense of the term 'rent') on the contrary tends to rise incessantly—that in fact all progress in wealth and population tends to a rise of rents—See *Mill's Political Economy*, Vol. I, p. 386; *Systems of Land Tenure in Various Countries*, p. 221. Where capitalist farming prevails, any fall in the usual rate of profit and interest must operate directly to increase rent: but, apart from this cause, rent increases in a progressive community. An increasing population has a tendency to increase the demand for food, and the price rises in consequence.

raiyats, not the *raiyats* only. Therefore the zemindars, having a share in that complete interest which constitutes property, ought to have also a share in that increase of value which is an accession to that interest. The effect of the second cause is to diminish the value of the rent payable in silver in relation to all commodities, which the landlord can obtain for the money which he receives as his rent. This money, therefore, represents a smaller share of the produce than it did before the relative value of silver fell. It is but equitable, therefore, that the money-rent of the landlord should be increased so as to make it represent a share of the produce equal to what it represented when the rent was originally fixed. Then there are other considerations. The benefit accruing from the operation of the first cause is limited by the quantity of the produce, which the *raiyat* sells or barters away. In respect of the portion retained for consumption by himself, his family and his cattle, and for seed, there is no direct benefit from the rise in price, because this portion does not come into the market. Here the first cause differs from the second, and it differs also from the third ground of enhancement, under which the excess quantity of produce obtained from the increased productive power of the soil represents so much clear benefit. From this analysis it will appear that the component elements of this ground of enhancement are sufficiently complex; and, looking at the above considerations, it is not very easy to say how the increment arising from increase of price ought to be divided so as to make the division fair to both parties."

§ 467. "Here, as in the case of the third ground, it is possible to conceive that the increase of price may be brought about (1) by the agency or at the expense of the *raiyat*, or (2) by the agency or at the expense of the landlord, or (3) without the agency or expense of either. In the first case, as the law now stands, the rent of the *raiyat* is not liable to enhancement. He receives the full benefit of the increase in price which he has himself brought about. That is the effect here also of the words 'other-

wise than by the agency or at the expense of the *raiyat*,' and we do not propose to alter this. At the same time it is not easy to suppose a case in which the *raiyat* could effect an increase in the price of the produce solely by his own agency or at his own expense. In the *second* case, or where the increase of price is due entirely to the zemindar's agency, or has been brought about altogether at his expense, it appears to us on the whole to be reasonable that he alone should receive the entire benefit. A case of this sort might occur where a zemindar had opened a new *hât* and improved the means of communication between it and the lands of his estate. In the third case, which is far the most common, the case, that is, of an increase of price brought about by neither the zemindar nor the *raiyat*, but by general causes, the reasoning used above in respect of the similar case arising upon the last ground of enhancement appears to have equal application. Having given the whole subject in its diversified details what consideration we have been able, a majority of us think that the fairest general rule here also will be to divide the increment equally between the landlord and tenant, when in the third case enhancement is allowed upon this ground."

Increase of Price may be due to the agency (1) of the raiyat, or (2) of the landlord, or (3) of neither. Who should receive the benefit in each case.

§ 468. "As to the period of past time between which and the present the comparison should be instituted, and as to the causes of the increase being not merely temporary or casual, the remarks already made upon the third ground of enhancement apply. Then as to the markets, the prices of which should govern, we have provided that the prices in the locality or at the usual markets are to be taken. There ought to be sufficient evidence of these prices procurable from the local *mahajans* and their books or from other sources. We have further facilitated the proof by providing for the preparation and publication of annual official Price Lists, the object and use of which we shall explain hereafter. The next question which has engaged our attention in connection with this part of the subject is the very important one of the species of produce which shall be taken for the calculation of prices. Shall these

Comparison to be made between prices of what times and places.

prices be calculated for all the crops actually grown on the lands, as well for special crops requiring special care and cultivation, as for the ordinary food crops of the district.

Prices of what Crops to be taken as the basis of Calculation.

During the period antecedent to British rule it was usual to vary the rent with the crops cultivated. Section 56 of Regulation VIII of 1793 enacted that 'where it is the established custom to vary the *pattas* for lands according to the articles produced thereon, and while the actual proprietors of land, dependent *talúkdars* or farmers of land and *raiyats* in such places shall prefer an adherence to this custom, the engagements entered into between them are to specify the quantity of land, species of produce, rate of rent, and amount thereof, with the term of the lease and a stipulation that, in the event of *the species of produce being changed*, a new engagement shall be executed for the remaining term of the first lease, or for a longer period if agreed on; and in the event of *any new species being cultivated*, a new engagement with the like specification and clause is to be executed accordingly.' It can well be understood that a despotic Government or its more despotic subordinates observed carefully any circumstances that would enable the cultivators to pay more than had previously been obtained from them. Where the share of the State was taken in kind, a less proportion was always accepted for special crops in consideration of the greater care and expense necessary to their production."

Question of Special Crops considered.

§ 469. "Where the share of the State had been commuted to a money payment, very high rates were imposed on the lands on which special crops were grown. These rates were too often regulated more with reference to the aggregate value of the gross produce, which was very considerable, than upon a due allowance for the cost of production, which was a very much larger item in proportion than in the case of ordinary crops. In reasonably good years the *raiyat* was able to pay and make a good profit; then came a year of failure, it may be, when he had made a larger venture than usual and the little capital vanished, while the high rates had to be paid, and perhaps

the *mahajan's* assistance had to be called in for this. The memory of the year of failure survived, kept green by the *mahajan's* long surviving claim, while the years of success from which little or nothing was saved were soon forgotten. It thus happened that the exaction of very high rates for fields devoted to special cultivation discouraged and retarded agricultural improvement. It may be well to draw here a distinction between higher rates for superior land capable of producing superior crops and therefore suited for these special crops, such rates being paid without direct reference to the particular crops actually produced from year to year—and higher rates assessed with direct reference to the crops annually grown. The latter are sure to run much higher than the former, and in a bad year the loss and the cause of it are felt more distinctly. We do not therefore propose to interfere with any existing classification of lands based on their superior quality or capability of producing special crops, but we think that, in regulating enhancement of rent on the ground of rise of prices, account should be taken of the ordinary or staple crops only. A different rule would in our opinion tend to discourage the cultivation of new and valuable species of production, and so prevent agricultural improvement. By allowing the Board of Revenue to declare from time to time what shall be taken to be the staple crops for particular areas, an opportunity will be afforded of making any new crop a staple as soon as its cultivation has been thoroughly and generally established. As to special crops, such as betel-leaf, tobacco, sugarcane, and such like, we think that, as they are grown only occasionally or in small quantities, and require particular attention and involve special expenditure, they ought not to be considered in settling enhanced rents. We may further observe in support of this view that, in commuting the Tithe into a money payment in England, staple crops only were taken into account, the staples selected being wheat, oats, and barley."

§ 470. The two great problems, which have to be

Two great Problems to be solved for Bengal.

solved by legislation, are these: (1) to define the class which shall be protected—of which it shall be predicated that no member of it may be evicted as long as he pays the rent demandable from him; (2) to provide for the determination of the rent which shall be demandable. These were substantially the problems which were sought to be solved for Ireland by The Land-Law Act of 1881. There are many points of comparison between Ireland and Bengal. Into both countries a system was introduced, which did not accord with the traditions of the past or the progress of the present: and in both countries landlords created by foreign power were maintained in their position by abnormal legislation. In Bengal, as in Ireland, the land was reclaimed and brought under cultivation, not by the exertion and expenditure of the landlord class, but by the labour of the peasantry. In both countries the tenant's house is built and the stock supplied at the expense, not of the landlord, but of the tenant. From the nature of the alluvial soil, no great improvement is possible by the exertion of individual labour in Bengal, once the *Jangal* has been cleared and the land brought under cultivation. Those great works of improvement, for which capital is required—the making of fair roads, the cutting of drainage channels, the straightening of crooked streams, the supply of wholesome water, have (with few exceptions) been left unattempted, save where Government action has supplied the want of private enterprise. So in Ireland the labour of the tenant brought the land under tillage, and great improvements were neglected by the landlords. In Bengal there is no capitalist farming, as there was little in Ireland until recently. The Irish landlord was too often an absentee, spending the wealth of the country in foreign cities. The rents of too many Bengali zemindars are expended, not in the districts, upon their estates, but in the pleasures of Calcutta. The Irish tenants were left to the Agent. The Bengali *raiyats* are in the hands of the *amlah*. In both countries, although from different causes, there are little or no manufactures; and the great bulk of

Points of Comparison between Ireland and Bengal.

the population are agriculturists. The land-hunger of Ireland, caused by a rapidly-increasing population, has its exact parallel in Bahár, and Famine has visited both countries with equally terrible results. Before the Famine of 1847, middlemen increased the misery in Ireland. Their existence in Bahár to this day is one great cause of the wretchedness of the *raiyats*, and their pernicious influence pervades every district in Bengal.[3] Ireland has had its hard-hearted speculators in land since the Incumbered Estates Court was established in 1848—men regardless of the traditions of the past, and respectless of the relations between the old gentry and their tenants—looking only to profit and desirous of gain. But Bengal has had throughout the century *Revenue Purchasers*, encouraged by the law of the land to invest their money in evictions and find usurious interest in enhancement. In both countries there has been legislation undertaken with the best intentions to remove evils honestly deplored; and in both countries the remedy has proved worse than the disease, the disorder being aggravated by the very measures that were designed for its cure. Ireland has had its Houghers, and its Levellers, and the letting of blood that cries from the ground—agrarian crime in Bengal has taken the form of fire-raising, and there have not been wanting instances in which the *raiyats* have murdered a landlord by way of warning.[4] Finally there has been a *no rent* league in Ireland, and in one district of Bengal there has been a *no rent* manifesto.

Similar consequences from the same cause.

§ 471. The similarity between these consequences in the two countries may be traced to the same cause—the law of the land being out of accord with—it may almost be said in antagonism to—the facts and actual relations of the people. The system of land-law which grew up in England under the peculiar circumstances of an exceptional

[3] As to the danger of subletting, see the *Report of the Famine Commission*, Part II, p. 120, § 31.

[4] One Purnachander Rai was murdered at Faridpore in 1876,—and a similar offence was perpetrated in the Dacca District some years previously.

progress has existed in no other country in the world, and is suited to none. America threw it off. Australia rejected it. It was forced on Ireland to the working of mischief incalculable, and the ripest wisdom of the present generation has admitted the mistake, and endeavoured to undo its consequences. In Bengal this system has been introduced, and maintained by the power of the rulers, and it has done not less mischief than in Ireland. Here also men are now tolerably well agreed that we must retrace our steps—that tenancy based on contract is an incongruity and an impossibility, when both parties do not meet on equal terms—and that the relation of *zemindar* and *raiyat* must be settled upon some other basis. In retracing our steps justice requires that we should be considerate in dealing with the interests of those who have shared our mutual mistake, whom we perhaps have led into error. Large sums of money have been invested on the faith of that state of things which we have created—upon the confidence inspired by the reflection that what was well-known to, yet suffered by, the authorities in India, and the rulers of Leadenhall Street, could scarcely be all wrong and unjustifiable. Bengali and Bahári landlords, if they thought at all, might reason that in the matter of evictions and enhancements they were following the example set them by the Government in its capacity of landlord; and if they went, as they did, further than the example warranted, an apologist may defend them on the ground, that they were following the traditions of their country. The successful *mahajan*, who had speculated in land, might well envy the skilful management that dur the minority of a ward could transform a mismanaged and incumbered estate into a profitable property, yielding an annual surplus to be accumulated until the heir would attain the age of discretion to spend it.

Singular System of England not suited for other Countries.

§ 472. It must not be supposed that legislation, which merely adjusts the relations between the *zemindars* and the *raiyats*, will be a final solution of the difficulties which exist in these provinces. The Bengali or Bahári *raiyat* is a very

different individual from the enfranchised serf of modern Europe. He is inclined to sloth, wanting in thrift and self-reliance, careful only of the present and regardless of the future. Let no one indulge the delusion that an Act, even of the Legislative Council of India, will convert him into a French, or Prussian, or Belgian peasant, industrious, frugal, provident. Even when the *raiyat* is protected from oppression, there is the danger that he will convert himself into a petty landlord and an oppressor of the worst kind. This danger is greater in the East than in the West. In Bombay, where the *raiyatwarí* system was introduced from the commencement, it was found necessary to protect the under-tenants.[5] In a despatch of 1879 from the Secretary of State[6] it is said:—"There is undeniable evidence in the Report before us that the very improvements introduced under our rules, such as fixity of tenure and lowering of the assessments, have been the principal causes of the great destitution which the Commissioners found to exist. The salable value of the land increased the credit of the *raiyat*, and encouraged beyond measure the national habit of borrowing and more expensive modes of living." The Famine Commission say in their Report that it is commonly observed that the landholders are more indebted than tenants with occupancy-rights, and tenants with rights than tenants-at-will;[7] and they observe upon the popular tendency to indebtedness, having acquired in the Deccan increased power from "the fatal gift of transferable rights in the soil."[8] Let the *raiyat* in the provinces under the Bengal Government be protected from oppression and exaction; let the demand of rent upon him be moderate, and above all things *certain;* let the enjoyment of any higher rights, which he may acquire by his industry, be secured to him; but let him be made to understand that he may not convert his liberty into licence; that the

Adjustment of Relations between Zemindars and Raiyats not a final solution.

Raiyat not self-reliant or provident.

The Dangers of Independence.

[5] See *Report of the Famine Commission*, Part II, pp. 122, 123; and Bombay Act I of 1879.

[6] To the Secretary to the Bombay Government, dated 29th February 1879.

[7] *Part* II, p. 131. [8] *Id.*, p. 133.

protection and security which are given to him, depend upon his faithful discharge of his liabilities, the punctual payment of his rent; and that Government, while willing to maintain him safe in the enjoyment of the gains of honest labour, the profits of patient industry, has no intention that he shall become an idle middleman, a petty landlord, and narrow-minded oppressor of *Kurfá* subtenants.[9]

Recapitulation, and Conclusion.

§ 473. I have shown in those portions of this work, which are concerned with the provinces under the administration of the Bengal Government, that the mutual rights of the *zemindars* and the *raiyats* were in confusion and uncertainty when the East India Company acquired the *Díwání* in 1765—that between 1765 and 1793 no effectual steps were taken to ascertain and define those rights—that Mr. Hastings and Mr. Shore, whose experience of the subject should have given weight to their sentiments, were of opinion that before any permanent settlement was made with the *zemindars*, those rights should be defined and adjusted—that Lord Cornwallis and the Court of Directors, putting aside the advice of Indian experience, deliberately refrained from any such definition and adjustment—that they, under the influence of English ideas, believed, honestly though mistakenly believed, that *zemindars* and *raiyats* would ad-

[9] I believe that any scheme, which would get rid of all tenants-at-will under the *Zemindars* would be mischievous in this way that it would reduce all tenants-at-will to the condition of tenants under tenants. There must always be a considerable class, who have no permanent interest in the soil and who in a purely agricultural community must live by agricultural labour. For them it is a great advantage to be able to obtain land as tenants-at-will, while the existence of a peasant proprietary is at once a lesson and an encouragement to them to endeavour to improve their own position. At the same time the profits of the peasant proprietor afford a standard to check rack-renting. One of the greatest dangers in an agricultural country like Bengal is the *morcellement* of the land. In these provinces this danger is peculiarly serious in consequence of early marriages, a rapidly increasing population, and the Hindú and Mahomedan laws of inheritance. When the land gets subdivided into parcels, each of which will barely sustain an average family in a fairly good year, there is no margin for saving, and scarcity or famine inevitably bring their terrible results, which the people are powerless to avert. I have always thought that this is a question which should not be omitted from consideration in any general revision of the land-laws of these Provinces.

just their mutual relations by contract amongst themselves, and relied upon the *Patta Regulations* to bring about this result—that the *Patta Regulations* not only failed for this purpose, but were utilized by the *zemindars* for the oppression of the *raiyats* and the destruction of their rights—that in 1799, when the Government revenue was threatened by the failure of the system of 1793, the *zemindars* were placed by abnormal legislation in a position of superiority and power over the *raiyats*, fatal to all ideas of freedom of contract and liberty of action—that at the same time the delusive idea of proving their rights in the Courts of Justice was put before the *raiyats*—that this idea was delusive for many reasons, and especially for this reason that the same Government, which invited them to prove their rights, had unwittingly destroyed the only records, and practically the only evidence of those rights—that fresh legislation, undertaken in 1812 with the intention of benefiting the *raiyats*, proved ineffectual, and served to strengthen the position of the *zemindars*—that in 1819 a system was sanctioned by the Legislature, which had the effect of creating middlemen and forcing still lower the condition of the cultivators—that in 1822 legislation, inaugurated in the interest of purchasers at Revenue Sales, had the effect of further destroying the rights of the *raiyats*—that at this very time, the Government of the Bengal Presidency and the Court of Directors were fully aware of the mischief that had been done, and were most anxious to remedy it—that these excellent intentions were never effectuated—that in 1845 further legislation in the interest of the revenue purchasers further prejudiced the interests of tenants and destroyed all security of tenure—that the *zemindars'* right to enhance rents, fortified and encouraged to unnatural activity by abnormal legislation in favour of landlords and revenue purchasers, took every advantage, of an increasing population, and the liberty of letting waste and unoccupied land on the *zemindars'* own terms in order to push rents up to the highest rates that

the tillers of the soil could pay and live—that as the result of this treatment of the peasantry, the Province of Bahár had been brought to a miserable condition of destitution and wretchedness—that in 1859 a well-meaning attempt was made to improve the position of the *raiyats*—that the Act passed with this object in that year, though productive of some good, was deficient in grasp, and failed to define and adjust the mutual rights of landlords and tenants—finally, that matters had in 1883 come to a conjuncture, which imperatively called for a full and complete solution of those complications, which had been brought about by nearly a century of progress misguided from the first, and too often misdirected with the best intentions. I have placed before the reader the most material portions of the evidence. He can thus judge for himself as to the soundness of the conclusions drawn, and will accept them only so far as they recommend themselves to his reason and judgment. I have not wittingly, I trust I have not at all (so far as individual care may ensure accuracy), omitted anything that is essential to enable an unprejudiced mind to form a just opinion upon the whole question.

Since the above was written and the first edition of this book was published, an earnest and well-intentioned attempt to adjust the relations between landlords and tenants in Bengal has been made by passing The Bengal Tenancy Act, 1885, which will be found in the *Appendix*. As this Act has not yet come into operation, it is premature to discuss its provisions or their possible results in a Work like this, which is intended to give an historical account of systems founded on custom or positive law, and of their actual economic effects upon the communities who have been subjected to their operation.

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सत्यमेव जयते

APPENDIX.

THE BENGAL TENANCY ACT, No. VIII OF 1885.

(*Received the assent of His Excellency the Governor General on the 14th March*, 1885.)

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An Act to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal.

WHEREAS it is expedient to amend and consolidate certain enactments relating to the law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title.

1. (1) This Act may be called "The Bengal Tenancy Act, 1885."

Commencement.

(2) It shall come into force on such date (hereinafter called the commencement of this Act) as the Local Government, with the previous sanction of the Governor-General in Council, may, by notification in the local official Gazette, appoint in this behalf.

Local extent.

(3) It shall extend by its own operation to all the territories for the time being under the administration of the Lieutenant-Governor of Bengal, except the Town of Calcutta, the Division of Orissa, and the Scheduled Districts specified in the third Part of the First Schedule of The Scheduled Districts Act, 1874; and the Local Government may, with the previous sanction of the Governor-General in Council, by notification in the local official Gazette, extend the whole or any portion of this Act to the Division of Orissa or any part thereof.

Repeal.

2. (1) The enactments specified in Schedule I hereto annexed are repealed in the territories to which this Act extends by its own operation.

(2) When this Act is extended to the Division of Orissa or any part thereof, such of those enactments as are in force in that Division or part, or, where a portion only of this Act is so extended, so much of them as is inconsistent with that portion, shall be repealed in that Division or part.

(3) Any enactment or document referring to any enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof.

(4) The repeal of any enactment by this Act shall not revive any right, privilege, matter or thing not in force or existing at the commencement of this Act.

[For example, the repeal of Act X of 1859 or of Act VIII (B. C.) of 1869 does not revive the right of zemindars and other landholders to compel the attendance of their tenants for the adjustment of their rents or other purpose, which right was taken away by section 11 of the former, and by section 12 of the latter, Act.]

Definitions.

3. In this Act, unless there is something repugnant in the subject or context :—

(1) 'Estate' means land included under one entry in any of the General Registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of a district, and includes Government khás maháls and revenue-free lands not entered in any Register.

[The existing law is contained in *The Land Registration Act*, VII (B. C.) of 1876. The last clause of this definition makes it clear that The Tenancy Act is to apply to Government Estates. See also the definition of 'Landlord' below. It does not, however, affect the procedure for the realization of the rents of such estates, see section 195 (*b*).]

(2) 'Proprietor' means a person owning, whether in trust or for his own benefit, an estate or a part of an estate.

(3) 'Tenant' means a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that person.

(4) 'Landlord' means a person immediately under whom a tenant holds, and includes the Government.

(5) 'Rent' means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant :

In sections 53 to 68, both inclusive, sections 72 to 75, both inclusive, Chapter XII and Schedule III of this Act, 'rent' includes also

money recoverable under any enactment for the time being in force as if it was rent.

[For example, arrears of cess payable to holders of estates or tenures—see section 47 of "The Cess Act," IX (B. C.) of 1880.]

(6) 'Pay,' 'payable' and 'payment,' used with reference to rent, include 'deliver,' 'deliverable' and 'delivery.'

(7) 'Tenure' means the interest of a tenure-holder or an under-tenure-holder.

(8) 'Permanent tenure' means a tenure which is heritable and which is not held for a limited time.

(9) 'Holding' means a parcel or parcels of land held by a raiyat and forming the subject of a separate tenancy.

(10) 'Village' means an area included in a village map of the revenue-survey within the same exterior boundary, or, where no such maps have been prepared, such area as any officer appointed by the Local Government in this behalf may determine after local inquiry held on such notice as the Local Government considers sufficient for giving information to all persons interested.

(11) 'Agricultural year' means, where the Bengali year prevails, the year commencing on the first day of Bysák, where the Faslí or Amlí year prevails, the year commencing on the first day of Asin, and, where any other year prevails for agricultural purposes, that year.

(12) 'Permanent Settlement' means the Permanent Settlement of Bengal, Behar and Orissa, made in the year 1793.

(13) 'Succession' includes both intestate and testamentary succession.

(14) 'Signed' includes 'marked' when the person making the mark is unable to write his name; it also includes 'stamped' with the name of the person referred to.

(15) 'Prescribed' means prescribed from time to time by the Local Government by notification in the official Gazette.

(16) 'Collector' means the Collector of a district or any other officer appointed by the Local Government to discharge any of the functions of a Collector under this Act.

(17) 'Revenue-officer' in any provision of this Act includes any officer whom the Local Government may appoint by name or by virtue of his office to discharge any of the functions of a Revenue-officer under that provision.

(18) 'Registered' means registered under any Act for the time being in force for the registration of documents.

CHAPTER II.

CLASSES OF TENANTS.

Classes of tenants.

4. There shall be, for the purposes of this Act, the following classes of tenants (namely):—

(1) tenure-holders, including undertenure-holders,

(2) raiyats, and

(3) under-raiyats, that is to say, tenants holding whether immediately or mediately under raiyats;

and the following classes of raiyats (namely):—

(*a*) raiyats holding at fixed rates, which expression means raiyats holding either at a rent fixed in perpetuity or at a rate of rent fixed in perpetuity,

(*b*) occupancy-raiyats, that is to say, raiyats having a right of occupancy in the land held by them, and

(*c*) non-occupancy-raiyats, that is to say, raiyats not having such a right of occupancy.

Meaning of 'tenure-holder' and 'raiyat.'

5. (1) 'Tenure-holder' means primarily a person who has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it, and includes also the successors in interest of persons who have acquired such a right.

(2) 'Raiyat' means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family, or by hired servants, or with the aid of partners, and includes also the successors in interest of persons who have acquired such a right.

[See 9 B. L. R. 113: 9 C. L. R. 449.]

Explanation.—Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it.

(3) A person shall not be deemed to be a raiyat unless he holds land either immediately under a proprietor or immediately under a tenure-holder.

(4) In determining whether a tenant is a tenure-holder or a raiyat, the Court shall have regard to—

(*a*) local custom; and

(*b*) the purpose for which the right of tenancy was originally acquired.

(5) Where the area held by a tenant exceeds one hundred standard bighás, the tenant shall be presumed to be a tenure-holder until the contrary is shewn.

[Will a *lakherajdar, i. e.* a person who has *lakheraj* land not entered in the Register of *Revenue-free* land maintained under The Land Registration Act, VII (B. C.) of 1876, fall under the definition of 'tenure-holder' or 'raiyat?' Can the grantee of a *Rent-free* grant be said to hold under his grantor? The provisions of this chapter generally reproduce the existing law: but the presumption in section 5, sub-section (5), is new.]

CHAPTER III.

TENURE-HOLDERS.

Enhancement of rent.

Tenure held since Permanent Settlement liable to enhancement only in certain cases.

6. Where a tenure has been held from the time of the Permanent Settlement, its rent shall not be liable to enhancement except on proof—

(*a*) that the landlord under whom it is held is entitled to enhance the rent thereof either by local custom or by the conditions under which the tenure is held, or

(*b*) that the tenure-holder, by receiving reductions of his rent, otherwise than on account of a diminution of the area of the tenure, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

[This is a reproduction of section 51 of Reg. VIII of 1793. See note to this section in my *Bengal Regulations:* also S. D. A. Rep. 1857, p. 1413: S. D. A. Rep. 1859, p. 677: 3 W. R. Act X, 26: 8 W. R. 427, 496: 9 W. R. 379: 19 W. R. 144: 20 W. R. 459, 496: 21 W. R. 439: 12 B. L. R. 232: 15 B. L. R. 120: 13 Moo. In. Ap. 248: I. L. R. 2 Calc. 125: I. L. R. 3 Calc. 251, 262: I. L. R. 4 Calc. 612: I. L. R. 5 Calc. 823: L. R. 2 I. A. 196.]

Limits of enhancement of rent of tenures.

7. (1) Where the rent of a tenure-holder is liable to enhancement, it may, subject to any contract between the parties, be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity.

(2) Where no such customary rate exists, it may, subject as aforesaid, be enhanced up to such limit as the Court thinks fair and equitable.

(3) In determining what is fair and equitable, the Court shall not leave to the tenure-holder as profit less than ten per centum of the balance

which remains after deducting from the gross rents payable to him the expenses of collecting them, and shall have regard to—

(*a*) the circumstances under which the tenure was created, for instance, whether the land comprised in the tenure, or a great portion of it, was first brought under cultivation by the agency or at the expense of the tenure-holder or his predecessors in interest, whether any fine or premium was paid on the creation of the tenure, and whether the tenure was originally created at a specially low rent for the purpose of reclamation; and

(*b*) the improvements, if any, made by the tenure-holder or his predecessors in interest.

(4) If the tenure-holder himself occupies any portion of the land included in the area of his tenure, or has made a grant of any portion of the land either rent-free or at a beneficial rent, a fair and equitable rent shall be calculated for that portion and included in the gross rents aforesaid.

[This section is new, and provides a rule for the enhancement of the rent of tenures. In consequence of the repeal of section 8 of Reg. V of 1812 without any reproduction of its provisions, this matter was left unprovided for by the former law—See 1 W. R. 339: 19 W. R. 144: 3 B. L. R. A. C. 270: I. L. R. 9 Calc. 571: 11 Moo. I. A. 433.]

Power to order gradual enhancement.

8. The Court may, if it thinks that an immediate increase of rent would produce hardship, direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees, for any number of years not exceeding five, until the limit of the enhancement allowed has been reached.

Rent once enhanced may not be altered for fifteen years.

9. When the rent of a tenure-holder has been enhanced by the Court or by contract, it shall not be again enhanced by the Court during the fifteen years next following the date on which it has been so enhanced.

[The provisions of these last two sections are new.]

Other incidents of tenures.

Permanent tenure-holder not liable to ejectment.

10. A holder of a permanent tenure shall not be ejected by his landlord except on the ground that he has broken a condition on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected:

Provided that where the contract is made after the commencement of this Act, the condition is consistent with the provisions of this Act.

[These provisions are substantially in accordance with existing law.]

11. Every permanent tenure shall, subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent as other immovable property.

Transfer and transmission of permanent tenure.

[This section substantially reproduces existing law—See 1 W. R. 5, 153: 9 W. R. 65: 19 W. R. 141: 24 W. R. 176: Marsh. 117, 119, 530: 3 B. L. R. 226: 5 B. L. R. 652: 6 B. L. R. 652: 7 B. L. R. 211: 10 Moo. In. Ap. 191: 11 Moo. In. Ap. 433: 12 Moo. In. Ap. 263: 14 Moo. In. Ap. 247: L. R. 4 I. A. 223: 5 C. L. R. 138.]

12. (1) A transfer of a permanent tenure by sale, gift or mortgage (other than a transfer by sale in execution of a decree or by summary sale under any law relating to patní or other tenures) can be made only by a registered instrument.

Voluntary transfer of permanent tenure.

(2) A registering officer shall not register any instrument purporting or operating to transfer by sale, gift or mortgage a permanent tenure unless there is paid to him, in addition to any fees payable under the Act for the time being in force for the registration of documents, a process-fee of the prescribed amount and a fee (hereinafter called "the landlord's fee") of the following amount, namely :—

(*a*) when rent is payable in respect of the tenure, a fee of two per centum on the annual rent of the tenure: provided that no such fee shall be less than one rupee or more than one hundred rupees; and

(*b*) when rent is not payable in respect of the tenure, a fee of two rupees.

(3) When the registration of any such instrument is complete, the registering officer shall send to the Collector the landlord's fee and a notice of the transfer and registration in the prescribed form, and the Collector shall cause the fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

[These provisions are new. Their object is to keep landlords of permanent tenures apprised of transfers and to secure to them the fees to which they are entitled upon such transfers. A question may arise as to whether the landlord will be held by receiving the fee from the Collector to admit the transfer or the transferability of the tenure.]

13. (1) When a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof, the Court shall, before confirming the sale under section 312 of the Code of Civil Procedure, require the purchaser to pay into Court the landlord's fee prescribed by the last foregoing section and such further fee for service of notice of the sale on the landlord as may be prescribed.

Transfer of permanent tenure by sale in execution of decree other than decree for rent.

(2) When the sale has been confirmed, the Court shall send to the Collector the landlord's fee and a notice of the sale in the prescribed form, and the Collector shall cause the fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

[These provisions are also new, and effectuate the same object in respect of transfers by sale in execution of decrees other than decrees for arrears of rent of the tenure.]

Transfer of permanent tenure by sale in execution of decree for rent.

14. When a permanent tenure is transferred by sale in execution of a decree for arrears of rent due in respect thereof, the Court shall send to the Collector a notice of the sale in the prescribed form.

[The same observations apply to this section, which is concerned with transfer by sale in execution of a decree for arrears of rent of the tenure itself.]

Succession to permanent tenure.

15. When a succession to a permanent tenure takes place, the person succeeding shall give notice of the succession to the Collector in the prescribed form, and shall pay to the Collector the prescribed fee for the service of the notice on the landlord and the landlord's fee prescribed by section 12, and the Collector shall cause the landlord's fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

[These provisions are also new, and are directed to effectuate the same object in cases of succession. Compliance with the requirements of this section is enforced by the provisions of the following section which are similar to those of section 78 of The Land Registration Act, VII (B.C.) of 1876. Before this legislation transfers of, and successions to, estates or tenures were seldom or never registered, and estates and tenures frequently stood in the names of persons long dead. The consequent difficulty of ascertaining the real owners, increased by the *benami* system under which property is held in the names of fictitious owners, was a fruitful source of fraud.]

Bar to recovery of rent pending notice of succession.

16. A person becoming entitled to a permanent tenure by succession shall not be entitled to recover by suit, distraint or other proceeding any rent payable to him as the holder of the tenure, until the Collector has received the notice and fees referred to in the last foregoing section.

Transfer of, and succession to, share in permanent tenure.

17. Subject to the provisions of section 88, the foregoing sections shall apply to the transfer of, or succession to, a share in a permanent tenure.

[Section 88 enacts that the division of a tenure or holding or distribution of its rent shall not be binding on the landlord, unless made with his consent in writing.]

CHAPTER IV.

RAIYATS HOLDING AT FIXED RATES.

Incidents of holding at fixed rates.

18. A raiyat holding at a rent, or rate of rent, fixed in perpetuity—

(*a*) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as the holder of a permanent tenure, and

(*b*) shall not be ejected by his landlord except on the ground that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected.

[These provisions are new, and they substantially place in the position of a permanent tenure-holder a raiyat who holds at a rent or rate of rent fixed in perpetuity: and this, irrespective of the time for which he has held or of his having acquired a right of occupancy. But see sub-section (4) of section 50, *post*.]

CHAPTER V.

OCCUPANCY-RAIYATS.

General.

Continuance of existing occupancy-rights.

19. Every raiyat who immediately before the commencement of this Act has, by the operation of any enactment, by custom or otherwise, a right of occupancy in any land shall, when this Act comes into force, have a right of occupancy in that land.

[This is substantially existing law. Act X of 1859, while giving a right of occupancy to every raiyat who had cultivated or held land for twelve years, did not expressly destroy or interfere with any similar right created by custom, contract, grant, prescription or otherwise—See B. L. R. F. B. 326: 17 W. R. 306: W. R. Sp. No. 156.]

Definition of "settled raiyat."

20. (1) Every person who for a period of twelve years, whether wholly or partly before or after the commencement of this Act, has continuously held as a raiyat land situate in any village, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village.

[After much discussion the *village* was adopted as the local area instead of the *estate*, which was at first proposed.]

(2) A person shall be deemed for the purposes of this section to have continuously held land in a village notwithstanding that the particular land held by him has been different at different times.

[Under Act X of 1859 a right of occupancy could be acquired only by holding or cultivating the *same* land for twelve years. It was alleged that some *zemindars*

prevented the acquisition of this right by shifting the *raiyats*, so as to prevent them from holding any single plot of land for the full period of twelve years. The above clause is intended to neutralize this practice.]

(3) A person shall be deemed, for the purposes of this section, to have held as a raiyat any land held as a raiyat by a person whose heir he is.

[The heir may apparently have the benefit of this presumption, although he has not himself entered into possession of the land.]

(4) Land held by two or more co-sharers as a raiyati holding shall be deemed, for the purposes of this section, to have been held as a raiyat by each such co-sharer.

(5) A person shall continue to be a settled raiyat of a village as long as he holds any land as a raiyat in that village and for one year thereafter.

(6) If a raiyat recovers possession of land under section 87, he shall be deemed to have continued to be a settled raiyat notwithstanding his having been out of possession more than a year.

[Section 87 is concerned with the abandonment of his holding by a raiyat.]

(7) If, in any proceeding under this Act, it is proved or admitted that a person holds any land as a raiyat, it shall, as between him and the landlord under whom he holds the land, be presumed for the purposes of this section, until the contrary is proved or admitted, that he has for twelve years continuously held that land or some part of it as a raiyat.

[In order to understand the meaning of *holding land as a raiyat*, reference must be made to the definition of "*raiyat*" in section 5. The effect of the presumption created by this clause is to put the burden of proof upon the landlord instead of, as heretofore, upon the tenant.]

Settled raiyats to have occupancy-rights.

21. (1) Every person who is a settled raiyat of a village within the meaning of the last foregoing section shall have a right of occupancy in all land for the time being held by him as a raiyat in that village.

[This provision is new. So far as regards the area of the village, the right of occupancy is appurtenant, not to the land, but to the status of a settled *raiyat*.]

(2) Every person who, being a settled raiyat of a village within the meaning of the last foregoing section, held land as a raiyat in that village at any time between the second day of March, 1883, and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force; but nothing in this sub-section shall affect any decree or order passed by a Court before the commencement of this Act.

[The 2nd March 1883 was the date on which the motion was made in the Legislative Council for leave to introduce *The Bengal Tenancy Bill*; and the

object of the above provision is to protect *raiyats*, who may have been induced, while the Bill was before the Council, to contract themselves out of, or otherwise forego, rights which the Act affirms or confers.]

Effect of acquisition of occupancy-right by landlord.

22. (1) When the immediate landlord of an occupancy-holding is a proprietor or permanent tenure-holder, and the entire interests of the landlord and the raiyat in the holding become united in the same person by transfer, succession or otherwise, the occupancy-right shall cease to exist; but nothing in this sub-section shall prejudicially affect the rights of any third person.

(2) If the occupancy-right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder, it shall cease to exist; but nothing in this sub-section shall prejudicially affect the rights of any third person.

[These provisions are new and supply a rule of merger. The extinction of the inferior interest is made a necessary consequence of the union of the superior and inferior interests in the same person, and this person is not allowed the option of keeping the inferior interest alive for any purpose of his own.]

(3) A person holding land as an ijárádár or farmer of rents shall not, while so holding, acquire a right of occupancy in any land comprised in his ijárá or farm.

[This is in accordance with existing law—1 W. R. 76: W. R. Jan.-July, 1864, Act X. 77: 25 W. R. 503, 556: 12 C. L. R. 559: L. R. 5 I. A. 168.]

Explanation.—A person having a right of occupancy in land does not lose it by subsequently becoming jointly interested in the land as proprietor or permanent tenure-holder, or by subsequently holding the land in ijárá or farm.

[This is in accordance with the decided cases so far as an *ijaradar* or farmer is concerned—see the references in the note to the preceding section. The effect of the *explanation* read with sub-section (2) of the section appears to be, that when a joint proprietor or tenure-holder *subsequently acquires the occupancy right*, such right will cease to exist; but when a person who first has the occupancy-right *subsequently becomes a joint proprietor or tenure-holder*, the occupancy right will continue to exist.]

Incidents of occupancy-right.

Rights of raiyat in respect of use of land.

23. When a raiyat has a right of occupancy in respect of any land, he may use the land in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy; but shall not be entitled to cut down trees in contravention of any local custom.

[This is a substantial reproduction of existing law—See 2 W. R. 157: 6 W. R. Act X. 40: 17 W. R. 416: 23 W. R. 298: N. W. P. H. C. Rep. F. B. 119, 125: 8 B. L. R. 242, Appen. 70: 11 B. L. R. Appen. 41: 2 C. L. R. 294: 10 C.

L. R. 25 : 12 C. L. R. 300 : I. L. R. 3 Calc. 781 : I. L. R. 9 Calc. 609. Although the raiyat may be ejected, if he render the land *unfit for the purposes of the tenancy*, (see clause (*a*), section 25), it would appear that he cannot be ejected for *materially impairing its value*, and that the landlord's only remedy is an action for damages. The right of an occupancy-raiyat to use land as provided by this section cannot be taken away or limited by any contract made after the passing of The Tenancy Act—see section 178 (3) (*b*).]

Obligation of raiyat to pay rent.

24. An occupancy-raiyat shall pay rent for his holding at fair and equitable rates.

Protection from eviction except on specified grounds.

25. An occupancy-raiyat shall not be ejected by his landlord from his holding, except in execution of a decree for ejectment passed on the ground—

(*a*) that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy, or

(*b*) that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

[The *contract* mentioned in clause (*b*) may apparently be oral or written.

This section read with section 65 materially alters the law. An occupancy-raiyat is no longer liable to ejectment for non-payment of rent. The landlord's remedy is to bring the holding to sale in execution of a decree for arrears of rent.]

Devolution of occupancy-right on death.

26. If a raiyat dies intestate in respect of a right of occupancy, it shall, subject to any custom to the contrary, descend in the same manner as other immovable property: provided that, in any case in which under the law of inheritance to which the raiyat is subject his other property goes to the Crown, his right of occupancy shall be extinguished.

[This section rather removes a doubt (7 W. R. 528), than enacts new law,]

Enhancement of rent.

Presumption as to fair and equitable rent.

27. The rent for the time being payable by an occupancy-raiyat shall be presumed to be fair and equitable until the contrary is proved.

[This section is a reproduction of existing law.]

Restriction on enhancement of money-rents.

28. Where an occupancy-raiyat pays his rent in money, his rent shall not be enhanced except as provided by this Act.

[The absolute prohibition in this section is new.]

Enhancement of rent by contract.

29. The money-rent of an occupancy-raiyat may be enhanced by contract, subject to the following conditions:—

(*a*) the contract must be in writing and registered;

(*b*) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the raiyat;

(*c*) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract;

[The provisions of this section, which is concerned with money-rents only, are wholly new.]

Provided as follows—

(i) Nothing in clause (*a*) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

[Men's acts are the best test of their intentions. A man who has actually paid rent for three years under an oral, or written, though unregistered, contract, can scarcely be heard to say that he did not understand the nature of the contract into which he was induced to enter.]

(ii) Nothing in clause (*b*) shall apply to a contract by which a raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the raiyat is not otherwise entitled; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and, except when the raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.

(iii) When a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (*b*) shall prevent the raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.

[This provision is mainly intended to prevent hardship to persons engaged in the manufacture of indigo and other articles of commercial value. In order to acquire the position necessary to carry on their particular industry successfully, they acquired land which they have for many years allowed the raiyats to hold at low rents in consideration of their cultivating indigo, or some other crop on a portion of the area, and delivering this crop when grown at fixed rates.]

Enhancement of rent by suit.

30. The landlord of a holding held at a money-rent by an occupancy-raiyat may,

subject to the provisions of this Act, institute a suit to enhance the rent on one or more of the following grounds, (namely):—

(*a*) that the rate of rent paid by the raiyat is below the prevailing rate paid by occupancy-raiyats for land of a similar description and with similar advantages in the same village, and that there is no sufficient reason for his holding at so low a rate;

[This is the first of the three grounds of enhancement contained in the old law, but slightly altered. The words "by occupancy-raiyats" have been substituted for "by the same class of raiyats" in the previous Act, but this does not really alter the law. The words "in the same village" have been substituted for "in the places adjacent." Under the old law places might have been *adjacent*, though not in the same village; and under the new law the lands compared may be in the same village, though not adjacent. The words "and that there is no sufficient reason for his holding at so low a rate" are new, and introduce a new element of consideration. A sufficient reason may be, that the tenant belonged to a superior caste, the members of which have customarily held at a somewhat lower rent—or that the tenant or his ancestor originally reclaimed the land and made it culturable by his own labour or at his own expense—I. L. R. 9 Calc. 505; S. C. 12 C. L. R. 251. In connection with this ground of enhancement must be read section 31, *post*.]

(*b*) that there has been a rise in the average local prices of staple food-crops during the currency of the present rent;

[As to staple food-crops, see section 39, *post*.]

(*c*) that the productive powers of the land held by the raiyat have been increased by an improvement effected by, or at the expense of, the landlord during the currency of the present rent;

(*d*) that the productive powers of the land held by the raiyat have been increased by fluvial action.

Explanation.—"Fluvial action" includes a change in the course of a river rendering irrigation from the river practicable when it was not previously practicable.

[The second ground of enhancement in the old law was:—"that the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the raiyat." See I. L. R. 5 Calc. 56. This ground has been partly reproduced in the above clauses (*b*), (*c*) and (*d*).

Clause (*b*) reproduces in more exact language the principle of *increase in the value of the produce*, which is more properly termed a *rise in prices*. Then the general term "produce" has been cut down to "staple food crops," which, according to the principle of *The Tithe Commutation Acts*, supply a reasonable standard test. It was thought undesirable to interfere with special crops which require special industry and expenditure. Account is taken of the increased cost of production, which commonly accompanies rise of price of agricultural produce, by deducting one-third of the increase of price—see clause (*b*), section 32, *post*.

Clause (*c*) is a case of *increase of productive powers* effected by the agency or at the expense of the landlord. In connection with this ground must be read the provisions of section 33, *post*. Subject to these provisions the landlord is entitled to the benefit of the whole increase.

Clause (*d*) is a case of increase of productive powers brought about without the action of either landlord or tenant, and here the net increase is to be divided between the two parties—see clause (*b*), section 34, *post*.

Other cases of *increase of productive powers*, which might have been included in the general language of the ground of enhancement as stated in the old law, have been excluded from the present Act.

The provisions of the section are applicable to *money-rents* only. Rent payable in *kind* contains in itself the principle of enhancement on the ground of *rise in price*, because the portion of the crop delivered as rent can be sold at the higher price.

The third ground of enhancement in the old law was, that the quantity of land held by the raiyat has been proved by measurement to be greater than the quantity for which rent has been previously paid by him. The Rent Commission pointed out that this is not really a ground of enhancement of rent at all, because a man may be compelled to pay more rent for more land without increasing his rent or rate of rent per *bighá* or acre. The Tenancy Act accordingly does not treat this as a ground of enhancement, but deals with it (see s. 52) under the head of "alteration of rent on alteration of area."

It is to be observed that the previous service of a *notice* of enhancement is no longer a condition precedent to the institution of a suit for enhancement. The suit itself will now be the notice of the claim for enhanced rent, but there cannot be a decree for rent at an enhanced rate for any period previous to the decree; and the decree itself cannot take effect until the following agricultural year—see section 154, *post*. Under the old law there might have been a decree for enhanced rent of the year after service of notice and before institution of suit.]

Rules as to enhancement on ground of prevailing rate.

31. Where an enhancement is claimed on the ground that the rate of rent paid is below the *prevailing rate*—

(*a*) in determining what is the prevailing rate, the Court shall have regard to the rates generally paid during a period of not less than three years before the institution of the suit, and shall not decree an enhancement unless there is a substantial difference between the rate paid by the raiyat and the prevailing rate found by the Court:

[The object of this clause is to prevent the manufacture of sham rates by kabuliyats never intended to be acted upon and by other devices. The Court must have regard to the rates generally *paid*. It is not enough that they appear in leases and kabuliyats unless they have been paid. It has been said that the object of providing here and elsewhere that "the Court shall *have regard to*" certain matters, was to give certain instructions for the guidance of the Courts, while avoiding a hard and fast definition, the want or failure of any of the essentials of which might be fatal. "There is," said Lord Mansfield, "a known distinction between circumstances which are *of the essence of a thing* required to be done by an Act of Parliament, and clauses merely *directory*." Whether this expression in The Tenancy Act is to be construed as imperative or directory, the Courts will have to decide.]

(*b*) if in the opinion of the Court the prevailing rate of rent cannot be satisfactorily ascertained without a local inquiry, the

Court may direct that a local inquiry be held under Chapter XXV of the Code of Civil Procedure by such Revenue-officer as the Local Government may authorize in that behalf by rules made under section 392 of the said Code;

[This will probably be found an useful provision. It is not always easy to ascertain a prevailing rate from evidence produced in Court.]

(*c*) in determining under this section the rate of rent payable by a raiyat his caste shall not be taken into consideration, unless it is proved that by local custom caste is taken into account in determining the rate; and whenever it is found that by local custom any description of raiyats hold land at favourable rates of rent, the rate shall be determined in accordance with that custom;

(*d*) in ascertaining the prevailing rate of rent the amount of any enhancement authorized on account of a landlord's improvement shall not be taken into consideration.

[In respect of raiyats whose lands have been benefited by such improvement, the proper course is to proceed under section 33.]

Rules as to enhancement on ground of rise in prices.

32. Where an enhancement is claimed on the ground of a *rise in prices*—

(*a*) the Court shall compare the average prices during the decennial period immediately preceding the institution of the suit with the average prices during such other decennial period as it may appear equitable and practicable to take for comparison;

(*b*) the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last decennial period bear to the average prices during the previous decennial period taken for purposes of comparison: provided that, in calculating this proportion, the average prices during the later period shall be reduced by one-third of their excess over the average prices during the earlier period;

(*c*) if in the opinion of the Court it is not practicable to take the decennial periods prescribed in clause (*a*), the Court may, in its discretion, substitute any shorter periods therefor.

[This section reproduces with some alterations and limitations the rule of proportion laid down in the Great Rent Case (*Thakurani Dasi* v. *Bisheshur Mukherji*, B. L. R. Sup. Vol. F. B. 202). (1) The application of the rule is now limited to *money-rents* and enhancement on the ground of a *rise in prices*. (2) The periods between which a comparison is to be made are *decennial periods* instead of periods of from three to five years. (3) In the Great Rent Case no account was taken of *increase of cost of production*; a deduction of one-third of the increase of price is allowed by the new rule in order to cover this. (4) The new rule applies to all *money-rents*; the old rule was limited to *customary* rents, *i.e.* rents fixed according to the rate commonly payable by the same class of raiyats for similar land in the

places adjacent, and representing a share of the gross produce calculated in money—See Digest, pp. 41, 239, 241: B. L. R. F. B. 202: 6 W. R. Act X. 34: 7 W. R. 94, 144: 9 W. R. 348: 6 B. L. R. Appen. 122.]

Rules as to enhancement on ground of landlord's improvement.

33. (1) Where an enhancement is claimed on the ground of a *landlord's improvement*—

(*a*) the Court shall not grant an enhancement unless the improvement has been registered in accordance with this Act;

[See sections 80-81, *post.*]

(*b*) in determining the amount of enhancement the Court shall have regard to—

(i) the increase in the productive powers of the land caused or likely to be caused by the improvement,

(ii) the cost of the improvement,

(iii) the cost of the cultivation required for utilizing the improvement, and

(iv) the existing rent and the ability of the land to bear a higher rent.

(2) A decree under this section shall, on the application of the tenant or his successor in interest, be subject to re-consideration in the event of the improvement not producing or ceasing to produce the estimated effect.

[These provisions are new.]

Rules as to enhancement on ground of increase in productive powers due to fluvial action.

34. Where an enhancement is claimed on the ground of an increase in productive powers due to *fluvial action*—

(*a*) the Court shall not take into account any increase which is merely temporary or casual;

(*b*) the Court may enhance the rent to such an amount as it may deem fair and equitable, but not so as to give the landlord more than *one-half* of the value of the net increase in the produce of the land.

[The provisions of this section are also new.]

Enhancement by suit to be fair and equitable.

35. Notwithstanding anything in the foregoing sections, the Court shall not in any case decree any enhancement which is under the circumstances of the case unfair or inequitable.

[This general provision is an equitable rule, intended to correct the possible rigour of the strict letter of the law.]

Power to order progressive enhancement.

36. If the Court passing a decree for enhancement considers that the immediate enforcement of the decree in its full extent will be attended with hardship to the raiyat, it may direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees for any

number of years not exceeding five until the limit of the enhancement decreed has been reached.

[This section is intended to obviate any hardship that might be caused by suddenly compelling a tenant to pay a higher rent before he had time to accommodate his circumstances to the change.]

Limitation of right to bring successive enhancement-suits.

37. (1) A suit instituted for the enhancement of the rent of a holding on the ground that the rate of rent paid is below the prevailing rate, or on the ground of a rise in prices, shall not be entertained if within the fifteen years next preceding its institution the rent of the holding has been enhanced by a contract made after the second day of March, 1883, or if within the said period of fifteen years the rent has been commuted under section 40, or a decree has been passed under this Act or any enactment repealed by this Act enhancing the rent on either of the grounds aforesaid or on any ground corresponding thereto, or dismissing the suit on the merits.

[These provisions are new, and are intended to prevent the unsettling consequences of too constant enhancements or attempted enhancements of rent.]

(2) Nothing in this section shall affect the provisions of section 373 of the Code of Civil Procedure.

[Under this section a Court may allow a suit to be withdrawn with liberty to sue again on the same cause of action.]

Reduction of rent.

Reduction of rent.

38. (1) An occupancy-raiyat holding at a money-rent may institute a suit for the reduction of his rent on the following grounds, and, except as hereinafter provided in the case of a diminution of the area of the holding, not otherwise, (namely):—

(*a*) on the ground that the soil of the holding has without the fault of the raiyat become permanently deteriorated by a deposit of sand or other specific cause, *sudden or gradual, or*

(*b*) on the ground that there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops during the currency of the present rent.

(2) In any suit instituted under this section, the Court may direct such reduction of the rent as it thinks fair and equitable.

[These provisions, it will be observed, apply only to an *occupancy-raiyat*, who holds at a *money rent*.

The old law allowed a *raiyat* having a right of occupancy to claim an abatement of the rent previously paid by him, (1) if the area of the land had been diminished by diluvion or otherwise; (2) if the value of the produce or the productive powers of the land had been decreased by any cause beyond the

power of the raiyat; or (3) if the quantity of land held by him had been proved by measurement to be less than the quantity for which rent had been previously paid by him. The *first* and *third* of these grounds are not properly grounds of reduction of the rent or rate of rent, and they are dealt with in The Tenancy Act under the head of *Alteration of Rent on Alteration of Area*—see section 52, *post*. The *second* ground is partly reproduced in the above section in language applicable to certain specific cases. It would appear that under the new as under the old law, an occupancy raiyat is not entitled to reduction of rent on the ground that the rent paid by him is higher than the prevailing rate paid by raiyats of the same class for land of a similar description—see 21 W. R. 404; B. L. R., F. B. 266.

See clause (*f*), sub-section (3), section 178, *post*.]

Price-lists.

Price-lists of staple food-crops.

39. (1) The Collector of every district shall prepare, monthly, or at shorter intervals, periodical lists of the market-prices of staple food-crops grown in such local areas as the Local Government may from time to time direct, and shall submit them to the Board of Revenue for approval or revision.

(2) The Collector may, if so directed by the Local Government, prepare for any local area like price-lists relating to such past times as the Local Government thinks fit, and shall submit the lists so prepared to the Board of Revenue for approval or revision.

(3) The Collector shall, one month before submitting a price-list to the Board of Revenue under this section, publish it in the prescribed manner within the local area to which it relates, and if any landlord or tenant of land within the local area, within the said period of one month, presents to him in writing any objection to the list, he shall submit the same to the Board of Revenue with the list.

(4) The price-lists shall, when approved or revised by the Board of Revenue, be published in the official Gazette; and any manifest error in any such list discovered after its publication may be corrected by the Collector with the sanction of the Board of Revenue.

(5) The Local Government shall cause to be compiled from the periodical lists prepared under this section lists of the average prices prevailing throughout each year, and shall cause them to be published annually in the official Gazette.

(6) In any proceedings under this chapter for an enhancement or reduction of rent on the ground of a rise or fall in prices, the Court shall refer to the lists published under this section, and shall presume that the prices shown in the lists prepared for any year subsequent to the passing of this Act are correct, unless and until it is proved that they are incorrect.

(7) The Local Government, subject to the control of the Governor General in Council, shall make rules for determining what are to be

deemed staple food-crops in any local area and for the guidance of officers preparing price-lists under this section.

[These provisions have been framed upon the principle of *The Tithe Commutation Acts*—see 6 & 7 Will. IV, cap. 71: 7 Will. IV & 1 Vict. cap. 69: 2 & 3 Vict. cap. 15: 5 & 6 Vict. cap. 54: 9 & 10 Vict. cap. 73: 10 & 11 Vict. cap. 104: and 23 & 24 Vict. cap. 93: also *The Digest*, page 250.]

Commutation.

Commutation of rent payable in kind.

40. (1) Where an occupancy-raiyat pays for a holding rent in kind, or on the estimated value of a portion of the crop, or at rates varying with the crop, or partly in one of those ways and partly in another, either the raiyat or his landlord may apply to have the rent commuted to a money-rent.

(2) The application may be made to the Collector or Sub-divisional Officer, or to an officer making a settlement of rents under Chapter X, or to any other officer specially authorized in this behalf by the Local Government.

(3) On the receipt of the application the officer may determine the sum to be paid as money-rent, and may order that the raiyat shall, in lieu of paying his rent in kind, or otherwise as aforesaid, pay the sum so determined.

(4) In making the determination the officer shall have regard to—

(*a*) the average money-rent payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity;

(*b*) the average value of the rent actually received by the landlord during the preceding ten years or during any shorter period for which evidence may be available; and

(*c*) the charges incurred by the landlord in respect of irrigation under the system of rent in kind, and the arrangements made on commutation for continuing those charges.

(5) The order shall be in writing, shall state the grounds on which it is made, and the time from which it is to take effect, and shall be subject to appeal in like manner as if it were an order made in an ordinary revenue proceeding.

(6) If the application is opposed, the officer shall consider whether under all the circumstances of the case it is reasonable to grant it, and shall grant or refuse it accordingly. If he refuses it, he shall record in writing the reasons for the refusal.

[These provisions are new, and the necessity for them has arisen chiefly in the province of Bahar. It will be observed that the Revenue Authorities, not the Civil Courts, are to have jurisdiction in commutation cases. See clause (*g*), sub-section (3), section 178.]

CHAPTER VI.

NON-OCCUPANCY-RAIYATS.

Application of chapter.

41. This chapter shall apply to raiyats not having a right of occupancy, who are in this Act referred to as non-occupancy-raiyats.

Initial rent of non-occupancy-raiyat.

42. When a non-occupancy-raiyat is admitted to the occupation of land, he shall become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission.

[In accordance with what has been the law since the time of the Permanent Settlement, the landlord will thus have the right to make his own terms with a new tenant.]

Conditions of enhancement of rent.

43. The rent of a non-occupancy-raiyat shall not be enhanced except by registered agreement or by agreement under section 46 :

Provided that nothing in this section shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

[These provisions are new. The proviso is similar to proviso (i) to section 29—see the note thereto, *ante*.]

Grounds on which non-occupancy-raiyat may be ejected.

44. A non-occupancy-raiyat shall, subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise (namely) :—

(*a*) on the ground that he has failed to pay an arrear of rent ;

[This is in accordance with the old law.]

(*b*) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected ;

[These provisions are partly new. See section 155, *post*.]

(*c*) where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired ;

[This provision is new. It must be read with section 45, *post*. Apparently when a non-occupancy raiyat has been admitted to occupation under an oral demise, or a written lease not registered, he can hold on until ejected under clause (*a*), or (*b*), or (*d*).]

(*d*) on the ground that he has refused to agree to pay a fair and equitable rent determined under section 46, or that the term for which he is entitled to hold at such a rent has expired.

[This provision is new.]

Conditions of ejectment on ground of expiration of lease.

45. A suit for ejectment on the ground of the expiration of the term of a lease shall not be instituted against a non-occupancy-raiyat unless notice to quit has been served on the raiyat not less than six months before the expiration of the term, and shall not be instituted after six months from the expiration of the term.

[Is the application of this section limited to the case in clause (*c*) section 44, *i. e.* where there is a *registered* lease? See sub-section (7), section 46.]

Conditions of ejectment on ground of refusal to agree to enhancement.

46. (1) A suit for ejectment on the ground of refusal to agree to an enhancement of rent shall not be instituted against a non-occupancy-raiyat unless the landlord has tendered to the raiyat an agreement to pay the enhanced rent, and the raiyat has within three months before the institution of the suit refused to execute the agreement.

[As to "refused" see sub-section (5), *post.*]

(2) A landlord desiring to tender an agreement to a raiyat under this section may file it in the office of such Court or officer as the Local Government appoints in this behalf for service on the raiyat. The Court or officer shall forthwith cause it to be served on the raiyat in the prescribed manner, and when it has been so served, it shall for the purposes of this section be deemed to have been tendered.

(3) If a raiyat on whom an agreement has been served under sub-section (2) executes it, and within one month from the date of service files it in the office from which it issued, it shall take effect from the commencement of the agricultural year next following.

(4) When an agreement has been executed and filed by a raiyat under sub-section (3), the Court or officer in whose office it is so filed shall forthwith cause a notice of its being so executed and filed to be served on the landlord in the prescribed manner.

(5) If the raiyat does not execute the agreement and file it under sub-section (3), he shall be deemed for the purposes of this section to have refused to execute it.

(6) If a raiyat refuses to execute an agreement tendered to him under this section, and the landlord thereupon institutes a suit to eject him, the Court shall determine what rent is fair and equitable for the holding.

(7) If the raiyat agrees to pay the rent so determined, he shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement, but on the expiration of that term shall be liable to ejectment under the conditions mentioned in the last foregoing section, unless he has acquired a right of occupancy.

[The term of five years is to run *from the date of the agreement.* Is this the date of his agreeing under sub-section (7) or the date of tender of the agreement under sub-section (1)? In the latter case the raiyat will acquire a right of occupancy if before such tender he has held for seven years under a lease or otherwise. In the former case it will be to his advantage to refuse the tender and protract the litigation, if the period of his holding before the tender has been less than seven years.]

(8) If the raiyat does not agree to pay the rent so determined, the Court shall pass a decree for ejectment.

(9) In determining what rent is fair and equitable, the Court shall have regard to the rents generally paid by raiyats for land of a similar description and with like advantages in the same village.

["rents generally paid by *raiyats*"—not necessarily "non-occupancy raiyats."]

(10) A decree for ejectment passed under this section shall take effect from the end of the agricultural year in which it is passed.

[The provisions of this section are new.]

Explanation of "admitted to occupation."

47. Where a raiyat has been in occupation of land and a lease is executed with a view to a continuance of his occupation, he is not to be deemed to be admitted to occupation by that lease for the purposes of this chapter, notwithstanding that the lease may purport to admit him to occupation.

[So that, if the lease were registered, the provisions of section 44 (*c*) would not apply.]

CHAPTER VII.

UNDER-RAIYATS.

Limit of rent recoverable from under-raiyats.

48. The landlord of an under-raiyat holding at a money-rent shall not be entitled to recover rent exceeding the rent which he himself pays by more than the following percentage of the same, (namely):—

(*a*) when the rent payable by the under-raiyat is payable under a registered lease or agreement—fifty per cent.; and

(*b*) in any other case—twenty-five per cent.

[It is not easy to predict what will be the effect of these provisions upon existing under-tenancies. In some parts of the country, the landlords of under-raiyats may find their advantage in escaping the limit by converting themselves

into tenure-holders and their under-raiyats into raiyats, where the provisions of the Act allow this course to be taken.]

Restriction on ejectment of under-raiyats.

49. An under-raiyat shall not be liable to be ejected by his landlord, except—

(*a*) on the expiration of the term of a written lease;

(*b*) when holding otherwise than under a written lease, at the end of the agricultural year next following the year in which a notice to quit is served upon him by his landlord.

[See section 89, *post*, which provides that no tenant shall be ejected from his *tenure* or *holding* except in execution of a decree. An under-raiyat's interest is not a "tenure" or a "holding"—see definitions of these terms in section 3. Is it intended by the words "ejected by his landlord" that the landlord may eject without resorting to the Courts. The same words are used in sections 10, 18 (*b*) and 25. Notwithstanding the prohibitive form of this section, it would seem clear that an under-raiyat may be ejected for failure to pay an arrear of rent—see section 66, *post*; and in this the old law remains unaltered. The effect of clause (*b*) is that the notice to quit must be, at least, a year's notice.

The operation of the provisions of this chapter will be unfavourable to middlemen.]

CHAPTER VIII.

General Provisions as to Rent.

Rules and presumptions as to amount of rent.

Rules and presumptions as to fixity of rent.

50. (1) Where a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the tenure or holding.

(2) If it is proved in any suit or other proceeding under this Act that either a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed during the twenty years immediately before the institution of the suit or proceeding, it shall be presumed, until the contrary is shown, that they have held at that rent or rate of rent from the time of the Permanent Setttement:

Provided that if it is required by or under any enactment that in any local area tenancies, or any classes of tenancies, at fixed rents or rates of rent shall be registered as such on, or before, a date specified by or under the enactment, the foregoing presumption shall not after that date apply to any tenancy or, as the case may be, to any tenancy of that class in that local area unless the tenancy has been so registered.

[This proviso is new, and is with a view to contemplated legislation on this subject. See also section 115, *post*.]

(3) The operation of this section, so far as it relates to land held by a raiyat, shall not be affected by the fact of the land having been separated from other land which formed with it a single holding, or amalgamated with other land into one holding.

(4) Nothing in this section shall apply to a tenure held for a term of years or determinable at the will of the landlord.

[This section is a reproduction of existing law—1 Board's Rep. 169 : Marsh. 68: 403 : 2 W. R. Act X. 30, 93 : 3 W. R. Act X. 20, 135, 162 : 4 W. R. Act X. 23, 43 : 5 W. R. Act X. 53 : 6 W. R. Act X. 58 : 7 W. R. 242, 472 : 8 W. R. 170 : 10 W. R. 117, 429 : 20 W. R. 419 : B. L. R. F. B. 326 : 1 B. L. R. Sh. Notes, 8 : 3 B. L. R. Appen. 88 : 6 B. L. R. Appen. 26, 120 : 8 B. L. R. 280 : 12 B. L. R. 62 : I. L. R. 4 Calc. 793 : I. L. R. 5 Calc. 273 : I. L. R. 9 Calc. 252, 526 : I. L. R. 10 Calc. 920 : L. R. 2 I. A. 196, 203. This section will bar enhancement in many cases in which section 6 will not operate to prevent it.]

Presumption as to amount of rent and conditions of holding.

51. If a question arises as to the amount of a tenant's rent or the conditions under which he holds in any agricultural year, he shall be presumed, until the contrary is shown, to hold at the same rent and under the same conditions as in the last preceding agricultural year.

[This is substantially the existing law—See *Digest, Art.* 42 : W. R. Sp. No. 148 : 3 W. R. Act X. 110 : B. L. R. F. B. 202 : 8 C. L. R. 310.]

Alteration of rent on alteration of area.

Alteration of rent in respect of alteration in area.

52. (1) Every tenant shall—

(*a*) be liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has been previously paid by him, unless it is proved that the excess is due to the addition to the tenure or holding of land which having previously belonged to the tenure or holding was lost by diluvion or otherwise without any reduction of the rent being made, and

(*b*) be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist in the area of his tenure or holding as compared with the area for which rent has been previously paid by him, unless it is proved that the deficiency is due to the loss of land which was added to the area of the tenure or holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area.

[See *note* to section 30, *ante*. The use of the word "tenant" in the first line of the section makes its provisions applicable to both tenure-holders and raiyats. See section 4.]

(2) In determining the area for which rent has been previously paid, the Court shall, if so required by any party to the suit, have regard to—

(*a*) the origin and conditions of the tenancy, for instance, whether the rent was a consolidated rent for the entire tenure or holding;

(*b*) whether the tenant has been allowed to hold additional land in consideration of an addition to his total rent or otherwise with the knowledge and consent of the landlord;

(*c*) the length of time during which the tenancy has lasted without dispute as to rent or area; and

(*d*) the length of the measure used or in local use at the time of the origin of the tenancy as compared with that used or in use at the time of the institution of the suit.

[It has been pointed out (*ante*, *note* to s. 30) that the matter of sub-section (1) (*a*) of this section was a ground of enhancement under the old law. When increased rent was claimed on this ground, it was necessary to serve a notice of enhancement during the year next preceding that for which the increased rent was claimed, and a suit for such increased rent must then have been brought within three months after the expiry of the latter year. The notice is abolished by The Tenancy Act, and additional rent for excess land is no longer regarded as enhancement. But then arises the question—Can the landlord sue for such additional rent for a period antecedent to institution of suit, or must he get a decree declaring his right to such additional rent, which (like an enhancement decree under section 154) will take effect subsequently? It would appear that the first of these two courses is open to the landlord. In connection with the subject of sub-section (1) (*a*), see 8 C. L. R. 161, 508, 517: 10 C. L. R. 559: 11 C. L. R. 320: I. L. R. 4 Calc. 941: I. L. R. 5 Calc. 823: I. L. R. 8 Calc. 706: I. L. R. 9 Calc. 72. So it has been pointed out (*ante*, *note* to s. 38), that the matter of sub-section (1) (*b*) above was, under the old law, a ground of abatement or reduction of rent; and the claim to such abatement might have been made either by a suit brought for the purpose, or in answer to a suit for arrears of rent. Apparently both courses are still open to the tenant under The Tenancy Act. In connection with sub-section (1) (*b*), see Marsh. 558: 1 W. R. 299: 2 W. R. Act X. 30, 65: W. R. Sp. No. 1864, p. 42: 16 W. R. 279: 1 B. L. R. A. C. 87: 8 C. L. R. 393: I. L. R. 7 Calc. 479: I. L. R. 9 Calc. 571: I. L. R. 10 Calc. 544.]

(3) In determining the amount to be added to the rent, the Court shall have regard to the rates payable by tenants of the same class for lands of a similar description and with similar advantages in the vicinity, and, in the case of a tenure-holder, to the profits to which he is entitled in respect of the rent of his tenure, and shall not in any case fix any rent which under the circumstances of the case is unfair or inequitable.

(4) The amount abated from the rent shall bear the same proportion to the rent previously payable as the diminution of the total

yearly value of the tenure or holding bears to the previous total yearly value thereof, or, in default of satisfactory proof of the yearly value of the land lost, shall bear to the rent previously payable the same proportion as the diminution of area bears to the previous area of the tenure or holding.

[The value of a tenure or holding depends much upon the rent paid for it. Whether, therefore, the amount of rent abated is calculated with reference to the diminished yearly value or the diminished area, where the tenant has held at a low rent, the abatement will be regulated by the rate of this low rent. But in the case of land added to a tenure or holding for which a low rent was previously payable, the additional rent will, under sub-section (3), be calculated, not at the old low rate, but at the *rate payable by tenants of the same class for lands of a similar description and with similar advantages in the vicinity*, and this may be higher than the old low rate. There are parts of Bengal where land is from time to time diluviated and reformed. In the case of a tenure wholly diluviated in the course of years and again reformed, it might happen, as a consequence of the different principles in sub-sections (3) and (4), that the rent would ultimately be increased, when the original area had been restored by reformation on the old site.

See clause (*f*), sub-section (3), section 178, *post*.]

Payment of rent.

Instalments of rent.

53. Subject to agreement or established usage, a money-rent payable by a tenant shall be paid in four equal instalments falling due on the last day of each quarter of the agricultural year.

[This is a new provision. It will be remembered that in sections 53 to 68, both inclusive, "rent" includes money recoverable under any enactment for the time being in force as if it was rent. See *ante*, section 3 (5).]

Time and place for payment of rent.

54. (1) Every tenant shall pay each instalment of rent before sunset of the day on which it falls due.

[This provision is new, and is borrowed from the Revenue Sale Law. It introduces a rule where no rule existed. According to English law rent is not due till midnight of the day specified in the lease for payment, but where it is necessary to *demand* or *tender* rent in order to eject or prevent a forfeiture, such demand or tender must be made before sunset.]

(2) The payment shall, except in cases where a tenant is allowed under this Act to deposit his rent, be made at the landlord's village-office, or at such other convenient place as may be appointed in that behalf by the landlord :

Provided that the Local Government may from time to time make rules, either generally or for any specified local area, authorizing a tenant to pay his rent by postal money-order.

(3) Any instalment or part of an instalment of rent not duly paid at or before the time when it falls due shall be deemed an arrear.

[As to interest on arrears—see section 67, *post.*]

Appropriation of payments.

55. (1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

(2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

[This is the ordinary law upon the subject. When neither debtor nor creditor makes any appropriation, the law appropriates the payment to the earliest debt. And see sections 59-61 of The Indian Contract Act, IX of 1872.]

Receipts and Accounts.

Tenant making payment to his landlord entitled to a receipt.

56. (1) Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord a written receipt for the amount paid by him, signed by the landlord.

[The landlord's agent duly authorized in writing in that behalf may sign. See section 187 (3).]

(2) The landlord shall prepare and retain a counterfoil of the receipt.

(3) The receipt and counterfoil shall specify such of the several particulars shown in the form of receipt given in Schedule II to this Act as can be specified by the landlord at the time of payment:

Provided that the Local Government may, from time to time, prescribe or sanction a modified form either generally or for any particular local area or class of cases.

(4) If a receipt does not contain substantially the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

[Sub-sections (2), (3), (4) are new law.]

Tenant entitled to full discharge or statement of account at close of year.

57. (1) Where a landlord admits that all rent payable by a tenant to the end of the agricultural year has been paid, the tenant shall be entitled to receive from the landlord, free of charge, within three months after the end of the year, a receipt in full discharge of all rent falling due to the end of the year, signed by the landlord.

(2) Where the landlord does not so admit, the tenant shall be entitled, on paying a fee of four annas, to receive within three months

after the end of the year a statement of account specifying the several particulars shown in the form of account given in Schedule II to this Act, or in such other form as may from time to time be prescribed by the Local Government either generally or for any particular local area or class of cases.

(3) The landlord shall prepare and retain a copy of the statement containing similar particulars.

[The provisions of this section are new. It will be observed that in the forms provided by sections 56 and 57 the *tenant's name* is one of the particulars to be given. It has been a common practice for a landlord to receive rent tendered by a person who has purchased by private, or by execution, sale the interest of a tenant, but in order to avoid acknowledging the transfer, to give a receipt stating that the rent was paid *marfat* or *guzrat*, *i.e.* by, or through, the person who brings the money. With the use of the new forms and the provisions of the new law as to transfers, this practice, which encourages litigation, should cease.]

Penalties and fine for withholding receipts and statements of account and failing to keep counterparts.

58. (1) If a landlord without reasonable cause refuses or neglects to deliver to a tenant a receipt containing the particulars prescribed by section 56 for any rent paid by the tenant, the tenant may, within three months from the date of payment, institute a suit to recover from him such penalty, not exceeding double the amount or value of that rent, as the Court thinks fit.

[The old law provided a similar penalty for withholding a receipt.]

(2) If a landlord without reasonable cause refuses or neglects to deliver to a tenant demanding the same either the receipt in full discharge or, if the tenant is not entitled to such a receipt, the statement of account for any year prescribed in section 57, the tenant may, within the next ensuing agricultural year, institute a suit to recover from him such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by the tenant to the landlord during the year for which the receipt or account should have been delivered.

(3) If a landlord without reasonable cause fails to prepare and retain a counterfoil or copy of a receipt or statement as required by either of the said sections, he shall be punished with fine which may extend to fifty rupees.

[The provisions of sub-sections (2) and (3) are new.]

Local Government to prepare forms of receipt and account.

59. (1) The Local Government shall cause to be prepared and kept for sale to landlords at all sub-divisional offices forms of receipts with counterfoils and of statements of account suitable for use under the foregoing sections.

(2) The forms may be sold in books with the leaves consecutively numbered or otherwise as the Local Government thinks fit.

[The provisions of this section are new.]

Effect of receipt by registered proprietor, manager or mortgagee.

60. Where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876, as proprietor, manager or mortgagee of that estate, or of his agent authorized in that behalf, shall be a sufficient discharge for the rent; and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person.

But nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, manager or mortgagee.

[Section 78 of The Land Registration Act, VII (B. C.) of 1876, enacts that *no person shall be bound to pay rent* to any person claiming it as a proprietor or manager of an estate or revenue-free property in respect of which registration is required by the Act, *unless the name of such claimant has been registered;* and that no person liable to pay rent to two or more *co-sharers* shall be bound to pay any one of them more than the amount, which bears the same proportion to the whole rent as the extent of interest *in respect of which such co-sharer is registered*, bears to the whole estate or property. Section 79 of the same Act provides that the receipt of any proprietor, manager or mortgagee, whose name and the extent of whose interest is registered under the Act, shall afford full indemnity to any person paying rent to such proprietor, manager or mortgagee. The second portion of the first clause of the above section of The Tenancy Act goes further than these provisions of The Land Registration Act, and precludes one particular defence. See I. L. R. 9 Calc. 517: 12 C. L. R. 141.]

Deposit of rent.

Application to deposit rent in Court.

61. (1) In any of the following cases, namely:—

(*a*) when a tenant tenders money on account of rent and the landlord refuses to receive it or refuses to grant a receipt for it;

(*b*) when a tenant bound to pay money on account of rent has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it;

(*c*) when the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the money, and no person has been empowered to receive the rent on their behalf; or

(*d*) when the tenant entertains a *bonâ fide* doubt as to who is entitled to receive the rent,

the tenant may present to the Court having jurisdiction to entertain a suit for the rent of his tenure or holding an application in writing for permission to deposit in the Court the full amount of the money then due.

(2) The application shall contain a statement of the grounds on which it is made; shall state—

in cases (*a*) and (*b*), the name of the person to whose credit the deposit is to be entered,

in case (*c*), the names of the sharers to whom the rent is due, or of so many of them as the tenant may be able to specify, and

in case (*d*), the names of the person to whom the rent was last paid and of the person or persons now claiming it,

shall be signed and verified, in the manner prescribed in section 52 of the Code of Civil Procedure, by the tenant, or, where he is not personally cognizant of the facts of the case, by some person so cognizant; and shall be accompanied by a fee of such amount as the Local Government, from time to time, by rule, directs.

[This section considerably alters the previous law, which allowed a deposit of rent in Court only when the tenant had tendered payment of what he considered to be the full amount of rent due from him, and the amount so tendered had not been accepted and a receipt in full forthwith granted.]

Receipt granted by Court for rent deposited to be a valid acquittance.

62. (1) If it appears to the Court to which an application is made under the last foregoing section that the applicant is entitled under that section to deposit the rent, it shall receive the rent and give a receipt for it under the seal of the Court.

(2) A receipt given under this section shall operate as an acquittance for the amount of the rent payable by the tenant and deposited as aforesaid, in the same manner and to the same extent as if that amount of rent had been received—

in cases (*a*) and (*b*) of the last foregoing section, by the person specified in the application as the person to whose credit the deposit was to be entered;

in case (*c*) of that section, by the co-sharers to whom the rent is due; and

in case (*d*) of that section, by the person entitled to the rent.

Notification of receipt of deposit.

63. (1) The Court receiving the deposit shall forthwith cause to be affixed in a conspicuous place at the Court-house a notification of the receipt thereof, containing a statement of all material particulars.

[These provisions are new. Under the old law a notice was at once served on the landlord.]

(2) If the amount of the deposit is not paid away under the next following section, within the period of fifteen days next following the date on which the notification is so affixed, the Court shall forthwith—

in cases (*a*) and (*b*) of section 61, cause a notice of the receipt of the deposit to be served, free of charge, on the person specified in the application as the person to whose credit the deposit was to be entered;

in case (*c*) of that section, cause a notice of the receipt of the deposit to be posted at the landlord's village-office or in some conspicuous place in the village in which the holding is situate; and

in case (*d*) of that section, cause a like notice to be served, free of charge, on every person who it has reason to believe claims or is entitled to the deposit.

Payment or refund of deposit.

64. (1) The Court may pay the amount of the deposit to any person appearing to it to be entitled to the same, or may, if it thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled.

[The second portion of this section is new, and—regard being had to the wider scope of the new provisions as to deposit of rent—very necessary.]

(2) The payment may, if the Local Government so direct, be made by postal money-order.

(3) If no payment is made under this section before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor upon his application and on his returning the receipt given by the Court with which the rent was deposited.

(4) No suit or other proceeding shall be instituted against the Secretary of State for India in Council, or against any officer of the Government, in respect of anything done by a Court receiving a deposit under the foregoing sections; but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

[The provisions of sub-sections (2), (3), and (4) are new. The Court is merely a stakeholder, and if it pay the rent to the wrong party, such party may be sued by the person rightfully entitled.]

Arrears of rent.

Liability to sale for arrears in case of permanent tenure, holding at fixed rates, or occupancy-holding.

65. Where a tenant is a permanent tenure-holder, a raiyat holding at fixed rates, or an occupancy raiyat, he shall not be liable to ejectment for arrears of rent, but his tenure or holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon.

[See section 25, *ante*. This section alters the law so far as (1) raiyats holding at fixed rates, and (2) occupancy-raiyats are concerned. Under the old law, they were liable to be ejected if arrears of rent were due at the end of the year, and such arrears with costs and interest were not paid into Court within fifteen days from the date of a decree therefor. The interest of (1) is now transferable, see section 18, *ante*. The interest of (2), though it may be brought to sale by the landlord to realize the rent due thereon, is not otherwise transferable by law, though it may be so by custom (see section 183, *post*). The provision that the rent shall be a first charge on the tenure or holding is new.]

Ejectment for arrears in other cases.

66. (1) When an arrear of rent remains due from a tenant not being a permanent tenure-holder, a raiyat holding at fixed rates, or an occupancy-raiyat, at the end of the Bengali year where that year prevails, or at the end of the month of Jeyt where the Fasli or Amli year prevails, the landlord may, whether he has obtained a decree for the recovery of the arrear or not, and whether he is entitled by the terms of any contract to eject the tenant for arrears or not, institute a suit to eject the tenant.

(2) In a suit for ejectment for an arrear of rent a decree passed in favour of the plaintiff shall specify the amount of the arrear and of the interest (if any) due thereon, and the decree shall not be executed if that amount and the costs of the suit are paid into Court within fifteen days from the date of the decree, or, when the Court is closed on the fifteenth day, on the day upon which the Court re-opens.

(3) The Court may for special reasons extend the period of fifteen days mentioned in this section.

[As regards the class of tenants to which it applies, this section substantially reproduces the existing law—See Marsh. 25, 471: 18 W. R. 412: 19 W. R. 349: 22 W. R. 376: 23 W. R. 50: B. L. R. F. B. 972: 10 B. L. R. Appen. 2: 12 B. L. R. 439: I. L. R. 4 Calc. 527: I. L. R. 5 Calc. 906: I. L. R. 7 Calc. 566: I. L. R. 9 Calc. 88: 12 C. L. R. 389.]

Interest on arrears.

67. An arrear of rent shall bear simple interest at the rate of twelve per centum per annum from the expiration of that quarter of the agricultural year in which the instalment falls due to the institution of the suit.

[This is a reproduction of existing law with the modification that interest does not begin to run until the end of the quarter. As to "shall bear," see I. L. R. 5 Calc. 102. See clause (*h*), sub-section (3) of section 178, *post*.]

Power to award damages on rent withheld without reasonable cause, or to defendant improperly sued for rent.

68. (1) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed

for rent and costs, such damages, not exceeding twenty-five per centum on the amount of rent decreed, as it thinks fit:

Provided that interest shall not be decreed when damages are awarded under this section.

[This is the old law save that it also provided that the rent might have been *tendered*, or (if tendered and refused) *deposited* in order to escape liability for damages.]

(2) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the plaintiff has instituted the suit without reasonable or probable cause, the Court may award to the defendant, by way of damages, such sum, not exceeding twenty-five per centum on the whole amount claimed by the plaintiff, as it thinks fit.

[This reproduces the old law.]

Produce rents.

Order for appraising or dividing produce.

69. (1) Where rent is taken by appraisement or division of the produce,—

["appraisement" refers to the *Danabundi* system to be found chiefly in Bahar, under which the raiyat agrees to pay his landlord the market value of a *certain proportion of the produce*. The crop is valued at harvest, and the rent is paid in money according to the valuation. "division of the produce" is used with reference to the *Agore Batai* system to be found chiefly in the same province and under which the crop is *actually divided* and the landlord's share made over to him. See *Report of the Rent Commission*, § 146.]

(*a*) If either the landlord or the tenant neglects to attend, either personally or by agent, at the proper time for making the appraisement or division, or

(*b*) If there is a dispute about the quantity, value or division of the produce,

the Collector may, on the application of either party, and on his depositing such sum on account of expenses as the Collector may require, make an order appointing such officer as he thinks fit to appraise or divide the produce.

(2) The Collector may, without such an application, make the like order in any case where in the opinion of the District or Sub-divisional Magistrate the making of the order would be likely to prevent a breach of the peace.

(3) Where a Collector makes an order under this section, he may, by order, prohibit the removal of the produce until the appraisement or division has been effected.

Procedure where officer appointed.

70. (1) When a Collector appoints an officer under the last foregoing section, the Collector may, in his discretion, direct the officer to associate with himself any other persons as assessors, and

may give him instructions regarding the number, qualifications and mode of selection of those assessors (if any), and the procedure to be followed in making the appraisement or division; and the officer shall conform to the instructions so given.

(2) The officer shall, before making an appraisement or division, give notice to the landlord and tenant of the time and place at which the appraisement or division will be made; but if either the landlord or the tenant fails to attend either personally or by agent, he may proceed *ex parte*.

(3) When the officer has made the appraisement or division, he shall submit a report of his proceedings to the Collector.

(4) The Collector shall consider the report, and, after giving the parties an opportunity of being heard and making such enquiry (if any) as he may think necessary, shall pass such order thereon as he thinks just.

(5) The Collector may, if he thinks fit, refer any question in dispute between the parties for the decision of a Civil Court, but subject as aforesaid, his order shall be final and shall, on application to a Civil Court by the landlord or the tenant, be enforceable as a decree.

(6) Where the officer makes an appraisement, the appraisement papers shall be filed in the Collector's office.

Rights and liabilities as to possession of crop.

71. (1) Where rent is taken by appraisement of the produce, the tenant shall be entitled to the exclusive possession of the produce.

(2) Where rent is taken by division of the produce, the tenant shall be entitled to the exclusive possession of the whole produce until it is divided, but shall not be entitled to remove any portion of the produce from the threshing-floor at such a time or in such a manner as to prevent the due division thereof at the proper time.

(3) In either case the tenant shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landlord.

(4) If the tenant removes any portion of the produce at such a time or in such a manner as to prevent the due appraisement or division thereof at the proper time, the produce shall be deemed to have been as full as the fullest crop of the same description appraised in the neighbourhood on similar land for that harvest.

[The provisions of sections 69, 70 and 71 are new, and are intended to meet the requirements of Bahar, where especially the want of such provisions has been felt.]

Liability for rent on change of landlord or after transfer of tenure or holding.

72. (1) A tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred, unless the transferee has before the payment given notice of the transfer to the tenant.

Tenant not liable to transferee of landlord's interest for rent paid to former landlord, without notice of the transfer.

[In sections 72 to 75 inclusive "rent" includes also money recoverable under any enactment for the time being in force as if it was rent. See definition of "rent" in section 3, *ante*.]

(2) Where there is more than one tenant paying rent to the landlord whose interest is transferred, a general notice from the transferee to the tenants published in the prescribed manner shall be a sufficient notice for the purposes of this section.

[The provisions of the section are new as a positive enactment of the Legislature; but the principle contained in them has usually been acted upon by the Courts, being in accordance with justice, equity and good conscience—their rule of decision where the statute law is silent. See 4 W. R. Act X. 38.]

73. When an occupancy-raiyat transfers his holding without the consent of the landlord, the transferor and transferee shall be jointly and severally liable to the landlord for arrears of rent accruing due after the transfer, unless and until notice of the transfer is given to the landlord in the prescribed manner.

Liability for rent after transfer of occupancy-holding.

[This is a new provision, and it is not very obvious what will be the effect of it, when notice is given, but the landlord does not consent to the transfer, and denies that the holding is transferable by custom.]

Illegal cesses, &c.

74. All impositions upon tenants under the denomination of *abwáb*, *mahtut*, or other like appellations, in addition to the actual rent, shall be illegal, and all stipulations and reservations for the payment of such shall be void.

Abwáb, &c. illegal.

[This is a reproduction of the old law—Sec. ss. 54, 55 of Reg. VIII of 1793: s. 3, Reg. V of 1812: cl. 1, s. 9, Reg. VII of 1822: s. 9, Reg. IX of 1825: 5 W. R. Act X. 86: 9 W. R. 300: 10 W. R. 257: 12 W. R. 29: 14 W. R. 447: 22 W. R. 12: 23 W. R. 447: 25 W. R. 252: 3 B. L. R. A. C. 44: I. L. R. 11 Calc. 175, F. B.]

75. Every tenant from whom, except under any special enactment for the time being in force, any sum of money or any portion of the produce of his land is exacted by his landlord in excess of the rent lawfully payable, may, within six

Penalty for exaction by landlord from tenant of sum in excess of the rent payable.

months from the date of the exaction, institute a suit to recover from the landlord in addition to the amount or value of what is so exacted such sum by way of penalty as the Court thinks fit, not exceeding two hundred rupees; or when double the amount or value of what is so exacted exceeds two hundred rupees, not exceeding double that amount or value.

[The old law declared the tenant entitled to recover damages not exceeding double the amount exacted.]

CHAPTER IX.

Miscellaneous Provisions as to Landlords and Tenants.

Improvements.

76. (1) For the purposes of this Act, the term "improvement," used with reference to a raiyat's holding, shall mean any work which adds to the value of the holding, which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is, after execution, made directly beneficial to it.

Definition of "improvement."

(2) Until the contrary is shown, the following shall be presumed to be improvements within the meaning of this section :—

(*a*) the construction of wells, tanks, water-channels and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture;

(*b*) the preparation of land for irrigation;

(*c*) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or waste-land which is culturable;

(*d*) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;

(*e*) the renewal or re-construction of any of the foregoing works, or alterations therein, or additions thereto; and

(*f*) the erection of a suitable dwelling-house for the raiyat and his family, together with all necessary out-offices.

(3) But no work executed by the raiyat of a holding shall be deemed to be an improvement for the purposes of this Act if it substantially diminishes the value of his landlord's property.

77. (1) Where a raiyat holds at fixed rates or has an occupancy right in his holding, neither the raiyat nor his landlord shall, as such, be entitled to prevent the other from making an improvement in respect of the holding, except on the ground that he is willing to make it himself.

Right to make improvements in case of holding at fixed rates and occupancy-holding.

(2) If both the raiyat and his landlord wish to make the same improvement, the raiyat shall have the prior right to make it, unless it affects another holding or other holdings under the same landlord.

Collector to decide question as to right to make improvement, &c.

78. If a question arises between the raiyat and his landlord—

(*a*) as to the right to make an improvement, or

(*b*) as to whether a particular work is an improvement,

the Collector may, on the application of either party, decide the question, and his decision shall be final.

Right to make improvements in case of non-occupancy-holding.

79. (1) A non-occupancy-raiyat shall be entitled to construct, maintain and repair a well for the irrigation of his holding, with all works incidental thereto, and to erect a suitable dwelling-house for himself and his family, with all necessary out-offices; but shall not, except as aforesaid and as next hereinafter provided, be entitled to make any other improvement in respect of his holding without his landlord's permission.

(2) A non-occupancy-raiyat who would, but for the want of his landlord's permission, be entitled to make an improvement in respect of his holding, may, if he desires that the improvement be made, deliver, or cause to be delivered, to his landlord a request in writing calling upon him to make the improvement within a reasonable time; and if the landlord is unable or neglects to comply with that request, may make the improvement himself.

Registration of landlords' improvements.

80. (1) A landlord may, by application to such Revenue-officer as the Local Government may appoint, register any improvement which he has lawfully made or which has been lawfully made at his expense or which he has assisted a tenant in making.

(2) The application shall be in such form, shall contain such information, and shall be verified in such manner, by local inquiry or otherwise, as the Local Government from time to time by rule directs.

(3) The officer receiving the application may reject it if it has not been made within twelve months—

(*a*) in the case of improvements made before the commencement of this Act—from the commencement of this Act;

(*b*) in the case of improvements made after the commencement of this Act—from the date of the completion of the work.

Application to record evidence as to improvement.

81. (1) If any landlord or tenant of a holding desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to a Revenue-officer, who shall thereupon, at a time and place of which notice shall be given to the parties, record the

evidence, unless he considers that there are no reasonable grounds for making the application, or it is made to appear that the subject-matter thereof is under inquiry in a Civil Court.

(2) When any matter has been recorded under this section, the record thereof shall be admissible in evidence in any subsequent proceedings between the landlord and tenant or any persons claiming under them.

Compensation for raiyats' improvements.

82. (1) Every raiyat who is ejected from his holding shall be entitled to compensation for improvements which have been made in respect thereof in accordance with this Act by him, or by his predecessor in interest, and for which compensation has not already been paid.

[See—as to the ejectment of raiyats holding at fixed rates, clause (*b*), section 18—as to the ejectment of occupancy-raiyats, section 25—and as to the ejectment of non-occupancy-raiyats, sections 44, 45, and 46. Apparently, these provisions as to compensation for improvements do not apply to under-raiyats, as to the ejectment of whom, see section 49.]

(2) Whenever a Court makes a decree or order for the ejectment of a raiyat, it shall determine the amount of compensation (if any) due under this section to the raiyat for improvements, and shall make the decree or order of ejectment conditional on the payment of that amount to the raiyat.

(3) No compensation under this section for an improvement shall be claimable where the raiyat has made the improvement in pursuance of a contract or under a lease binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

(4) Improvements made by a raiyat between the 2nd day of March, 1883, and the commencement of this Act shall be deemed to have been made in accordance with this Act.

[See note to sub-section (2), section 21.]

(5) The Local Government may, from time to time, by notification in the official Gazette, make rules requiring the Court to associate with itself, for the purpose of estimating the compensation to be awarded under this section for an improvement, such number of assessors as the Local Government thinks fit, and determining the qualifications of those assessors and the mode of selecting them.

Principle on which compensation is to be estimated.

83. (1) In estimating the compensation to be awarded under the last foregoing section for an improvement, regard shall be had—

(*a*) to the amount by which the value, or the produce, of the holding, or the value of that produce, is increased by the improvement;

(*b*) to the condition of the improvement, and the probable duration of its effects;

(*c*) to the labour and capital required for the making of such an improvement;

(*d*) to any reduction or remission of rent or any other advantage given by the landlord to the raiyat in consideration of the improvement; and

(*e*) in the case of a reclamation or of the conversion of un-irrigated into irrigated land, to the length of time during which the raiyat has had the benefit of the improvement at an unenhanced rent.

(2) When the amount of the compensation has been assessed, the Court may, if the landlord and raiyat agree, direct that, instead of being paid wholly in money, it shall be made wholly or partly in some other way.

[The provisions of sections 76 to 83 inclusive are wholly new, and they introduce a new principle into the relation of landlord and tenant in Bengal. For information as to the law of other countries on this subject see Titles, *Improvements*, and *Compensation* in the Index to the body of this work.]

Acquisition of land for building and other purposes.

Acquisition of land for building and other purposes.

84. A Civil Court may, on the application of the landlord of a holding, and on being satisfied that he is desirous of acquiring the holding or part thereof for some reasonable and sufficient purpose having relation to the good of the holding or of the estate in which it is comprised, including the use of the ground as building ground, or for any religious, educational or charitable purpose,

and on being satisfied on the certificate of the Collector that the purpose is reasonable and sufficient,

authorize the acquisition thereof by the landlord upon such conditions as the Court may think fit, and require the tenant to sell his interest in the whole or such part of the holding to the landlord upon such terms as may be approved by the Court, including full compensation to the tenant.

[These provisions also are new. See *ante* p. 332.]

Sub-letting.

Restrictions on sub-letting.

85. (1) If a raiyat sub-lets otherwise than by a registered instrument, the sub-lease shall not be valid against his landlord unless made with the landlord's consent.

(2) A sub-lease by a raiyat shall not be admitted to registration if it purports to create a term exceeding nine years.

(3) Where a raiyat has, without the consent of his landlord, granted a sub-lease by an instrument registered before the commencement of

this Act, the sub-lease shall not be valid for more than nine years from the commencement of this Act.

[These provisions are new, and it is premature to express any opinion as to the probable result of their operation. See also, as to under-raiyats, sections 48 and 49, *ante*.]

Surrender and abandonment.

Surrender.

86. (1) A raiyat not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year, surrender his holding.

[Under the old law a raiyat holding otherwise than under a lease for a definite term could relinquish the land held or cultivated by him, if he gave notice of relinquishment at least three months before the expiry of the agricultural year. If he failed to give such notice and the land was not let to any other person, he continued liable for the rent. The effect of the language used was such that the relinquishment was not valid or complete unless the notice had been given. Under the new law, if no notice of surrender has been given, the surrender will nevertheless be complete, although the liability for loss of rent will remain—see next clause. The section applies to a raiyat, *i.e.* any raiyat, an occupancy-raiyat or a non-occupancy-raiyat, but not to an under-raiyat. Then a holding only may be surrendered—see definition in section 3. A tenure may not be relinquished or surrendered at the will of the tenure-holder—see 20 W. R. 383 : I. L. R. 9 Calc. 671 : 12 C. L. R. 343.]

(2) But, notwithstanding the surrender, the raiyat shall be liable to indemnify the landlord against any loss of the rent of the holding for the agricultural year next following the date of the surrender, unless he gives to his landlord, at least three months before he surrenders, notice of his intention to surrender.

(3) When a raiyat has surrendered his holding, the Court shall in the following cases for the purposes of sub-section (2) presume, until the contrary is shown, that such notice was so given, namely :—

(*a*) if the raiyat takes a new holding in the same village from the same landlord during the agricultural year next following the surrender ;

(*b*) if the raiyat ceases, at least three months before the end of the agricultural year at the end of which the surrender is made, to reside in the village in which the surrendered holding is situate.

[The provisions of this sub-section are new.]

(4) The raiyat may, if he thinks fit, cause the notice to be served through the Civil Court within the jurisdiction of which the holding or any portion of it is situate.

(5) When a raiyat has surrendered his holding, the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself.

(6) When a holding is subject to an incumbrance secured by a registered instrument, the surrender of the holding shall not be valid unless it is made with the consent of the landlord and the incumbrancer.

[The provision of this clause is new.]

(7) Save as provided in the last foregoing sub-section, nothing in this section shall affect any arrangement by which a raiyat and his landlord may arrange for a surrender of the whole or a part of the holding.

[See clause (*c*), sub-section (3), section 178, *post*.]

Abandonment.

87. (1) If a raiyat voluntarily abandons his residence without notice to his landlord and without arranging for payment of his rent as it falls due, and ceases to cultivate his holding either by himself or by some other person, the landlord may, at any time after the expiration of the agricultural year in which the raiyat so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself.

(2) Before a landlord enters under this section, he shall file a notice in the prescribed form in the Collector's office stating that he has treated the holding as abandoned and is about to enter on it accordingly; and the Collector shall cause the notice to be published in such manner as the Local Government, by rule, directs.

(3) When a landlord enters under this section, the raiyat shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy-raiyat, six months, from the date of the publication of the notice; and thereupon the Court may, on being satisfied that the raiyat did not voluntarily abandon his holding, order recovery of possession on such terms, if any, with respect to compensation to persons injured and payment of arrears of rent as to the Court may seem just.

(4) Where the whole or part of a holding has been sub-let by a registered instrument, the landlord shall, before entering under this section on the holding, offer the whole holding to the sub-lessee for the remainder of the term of the sub-lease at the rent paid by the raiyat who has ceased to cultivate the holding, and on condition of the sub-lessee paying up all arrears due from that raiyat. If the sub-lessee refuses or neglects within a reasonable time to accept the offer, the landlord may avoid the sub-lease and may enter on the holding and let it to another tenant or cultivate it himself as provided in sub-sections (1) and (2).

[These provisions have been adopted, after much discussion, as the best means of dealing with a question which often comes before the Courts—see 6 W. R. 67: 7 W. R. 153: 12 W. R. 304: 20 W. R. 129: 24 W. R. 344: I. L. R. 4 Calc. 894: I. L. R. 8 Calc. 612: 10 C. L. R. 15, 509.]

Sub-division of tenancy.

88. A division of a tenure or holding, or distribution of the rent payable in respect thereof, shall not be binding on the landlord unless it is made with his consent in writing.

Division of tenancy not binding on landlord without his consent.

[This is a legislative enunciation of the common law of the country.]

Ejectment.

89. No tenant shall be ejected from his tenure or holding except in execution of a decree.

No ejectment except in execution of decree.

[This removes all doubt as to the applicability to non-occupancy-raiyats and under-raiyats of that which has been clear law as regards tenure-holders and occupancy-raiyats—See *note* to section 49, *ante*.]

Measurements.

90. (1) Subject to the provisions of this section and any contract, a landlord may, by himself, or by any person authorized by him in this behalf, enter on and measure all land comprised in his estate or tenure, other than land exempt from the payment of revenue.

Landlord's right to measure land.

[This is a substantial reproduction of the old law, under which a landlord was entitled, unless restrained from so doing by express engagement with the occupants of the land, to make *a general survey and measurement* of the lands comprised in the whole or any part of any estate, tenure or holding, of the rents of which he was in receipt. The express grant of authority to *enter on* the land is new—see W. R. Jan. July 1864, Act X. 105: 4 W. R. Act X. 16 : 6 W. R. Act X. 10 : 7 W. R. 96, 415 : 8 W. R. 149 : 9 W. R. 151, 331 : 10 W. R. 361 : 11 W. R. 293, 445 : 20 W. R., 385 : 3 B. L. R. Appen. 27 : 10 B. L. R. 397: I. L. R. 7 Calc. 684 : 9 C. L. R. 444.]

(2) A landlord shall not, without the consent of the tenant, or the written permission of the Collector, be entitled to measure land more than once in ten years, except in the following cases (namely):—

(*a*) where the area of the tenure or holding is liable, by reason of alluvion or diluvion, to vary from year to year, and the rent payable depends on the area;

(*b*) where the area under cultivation is liable to vary from year to year and the rent payable depends on the area under cultivation;

(*c*) where the landlord is a purchaser otherwise than by voluntary transfer and not more than two years have elapsed since the date of his entry under the purchase.

(3) The ten years shall be computed from the date of the last measurement, whether made before or after the commencement of this Act.

[The provisions of this clause are new, and their object is to prevent tenants being harassed and worried by constant measurements made with a view to obtain additional rent.]

Power for Court to order tenant to attend and point out boundaries.

91. (1) Where a landlord desires to measure any land which he is entitled to measure under the last foregoing section, the Civil Court may, on the application of the landlord, make an order requiring the tenant to attend and point out the boundaries of the land.

(2) If the tenant refuses or neglects to comply with the order, a map or other record of the boundaries and measurements of the land, prepared under the direction of the landlord at the time when the tenant was directed to attend, shall be presumed to be correct until the contrary is shown.

[This alters the old law, under which if a tenant, after the issue of an order enjoining his attendance, neglected to attend and point out his land, it was *not competent to him to contest the correctness of the measurement made, or any of the proceedings held in his absence.* A disputable or rebuttable presumption is substituted for a conclusive or absolute presumption.]

Standard of measurement.

92. (1) Every measurement of land made by order of a Civil Court or of a Revenue-officer, in any suit or proceeding between a landlord and tenant, shall be made by the acre, unless the Court or Revenue-officer directs that it be made by any other specified standard.

(2) If the rights of the parties are regulated by any local measure other than the acre, the acre shall be converted into the local measure for the purposes of the suit or proceeding.

(3) The Local Government may, after local enquiry, make rules declaring for any local area the standard or standards of measurement locally in use in that area, and every declaration so made shall be presumed to be correct until the contrary is shown.

[The provisions of this section are new.]

Managers.

Power to call upon co-owners to show cause why they should not appoint a common manager.

93. When any dispute exists between co-owners of an estate or tenure as to the management thereof, and in consequence there has ensued, or is likely to ensue,

(*a*) inconvenience to the public, or

(*b*) injury to private rights,

the District Judge may, on the application in case (*a*) of the Collector, and in case (*b*) of any one having an interest in the estate or

tenure, direct a notice to be served on all the co-owners, calling on them to show cause why they should not appoint a common manager:

[The extension of these provisions to *tenures* is new. The old law, sections 26 and 27, Reg. V of 1812 applied only to estates.]

Provided that a co-owner of an estate or tenure shall not be entitled to apply under this section unless he is actually in possession of the interest he claims, and, if he is a co-owner of an estate, unless his name and the extent of his interest are registered under The Land Registration Act, 1876.

[This proviso is new.]

Power to order them to appoint a manager if cause is not shown.

94. If the co-owners fail to show cause as aforesaid within one month after service of a notice under the last foregoing section, the District Judge may make an order directing them to appoint a common manager, and a copy of the order shall be served on any co-owner who did not appear before it was made.

[The procedure provisions as to (1) serving a notice to show cause, and (2) making an order directing the co-owners to appoint a common manager are new. Under the old law the District Judge proceeded to appoint a manager at once.]

Power to appoint manager if order is not obeyed.

95. If the co-owners do not, within such period, not being less than one month after the making of an order under the last foregoing section, as the District Judge may fix in this behalf, or, where the order has been served as directed by that section, within a like period after such service, appoint a common manager and report the appointment for the information of the District Judge, the District Judge may, unless it is shown to his satisfaction that there is a prospect of a satisfactory arrangement being made within a reasonable time,—

(*a*) direct that the estate or tenure be managed by the Court of Wards in any case in which the Court of Wards consents to undertake the management thereof; or

(*b*) in any case appoint a manager.

[Clause (*a*) is new. See, as to the Court of Wards, Act IX (B.C.) of 1879.]

Power to nominate person to act in all cases under clause (*b*) of last section.

96. The Local Government may nominate a person for any local area to manage all estates and tenures within that local area for which it may be necessary to appoint a manager under clause (*b*) of the last foregoing section; and, when any person has been so nominated, no other person shall be appointed manager under that clause by the District Judge, unless in the case of any estate the Judge thinks fit to appoint one of the co-owners themselves as manager.

[This provision is new.]

97. In any case in which the Court of Wards undertakes under section 95 the management of an estate or tenure, so much of the provisions of the Court of Wards Act, 1879, as relates to the management of immoveable property shall apply to the management.

The Court of Wards Act, 1879, applicable to management by Court of Wards.

[This is also a new provision. The Court of Wards Act is IX (B.C.) of 1879.]

98. (1) A manager appointed under section 95 may, if the District Judge thinks fit, be remunerated by a fixed salary or percentage of the money collected by him as manager, or partly in one way and partly in the other, as the District Judge from time to time directs.

Provisions applicable to manager.

(2) He shall give such security for the proper discharge of his duties as the District Judge directs.

(3) He shall, subject to the control of the District Judge, have, for the purposes of management, the same powers as the co-owners jointly might but for his appointment have exercised, and the co-owners shall not exercise any such power.

(4) He shall deal with and distribute the profits in accordance with the orders of the District Judge.

(5) He shall keep regular accounts, and allow the co-owners or any of them to inspect and take copies of those accounts.

(6) He shall pass his accounts at such period and in such form as the District Judge may direct.

(7) He may make any application which the proprietors could make under section 103.

(8) He shall be removable by the order of the District Judge, and not otherwise.

[The provisions of this section are new and very necessary.]

99. When an estate or tenure has been placed under the management of the Court of Wards, or a manager has been appointed for the same under section 95, the District Judge may at any time direct that the management of it be restored to the co-owners, if he is satisfied that the management will be conducted by them without inconvenience to the public or injury to private rights.

Power to restore management to co-owners.

100. The High Court may, from time to time, make rules defining the powers and duties of managers under the foregoing sections.

Power to make rules.

[This section is new.]

CHAPTER X.

RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS.

[The provisions of this Chapter, sections 101 to 115 inclusive, are new. As to the Record-of-Rights in Upper India, see *ante*, p. 735.]

Power to order survey and preparation of record-of-rights.

101. (1) The Local Government may, in any case with the previous sanction of the Governor-General in Council, and may, if it thinks fit, without such sanction in any of the cases next hereinafter mentioned, make an order directing that a survey be made, and a record-of-rights be prepared, in respect of the lands in a local area by a Revenue-officer.

[With regard to a general Record-of-Rights otherwise than in the cases provided for by sub-section (2), a pledge was given when the Bill was before the Legislative Council that the Lieutenant-Governor would apply the provisions of the new law only in some one selected district in Bahar and abide by the results of that experiment. It was stated that the Secretary of State had sanctioned this and nothing more, and that nothing more would be done without the further sanction of the Secretary of State.—See *Supplement to the Gazette of India*, May 9th, 1885, page 765.

As to the Revenue-officer who will make the survey and prepare the Record-of-Rights, see the definition of Revenue-officer in section 3.]

(2) The cases in which an order may be made under this section without the previous sanction of the Governor-General in Council are the following (namely):—

(*a*) where the landlord or a large proportion of the landlords or of the tenants applies for such an order and deposits, or gives security for, such amount, for the payment of expenses, as the Local Government directs;

(*b*) where the preparation of such a record is calculated to settle or avert a serious dispute existing or likely to arise between the tenants and their landlords generally;

[This clause in part takes the place of the time-expired "Agrarian Disputes Act," VI (B.C.) of 1876. And see section 112, *post.*]

(*c*) where the local area is comprised in an estate or tenure which belongs to or is managed by the Government or the Court of Wards; and

(*d*) where a settlement of revenue is being made in respect of the local area.

[In the case provided for by clause (*d*) there must always be a settlement of rent. See section 104, sub-section (2). In the cases provided for by clauses (*a*), (*b*) and (*c*) there may be an ascertainment of existing facts without a settlement of rent.]

(3) A notification in the official Gazette of an order under this section shall be conclusive evidence that the order has been duly made.

[The effect of the order is to suspend the jurisdiction of the Civil Courts in certain cases between landlord and tenant. See section 111, *post.*]

Particulars to be recorded.

102. Where an order is made under the last foregoing section, the particulars to be recorded shall be specified in the order, and may include, either without or in addition to other particulars, some or all of the following, namely:—

(*a*) the name of each tenant;

(*b*) the class to which he belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure;

(*c*) the situation, quantity and boundaries of the land held by him;

(*d*) the name of his landlord;

(*e*) the rent payable;

(*f*) the mode in which that rent has been fixed, whether by contract, by order of a Court, or otherwise;

(*g*) if the rent is a gradually increasing rent, the time at which, and the steps by which, it increases;

(*h*) the special conditions and incidents, if any, of the tenancy.

Power for Revenue-officer to record particulars on application of proprietor or tenure-holder.

103. On the application of a proprietor or tenure-holder, and on his depositing or giving security for the required amount for expenses, a Revenue-officer may, subject to and in accordance with rules made in this behalf by the Local Government, ascertain and record the particulars specified in the last foregoing section with respect to the estate or tenure or any part thereof.

[Under section 101a, (1) *survey* and (2) *record-of-rights* are to be prepared for a *local area* in which there may be many landlords; and in order to those more extended proceedings an order of Government is necessary. The proceedings under the present section are limited to a single estate or tenure; they are undertaken upon the application of the proprietor or tenure-holder, and a survey is not a necessary part of them. The provisions of this section will be especially useful to purchasers at public sales, who, in consequence of the opposition offered by the raiyats generally acting in concert with the old proprietors, experience great difficulty in obtaining that information which a Revenue-officer is here empowered to ascertain and record.]

Procedure as to recording or settling rents.

104. (1) When, in any proceeding under this chapter, it does not appear that the tenant is holding land in excess of or less than that for which he is paying rent, and neither the landlord nor the tenant applies for a settlement of rent, the officer shall record the rent payable by the tenant, and the land in respect of which the rent is payable.

(2) When it appears that a tenant is holding land in excess of, or less than, that for which he is paying rent, or either the landlord or the tenant applies for a settlement of rent, or in any case under section 101, sub-section (2), clause(*d*), the officer shall settle a fair and equitable rent in respect of the land held by the tenant.

(3) In settling rents under this section, the officer shall presume, until the contrary is proved, that the existing rent is fair and equitable, and shall have regard to the rules laid down in this Act for the guidance of the Civil Court in increasing or reducing rents, as the case may be.

[This presumption is similar to that in section 27, *ante*. Under the provisions of this section, rent may have to be *reduced* in order to make it fair and equitable, but it can be reduced on those grounds only which the Act provides.]

Publication of record.

105. (1) When the Revenue-officer has completed a record made under this chapter, he shall cause a draft thereof to be locally published in the prescribed manner and for the prescribed period, and shall receive and consider any objection which may be made to any entry therein during the period of publication.

(2) After the expiration of this period the Revenue-officer shall finally frame the record, and shall cause it to be locally published in the prescribed manner, and the publication shall be conclusive evidence that the record has been duly made under this chapter.

Procedure in case of dispute as to entries in record.

106. If at any time before the final publication of the record under the last foregoing section a dispute arises as to the correctness of any entry (not being an entry of a rent settled under this chapter), or as to the propriety of any omission, which the Revenue-officer proposes to make or has made therein or therefrom, the Revenue-officer shall hear and decide the dispute.

[An appeal lies from the Revenue-officer to the Special Judge appointed under section 108.]

Procedure to be adopted by Revenue-officer.

107. In all proceedings for the settlement of rents under this chapter, and in all proceedings under the last foregoing section, the Revenue-officer shall, subject to rules made by the Local Government under this Act, adopt the procedure laid down in the Code of Civil Procedure

for the trial of suits, and his decision in every such proceeding shall have the force of a decree.

Appeals from decisions of Revenue-officers.

108. (1) The Local Government shall appoint one or more persons to be a Special Judge or Special Judges for the purpose of hearing appeals from the decisions of Revenue-officers under this chapter.

[When action is taken under section 101, the Special Judge may have a large amount of work; but if there be only a case or two under section 103, they could be disposed of by the District Judge. Can he be appointed Special Judge under this section, while retaining his office of District and Sessions Judge?]

(2) An appeal shall lie to the Special Judge from the decision of a Revenue-officer under this chapter, and the provisions of the Code of Civil Procedure relating to appeals shall, as nearly as may be, apply to all such appeals.

(3) Subject to the provisions of Chapter XLII of the Code of Civil Procedure, an appeal shall lie to the High Court from the decision of a Special Judge in any case under section 106 as if he were a Court subordinate to the High Court within the meaning of the first section of that chapter:

Provided that, if in a second appeal the High Court alters the decision of the Special Judge in respect of any of the particulars with reference to which the rent of any tenure or holding has been settled, the Court may settle a new rent for the tenure or holding, but in so doing shall be guided by the rents of the other tenures or holdings of the same class comprised in the same record as ascertained or settled under section 104.

Undisputed entries in record to be presumptive evidence.

109. (1) Every record made under this chapter shall distinguish between the disputed and the undisputed entries therein.

(2) Every undisputed entry in the record shall be presumed to be correct until the contrary is proved.

[See I. L. R. 5 Calc. 744.]

Time at which settlement of rent is to take effect.

110. When any rent is settled under this chapter, the settlement shall take effect from the beginning of the agricultural year next after the final publication of the record.

Stay of proceedings in Civil Court during preparation of record.

111. When an order has been made under section 101,—

(*a*) a Civil Court shall not, until the final publication of the record, entertain a suit or application for the alteration of the rent or the determination of the status of any tenant in the area to which the order applies; and

(*b*) the High Court may, if it thinks fit, transfer to the Revenue-officer any proceedings pending in a Civil Court for the alteration of any such rent or for the determination of any of the matters specified or referred to in section 102.

Power to authorize a special settlement in special cases.

112. (1) The Local Government, with the previous sanction of the Governor General in Council, may, on being satisfied that the exercise of the powers hereinafter mentioned is necessary in the interests of public order or of the local welfare, invest a Revenue-officer acting under this chapter with the following powers or either of them, namely :—

(*a*) power to settle all rents ;

(*b*) power, when settling rents, to reduce rents if in the opinion of the officer the maintenance of existing rents would on any ground, whether specified in this Act or not, be unfair or inequitable.

(2) The powers given under this section may be made exerciseable within a specified area either generally or with reference to specified cases or classes of cases.

(3) When the Local Government takes any action under this section, the settlement-record prepared by the Revenue-officer shall not take effect until it has been finally confirmed by the Governor General in Council.

[The provisions of the time-expired "Agrarian Disputes Act," VI (B.C.) of 1876, were intended to meet a similar emergency. The Revenue-officer, in that behalf specially empowered, may reduce rents *on any ground, whether specified in the Act or not.* There is no appeal to the Civil Courts from the orders of a Revenue-officer made in the exercise of the special jurisdiction conferred by this section, and on this account it was strongly urged, and with success, that there should be a possible resort to the Governor-General in Council before the proceedings of the Revenue-officer became absolutely final—See *Supplement to the Gazette of India,* May 9th, 1885, pages 766-767.]

Period for which rents as settled are to remain unaltered.

113. When the rent of a tenure or holding is settled under this chapter, it shall not, except on the ground of a landlord's improvement or of a subsequent alteration in the area of the tenure or holding, be enhanced, in the case of a tenure or an occupancy holding for fifteen years, and, in the case of a non-occupancy holding, if the rent is settled in any case under section 112 or on the application of the landlord under section 104, for five years. The periods of fifteen and five years shall be counted from the date of the final publication of the record.

Expenses of proceedings under chapter.

114. Where an order is made under this chapter in any case except under section 101, sub-section (2), clause (*d*), the expenses incurred by the Government in carrying out the provisions of this chapter in any local area, or such part of those expenses as the Local Government may direct, shall be defrayed by the landlords and tenants of land in that local area, in such proportions as the Local Government, having regard to all the circumstances of each case, may determine; and the proportion of those expenses so to be defrayed by any person shall be recoverable by the Government from him as if it were an arrear of revenue due by him.

[The excepted case is where a settlement of the revenue is being made.]

Presumption as to fixity of rent not to apply where record has been prepared.

115. When the particulars mentioned in section 102, clause (*b*), have been recorded under this chapter in respect of any tenancy, the presumption under section 50 shall not thereafter apply to that tenancy.

[That is, the presumption of fixity of rent from proof of payment of the same rent or rate of rent for twenty years.]

CHAPTER XI.

Record of Proprietors' Private Lands.

Saving as to khámár land.

116. Nothing in Chapter V shall confer a right of occupancy in, and nothing in Chapter VI shall apply to, a proprietor's private lands known in Bengal as khámár, nij or nij-jot, and in Behar as zirát, nij, sír or kamat, where any such land is held under a lease for a term of years or under a lease from year to year.

[Chapter V relates to *occupancy-raiyats*. Chapter VI relates to *non-occupancy-raiyats*. As to *khámár* lands, see *ante*, page 466. The khámár lands of Bengal and Bahar may be compared to the *demesne* lands of a Manor—See *ante*, page 45, *note*, and page 101.]

Power for Government to order survey and record of proprietor's private lands.

117. The Local Government may, from time to time, make an order directing a Revenue-officer to make a survey and record of all the lands in a specified local area which are a proprietor's private lands within the meaning of the last foregoing section.

Power for Revenue-officer to record private land on application of proprietor or tenant.

118. In the case of any land alleged to be a proprietor's private land, on the application of the proprietor or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue-officer may, subject to and in

accordance with rules made in this behalf by the Local Government, ascertain and record whether the land is or is not a proprietor's private land.

Procedure for recording private land.

119. When a Revenue-officer proceeds under either of the two last foregoing sections, the provisions of sections 105 to 109, both inclusive, shall apply.

[Section 105 relates to the publication of the record: section 106 empowers the Revenue-officer to decide disputes as to the entries in the record: section 107 makes the Code of Civil Procedure applicable to his proceedings and gives the force of a decree to his decision: section 108 allows an appeal to a Special Judge with a further appeal to the High Court: and section 109 makes undisputed entries presumptive evidence.]

Rules for determination of proprietor's private land.

120. (1) The Revenue-officer shall record as a proprietor's private land—

(*a*) land which is proved to have been cultivated as khámár, zirát, sír, nij, nij-jot or kamat by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the passing of this Act, and

(*b*) cultivated land which is recognised by village usage as proprietor's khámár, zirát, sír, nij, nij-jot or kamat.

(2) In determining whether any other land ought to be recorded as a proprietor's private land, the officer shall have regard to local custom, and to the question whether the land was before the second day of March, 1883, specifically let as proprietor's private land, and to any other evidence that may be produced; but shall presume that land is not a proprietor's private land until the contrary is shown.

[See note to section 21, *ante*.]

(3) If any question arises in a Civil Court as to whether land is or is not a proprietor's private land, the Court shall have regard to the rule laid down in this section for the guidance of Revenue-officers.

CHAPTER XII.

DISTRAINT.

[In this Chapter, rent (see the definition in section 3, *ante*) includes money recoverable under any enactment for the time being in force as if it was rent.]

Cases in which an application for distraint may be made.

121. Where an arrear of rent is due to the landlord of a raiyat or under-raiyat, and has not been due for more than a year, and no security has been accepted therefor by the landlord, the landlord

may, in addition to any other remedy to which he is entitled by law, present an application to the Civil Court requesting the Court to recover the arrear by distraining, while in the possession of the cultivator, —

(*a*) any crops or other products of the earth standing or ungathered on the holding;

(*b*) any crops or other products of the earth which have been grown on the holding and have been reaped or gathered and are deposited on the holding, or on a threshing-floor or place for treading out grain, or the like, whether in the fields or within a homestead:

[The great difference between the old law of Distraint and that contained in the present Act is, that under the old law the landlord was allowed to distrain upon his own authority, though, having made the distraint, he was bound to give notice to the Court, which regulated further proceedings including the sale of the distrained property; while under the new law the landlord must, in the first instance, apply to the Court, which conducts all the proceedings including the act of distraint. To this general rule of procedure, there may, however, be an exception in the special class of cases provided for by section 181, *post*. The abuse by some landlords of the power of distraint was the cause of the change in the law. The facility of proceeding by "application" instead of by "suit" diminishes the expense of legal proceedings to landlords, the court-fee on the former being less than on the latter.]

Provided that an application shall not be made under this section—

(1) by a proprietor or manager as defined under the Land Registration Act, 1876, or a mortgagee of such a proprietor or manager, unless his name and the extent of his interest in the land in respect of which the arrear is due have been registered under the provisions of that Act; or

[This provision is new.]

(2) for the recovery of any sum in excess of the rent payable for the holding in the preceding agricultural year, unless that sum is payable under a written contract or in consequence of a proceeding under this Act or an enactment hereby repealed; or

(3) in respect of the produce of any part of the holding which the tenant has sub-let with the written consent of the landlord.

[This provision is new.]

Form of application.

122. (1) Every application under the last foregoing section shall specify—

(*a*) the holding in respect of which the arrear is claimed, and the boundaries thereof, or such other particulars as may suffice for its identification;

(*b*) the name of the tenant;

(*c*) the period in respect of which the arrear is claimed ;

(*d*) the amount of the arrear, with the interest, if any, claimed thereon, and, when an amount in excess of the rent payable by the tenant in the last preceding agricultural year is claimed, the contract, or proceeding, as the case may be, under which that amount is payable ;

(*e*) the nature and approximate value of the produce to be distrained ;

(*f*) the place where it is to be found, or such other particulars as may suffice for its identification ; and

(*g*) if it is standing or ungathered, the time at which it is likely to be cut or gathered.

(2) The application shall be signed and verified in the manner prescribed by the Code of Civil Procedure for the signing and verification of plaints.

Procedure on receipt of application.

123. (1) The applicant shall, at the time of filing an application under the foregoing sections, file in Court such documentary evidence (if any) as he may consider necessary for the purposes of the application.

(2) The Court may, if it thinks fit, examine the applicant, and shall, with as little delay as possible, admit the application or reject it, or permit the applicant to furnish additional evidence in support of it.

(3) Where a Court cannot forthwith admit or reject an application under sub-section (2), it may, if it thinks fit, make an order prohibiting the removal of the produce specified in the application pending the execution of an order for distraining the same or the rejection of the application.

(4) When an order for distraining any produce is made under this section at a considerable time before the produce is likely to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may, if it thinks fit, make a further order prohibiting the removal of the produce pending the execution of the order for distraint.

Execution of order for distraint.

124. If an application is admitted under the last foregoing section, the Court shall depute an officer to distrain the produce specified therein, or such portion of that produce as it thinks fit; and the officer shall proceed to the place where the produce is, and distrain the produce by taking charge of it himself or placing some other person in charge of it in his behalf, and publishing a notification of the distraint in accordance with rules to that effect to be made by the High Court ;

Provided that produce which from its nature does not admit of being stored shall not be distrained under this section at any time less than twenty days before the time when it would be fit for reaping or gathering.

Service of demand and account.

125. (1) The distraining officer shall, at the time of making the distraint, serve on the defaulter a written demand for the arrear due, and the costs incurred in making the distraint, with an account exhibiting the grounds on which the distraint is made.

(2) Where the distraining officer has reason to believe that a person other than the defaulter is the owner of the property distrained, he shall serve copies of the demand and account on that person likewise.

(3) The demand and account shall, if practicable, be served personally; but if a person on whom they are to be served absconds or conceals himself, or cannot otherwise be found, the officer shall affix copies of the demand and account on a conspicuous part of the outside of the house in which he usually resides.

Right to reap, &c., produce.

126. (1) A distraint under this chapter shall not prevent any person from reaping, gathering or storing any produce, or doing any other act necessary for its due preservation.

(2) If the person entitled to do so fails to do so at the proper time, the distraining officer shall cause any standing crops or ungathered products distrained to be reaped or gathered when ripe, and stored in such granaries or other places as are commonly used for the purpose, or in some other convenient place in the neighbourhood, or shall do whatever else may be necessary for the due preservation of the same.

(3) In either case the distrained property shall remain in the charge of the distraining officer, or of some other person appointed by him in this behalf.

Sale proclamation to be issued unless demand is satisfied.

127. (1) Unless the demand, with all costs of the distraint, be immediately satisfied, the distraining officer shall issue a proclamation specifying the particulars of the property distrained and the demand for which it is distraint, and notifying that he will, at a place and on a day specified, not being less than three or more than seven days after the time of making the distraint, sell the distrained property by public auction:

Provided that when the crops or products distrained from their nature admit of being stored but have not yet been stored, the day of the sale shall be so fixed as to admit of their being made ready for storing before its arrival.

(2) The proclamation shall be stuck up on a conspicuous place in the village in which the land is situate for which the arrears of rent are claimed.

Place of sale.

128. The sale shall be held at the place where the distrained property is, or at the nearest place of public resort if the distraining officer is of opinion that it is likely to sell there to better advantage.

When produce may be sold standing.

129. (1) Crops or products which from their nature admit of being stored shall not be sold before they are reaped or gathered and are ready for storing.

(2) Crops or products which from their nature do not admit of being stored may be sold before they are reaped or gathered, and the purchaser shall be entitled to enter on the land by himself, or by any person appointed by him in this behalf and do all that is necessary for the purpose of tending and reaping or gathering them.

Manner of sale.

130. The property shall be sold by public auction in one or more lots as the officer holding the sale may think advisable; and if the demand, with the costs of distraint and sale, is satisfied by the sale of a portion of the property, the distraint shall be immediately withdrawn with respect to the remainder.

Postponement of sale.

131. If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) is not offered for it, and if the owner of the property, or a person authorized to act in his behalf, applies to have the sale postponed till the next day, or (if a market is held at the place of sale) the next market day, the sale shall be postponed until that day, and shall be then completed, whatever price may be offered for the property.

Payment of purchase-money.

132. The price of every lot shall be paid at the time of sale, or as soon thereafter as the officer holding the sale directs, and in default of such payment the property shall be put up again and sold.

Certificate to be given to purchaser.

133. When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

Proceeds of sale how to be applied.

134. (1) From the proceeds of every sale of distrained property under this chapter, the officer holding the sale shall pay the costs of the distraint and sale, calculated on a scale of charges prescribed by rules to be made, from time to time, by the Local Government in this behalf.

(2) The remainder shall be applied to the discharge of the arrear

for which the distress was made, with interest thereon up to the day of sale; and the surplus (if any) shall be paid to the person whose property has been sold.

Certain persons may not purchase.

135. Officers holding sales of property under this Act, and all persons employed by, or subordinate to, such officers, are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

[The penalty for violating this prohibition is contained in section 185 of the Indian Penal Code.]

Procedure where demand is paid before the sale.

136. (1) If at any time after a distraint has been made under this chapter, and before the sale of the distrained property, the defaulter, or the owner of the distrained property where he is not the defaulter, deposits in the Court issuing the order of distraint, or in the hands of the distraining officer, the amount specified in the demand served under section 125, with all costs which may have been incurred after the service of the demand, the Court or officer, as the case may be, shall grant a receipt for the same and the distraint shall forthwith be withdrawn.

(2) When the distraining officer receives the deposit, he shall forthwith pay it into the Court.

(3) A receipt granted under this section to an owner of distrained property not being the defaulter shall afford a full protection to him against any subsequent claim for the arrears of rent on account of which the distraint was made.

[This is a new provision.]

(4) After the expiration of one month from the date of a deposit being made under this section, the Court shall pay therefrom to the applicant for distraint the amount due to him, unless in the meanwhile the owner of the property distrained has instituted a suit against the applicant contesting the legality of the distraint and claiming compensation in respect of the same.

(5) A landlord shall not be deemed to have consented to his tenant's sub-letting the holding or any part thereof merely by reason of his having received an amount deposited under this section by an inferior tenant.

[This is a new and necessary provision.]

Amount paid by under-tenant for his lessor may be deducted from rent.

137. (1) When an inferior tenant, on his property being lawfully distrained under this chapter for the default of a superior tenant, makes any payment under the last foregoing section, he shall be entitled to deduct the amount of that payment from any rent payable by him to his immediate landlord, and that landlord, if he is not the

defaulter, shall in like manner be entitled to deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

(2) Nothing in this section shall affect the right of an inferior tenant making a payment under the last foregoing section to institute a suit for the recovery from the defaulter of any portion of the amount paid which he has not deducted under this section.

[The provisions of this section are new.]

Conflict between rights of superior and inferior landlords.

138. When land is sub-let, and any conflict arises under this chapter between the rights of a superior and of an inferior landlord who distrain the same property, the right of the superior landlord shall prevail.

[These provisions are also new.]

Distraint of property which is under attachment.

139. When any conflict arises between an order for distraint issued under this chapter and an order issued by a Civil Court for the attachment or sale of the property which is the subject of the distraint, the order for distraint shall prevail; but, if the property is sold under that order, the surplus proceeds of the sale shall not be paid under section 134 to the owner of the property without the sanction of the Court by which the order of attachment or sale was issued.

[These provisions also are new.]

Suit for compensation for wrongful distraint.

140. No appeal shall lie from any order passed by a Civil Court under this chapter; but any person whose property is distrained on an application made under section 121 in any case in which such an application is not permitted by that section may institute a suit against the applicant for the recovery of compensation.

Power for Local Government to authorize distraint in certain cases.

141. (1) When the Local Government is of opinion that in any local area or in any class of cases it would, by reason of the character of the cultivation or the habits of the cultivators, be impracticable for a landlord to realize his rent by an application under this chapter to the Civil Court, it may, from time to time, by order, authorize the landlord to distrain, by himself or his agent, any produce for the distraint of which he would be entitled to apply under this chapter to the Civil Court:

Provided that every person distraining any produce under such authorization shall proceed in the manner prescribed by section 124, and shall forthwith give notice, in such form as the High Court may, by rule, prescribe, to the Civil Court having jurisdiction to entertain an application for distraining the produce, and that Court shall, with

no avoidable delay, depute an officer to take charge of the produce distrained.

(2) When an officer of the Court has taken charge of any distrained produce under this section, the proceedings shall thereafter be conducted in all respects as if he had distrained it under section 124.

(3) The Local Government may at any time rescind any order made by it under this section.

[See note to section 121, *ante*. The provisions of this section are a concession to those who urged that the necessity of applying in the first instance to the Court would make the distraint procedure useless in many cases—for example, where the crop is capable of being easily removed; where the cultivators have no property and can readily abscond, while the Courts are distant and the ordinary remedy takes some time.]

Power for High Court to make rules.

142. The High Court may, from time to time, make rules consistent with this Act for regulating the procedure in all cases under this chapter.

CHAPTER XIII.

JUDICIAL PROCEDURE.

Power to modify Civil Procedure Code in its application to landlord and tenant suits.

143. (1) The High Court may, from time to time, with the approval of the Governor General in Council, make rules consistent with this Act declaring that any portions of the Code of Civil Procedure shall not apply to suits between landlord and tenant as such or to any specified classes of such suits, or shall apply to them subject to modifications specified in the rules.

(2) Subject to any rules so made, and subject also to the other provisions of this Act, the Code of Civil Procedure shall apply to all such suits.

[This section is new. As to the *other provisions* of the Act, see section 148, *post*.]

Jurisdiction in proceedings under Act.

144. (1) The cause of action in all suits between landlord and tenant as such shall, for the purposes of the Code of Civil Procedure, be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the suit is brought.

(2) When under this Act a Civil Court is authorized to make an order on the application of a landlord or a tenant, the application shall be made to the Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the application is brought.

[These provisions reproduce existing law.]

Náibs or gumáshtas to be recognized agents.

145. Every náib or gumáshta of a landlord empowered in this behalf by a written authority under the hand of the landlord shall, for the purposes of every such suit or application, be deemed to be the recognized agent of the landlord within the meaning of the Code of Civil Procedure, notwithstanding that the landlord may reside within the local limits of the jurisdiction of the Court in which the suit is to be instituted or is pending, or in which the application is made.

[The suit must be instituted or defended *in the name of the landlord*, while the náib or gumáshta acts as his agent in conducting it—See 11 W. R. 43: I. L. R. 9 Calc. 450: 12 C. L. R. 55.]

Special register of suits.

146. The particulars referred to in section 58 of the Code of Civil Procedure shall, in the case of such suits, instead of being entered in the register of civil suits prescribed by that section, be entered in a special register to be kept by each Civil Court, in such form as the Local Government may, from time to time, prescribe in this behalf.

[A separate or special Register is desirable for statistical purposes.]

Successive rent-suits.

147. Subject to the provisions of section 373 of the Code of Civil Procedure, where a landlord has instituted a suit against a raiyat for the recovery of any rent of his holding, the landlord shall not institute another suit against him for the recovery of any rent of that holding until after three months from the date of the institution of the previous suit.

[This provision is new and is intended to prevent raiyats being harassed by repeated suits for rent. It applies to *holdings* only (see the definition in section 3), not to tenures. In connection with this section see the Illustration to section 43 of the Code of Civil Procedure, and I. L. R. 6 Calc. 791; S. C. 8 C. L. R. 297.]

Procedure in rent-suits.

148. The following rules shall apply to suits for the recovery of rent:—

(*a*) sections 121 to 127 (both inclusive), 129, 305, and 320 to 326 (both inclusive) of the Code of Civil Procedure shall not apply to any such suit:

(*b*) the plaint shall contain, in addition to the particulars specified in section 50 of the Code of Civil Procedure, a statement of the situation, designation, extent and boundaries of the land held by the tenant; or, where the plaintiff is unable to give the extent or boundaries, in lieu thereof a description sufficient for identification:

(*c*) the summons shall be for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only:

(*d*) the service of the summons may, if the High Court by rule, either generally, or specially for any local area, so directs, be effected, either in addition to, or in substitution for, any other mode of service, by forwarding the summons by post in a letter addressed to the defendant and registered under Part III of the Indian Post Office Act, 1866 ;

when a summons is so forwarded in a letter, and it is proved that the letter was duly posted and registered, the Court may presume that the summons has been duly served ;

(*e*) a written statement shall not be filed without the leave of the Court:

(*f*) the rules for recording the evidence of witnesses prescribed by section 189 of the Code of Civil Procedure shall apply, whether an appeal is allowed or not :

[Section 189 provides that it shall not be necessary to take down the evidence of the witnesses in writing at length; but the Judge, as the examination of each witness proceeds, shall make a *memorandum of the substance of what he deposes* and such memorandum shall be written and signed by the Judge with his own hand and shall form part of the record.]

(*g*) the Court may, when passing the decree, order on the oral application of the decree-holder the execution thereof, unless it is a decree for ejectment for arrears :

(*h*) notwithstanding anything contained in section 232 of the Code of Civil Procedure, an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become and is vested in him.

[This section makes applicable to suits between landlords and tenants those portions of the Code which provide a procedure as simple as is consistent with that degree of rule and form which is absolutely indispensable as a safeguard against fraud, injustice and abuse of the process of the Courts. It is to be observed that under section 143, the High Court has full power to modify this procedure as experience may show to be expedient. It was very strongly urged upon the Government that some short and summary procedure should be provided to enable landlords to recover their rents, and all that the Legislature could safely do in this direction has been done. The Rent Commission said in their Report:—"Any attempt to abridge judicial inquiry by arbitrary and abnormal presumptions in favour of either party, which by precluding the production of evidence may enable Judges to arrive at rapid conclusions is, to our minds, retrogressive and unsafe. The history of the judicial administration of this country for the last half century is a continuous record of the abandonment of a system of procedure under which rights were hastily and perfunctorily adjudicated upon, the person defeated and dissatisfied being left to a regular suit to right himself, if wronged by an irregular proceeding, which too often saddled him with the burden of proof that should have been laid on the shoulders of his adversary, and thus unfairly diminished his chance of ultimate success."—§ 174. The soundness of these observations has been generally admitted.]

149. (1) When a defendant admits that money is due from him on account of rent, but pleads that it is due not to the plaintiff but to a third person, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

Payment into Court of money admitted to be due to third person.

(2) Where such a payment is made, the Court shall forthwith cause notice of the payment to be served on the third person.

(3) Unless the third person within three months from the receipt of the notice institutes a suit against the plaintiff and therein obtains an order restraining payment out of the money, it shall be paid out to the plaintiff on his application.

(4) Nothing in this section shall affect the right of any person to recover from the plaintiff money paid to him under sub-section (3).

[These provisions are new and are intended as some check on the two common practice of setting up the title of a third person as an answer to a suit for rent.]

150. When a defendant admits that money is due from him to the plaintiff on account of rent, but pleads that the amount claimed is in excess of the amount due, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

Payment into Court of money admitted to be due to landlord.

[This provision also is new and may be a check upon another kind of defence too often false.]

151. When a defendant is liable to pay money into Court under either of the two last foregoing sections, if the Court thinks that there are sufficient reasons for so ordering, it may take cognizance of the defendant's plea on his paying into Court such reasonable portion of the money as the Court directs.

Provision as to payment of portion of money.

[This is a concession to a defendant, who is really honest in the defence which he makes.]

152. When a defendant pays money into Court under either of the said sections, the Court shall give the defendant a receipt, and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the plaintiff or the third person, as the case may be.

Court to grant receipt.

[To an honest defendant, who entertains a *bonâ fide* doubt as to who is entitled to receive rent from him, this provision will be a real boon.]

153. An appeal shall not lie from any decree or order passed, whether in the first instance or on appeal, in any suit instituted by a landlord for the recovery of rent where—

Appeals in rent-suits.

(*a*) the decree or order is passed by a District Judge, Additional Judge or Subordinate Judge, and the amount claimed in the suit does not exceed one hundred rupees, or

[The insertion of the Subordinate Judge in this provision is new.]

(*b*) the decree or order is passed by any other judicial officer specially empowered by the Local Government to exercise final jurisdiction under this section, and the amount claimed in the suit does not exceed fifty rupees;

unless in either case the decree or order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto, or a question of a right to enhance or vary the rent of a tenant, or a question of the amount of rent annually payable by a tenant:

[The last thirteen words are new. As to this clause, see 21 W. R. 36: 23 W. R. 227: 13 B. L. R. 376: 15 B. L. R. 111: 2 C. L. R. 558: 8 C. L. R. 86: 12 C. L. R. 223: I. L. R. 3 Calc. 151: I. L. R. 5 Calc. 594: I. L. R. 7 Calc. 330: I. L. R. 8 Calc. 238, 712: I. L. R. 9 Calc. 596.]

Provided that the District Judge may call for the record of any case in which a judicial officer as aforesaid has passed a decree or order to which this section applies, if it appears that the judicial officer has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of his jurisdiction illegally or with material irregularity; and may pass such order as the District Judge thinks fit.

[In this section clause (*b*) and the proviso are new. The object of clause (*b*) is to take away the right of appeal and treat as suits of the Small Cause Class cases in which the real question is whether the rent has, or has not, been paid. The power given by the proviso will enable District Judges to exercise an effective supervision in those cases in which the right of appeal is taken away.]

154. A decree for enhancement of rent under this Act, if passed in a suit instituted in the first eight months of an agricultural year, shall ordinarily take effect on the commencement of the agricultural year next following; and, if passed in a suit instituted in the last four months of the agricultural year, shall ordinarily take effect on the commencement of the agricultural year next but one following; but nothing in this section shall prevent the Court from fixing, for special reasons, a later date from which any such decree shall take effect.

Date from which decree for enhancement takes effect.

[See note to section 52 (2), *ante*.]

Relief against forfeitures.

155. (1) A suit for the ejectment of a tenant, on the ground—

(*a*) that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or

[See *ante*, sections 25 and 44 (*b*).]

(*b*) that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord, liable to ejectment,

[See *ante*, sections 10, 18 (*b*), 25 and 44 (*b*).]

shall not be entertained unless the landlord has served, in the prescribed manner, a notice on the tenant specifying the particular misuse or breach complained of, and, where the misuse or breach is capable of remedy, requiring the tenant to remedy the same, and, in any case, to pay reasonable compensation for the misuse or breach, and the tenant has failed to comply within a reasonable time with that request.

(2) A decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would reasonably be payable to the plaintiff for the misuse or breach, and whether, in the opinion of the Court, the misuse or breach is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff, and, where the misuse or breach is declared to be capable of remedy, to remedy the same.

(3) The Court may, from time to time, for special reasons, extend a period fixed by it under sub-section (2).

(4) If the defendant, within the period or extended period (as the case may be) fixed by the Court under this section, pays the compensation mentioned in the decree, and, where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.

[These provisions are new and are in accordance with modern law reform which does not favour forfeiture, if the landlord can be otherwise fairly compensated for the breach or injury committed by the tenant.]

Rights of ejected raiyats in respect of crops and land prepared for sowing.

156. The following rules shall apply in the case of every raiyat ejected from a holding:—

(*a*) when the raiyat has, before the date of his ejectment, sown or planted crops in any land comprised in the holding, he shall be entitled, at the option of the landlord, either to retain possession of that land and to use it for the purpose of tending and gathering in the crops, or to receive from the landlord the value of the crops as estimated by the Court executing the decree for ejectment ;

(*b*) when the raiyat has, before the date of his ejectment, prepared for sowing any land comprised in his holding, but has not sown or planted crops in that land, he shall be entitled to receive from the landlord the value of the labour and capital expended by him in so preparing the land, as estimated by the Court executing the decree for ejectment, together with reasonable interest on that value;

(*c*) but a raiyat shall not be entitled to retain possession of any land or receive any sum in respect thereof under this section where, after the commencement of proceedings by the landlord for his ejectment, he has cultivated or prepared the land contrary to local usage;

(*d*) if the landlord elects under this section to allow a raiyat to retain possession of the land, the raiyat shall pay to the landlord, for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejectment may deem reasonable.

[These somewhat elaborate provisions are intended to provide fair rules as to the away-going crop. When the holding is sold in execution, the crop passes with the land (I. L. R. 4 Calc. 814) and the tenant gets the benefit of its value in the surplus sale proceeds. When the landlord, instead of selling the holding, ejects the raiyat, it seems scarcely reasonable that the latter should lose the value of the crop, which was the effect of the case at I. L. R. 5 Calc. 135.]

Power for Court to fix fair rent as alternative to ejectment.

157. When a plaintiff institutes a suit for the ejectment of a trespasser, he may, if he thinks fit, claim as alternative relief that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court, and the Court may grant such relief accordingly.

[This provision is new, and will be useful in the case of squatters, and of tenants who encroach upon other land belonging to their landlord.]

Application to determine incidents of tenancy.

158. (1) The Court having jurisdiction to determine a suit for the possession of land may, on the application of either the landlord or the tenant of the land, determine all or any of the following matters, (namely):—

(*a*) the situation, quantity and boundaries of the land;

(*b*) the name and description of the tenant thereof (if any);

(*c*) the class to which he belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat, or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not and whether his rent is liable to enhancement during the continuance of his tenure; and

(*d*) the rent payable by him at the time of the application.

(2) If, in the opinion of the Court, any of these matters cannot be satisfactorily determined without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV of the Code of Civil Procedure by such Revenue-officer as the Local Government may authorize in that behalf by rule made under section 392 of the said Code.

(3) The order on any application under this section shall have the effect of, and be subject to the like appeal as, a decree.

[The provisions of this section are new, and if honestly used to settle *bonâ fide* disputes, should prove most useful.]

CHAPTER XIV.

SALE FOR ARREARS UNDER DECREE.

General powers of purchaser as to avoidance of incumbrances.

159. Where a tenure or holding is sold in execution of a decree for arrears due in respect thereof, the purchaser shall take subject to the interests defined in this chapter as "protected interests," but with power to annul the interests defined in this chapter as "incumbrances":

Provided as follows:—

(*a*) a registered and notified incumbrance within the meaning of this chapter shall not be so annulled except in the case hereinafter mentioned in that behalf;

(*b*) the power to annul shall be exercisable only in manner by this chapter directed.

Protected interests.

160. The following shall be deemed to be protected interests within the meaning of this chapter:—

(*a*) any under-tenure existing from the time of the Permanent Settlement;

(*b*) any under-tenure recognized by the settlement-proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement;

(*c*) any lease of land whereon dwelling-houses, manufactories or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship, or burning or burying grounds have been made;

[See section 167 (4), *post*.]

(*d*) any right of occupancy;

(*e*) the right of a non-occupancy-raiyat to hold for five years at a rent fixed under Chapter VI by a Court, or under Chapter X by a Revenue-officer;

(*f*) any right conferred on an occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred; and

(*g*) any right or interest which the landlord at whose instance the tenure or holding is sold, or his predecessor in title, has expressly and in writing given the tenant for the time being permission to create.

[That the purchaser of a tenure at a sale in execution of a decree for arrears of the rent thereof should have power to avoid and annul other incumbrances, but should not have power to avoid or annul interests such as those specified in clauses (*a*), (*b*), (*c*), (*d*) and (*g*), and probably (*f*) was the old law of Bengal. The interest in clause (*e*) is created by this Act and is added as being analogous to some of the pre-existing interests. But by the old law the power of avoidance and annulment did not belong to such purchasers of all tenures. It belonged to the purchasers of three classes of tenures only:—*viz.* (1) tenures, the right of selling which for arrears of their own rent was given by the original title deeds; (2) tenures made transferable by the deeds creating them; and (3) tenures transferable by the custom of the country. There were certain points of difference between the law relating to (1) and that relating to (2) and (3)—See the Author's *Bengal Regulations*, pp. 497-498, 513—522. The Tenancy Act declares all permanent tenures to be transferable (s. 11). The extension by the Act of the power of avoiding incumbrances to purchasers at execution sales of *tenures other than the above* and *holdings* is new. So far as tenures are concerned, the change is not very material, for there are not many tenures in the Province of Bengal which do not fall under some one of the above three heads; but the extension of the law of avoidance to *holdings* will be productive of results the effect of which it is difficult to forecast.]

Meaning of "incumbrance" and "registered and notified incumbrance."

161. For the purposes of this chapter—

(*a*) the term "incumbrance," used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created by the tenant on his tenure or holding or in limitation of his own interest therein, and not being a protected interest as defined in the last foregoing section;

(*b*) the term "registered and notified incumbrance," used with reference to a tenure or holding sold or liable to sale in execution of a decree for an arrear of rent due in respect thereof, means an incumbrance created by a registered instrument of which a copy has, not less than three months before the accrual of the arrear, been served on the landlord in manner hereinafter provided.

Application for sale of tenure or holding.

162. When a decree has been passed for an arrear of rent due for a tenure or holding, and the decree-holder applies under section 235 of the Code of Civil Procedure for the attachment and sale of the tenure or holding in execution of the decree, he shall produce a statement showing

the parganá, estate and village in which the land comprised in the tenure or holding is situate, the yearly rent payable for the same and the total amount recoverable under the decree.

[Section 235 of the Code of Civil Procedure provides that the application for execution of a decree shall be in writing and verified, and shall contain certain particulars in a tabular form.]

Order of attachment and proclamation of sale to be issued simultaneously.

163. (1) Notwithstanding anything contained in the Code of Civil Procedure, when the decree-holder makes the application mentioned in the last foregoing section, the Court shall, if under section 245 of the said Code it admits the application and orders execution of the decree as applied for, issue simultaneously the order of attachment and the proclamation required by section 287 of the said Code.

(2) The proclamation shall, in addition to stating and specifying the particulars mentioned in section 287 of the said Code, announce—

(*a*) in the case of a tenure or a holding of a raiyat holding at fixed rates, that the tenure or holding will first be put up to auction subject to the registered and notified incumbrances, and will be sold subject to those incumbrances if the sum bid is sufficient to liquidate the amount of the decree and costs, and that otherwise it will, if the decree-holder so desires, be sold on a subsequent day, of which due notice will be given, with power to annul all incumbrances; and

(*b*) in the case of an occupancy-holding, that the holding will be sold with power to annul all incumbrances.

(3) The proclamation shall, besides being made in the manner prescribed by section 289 of the said Code, be published by fixing up a copy thereof in a conspicuous place on the land comprised in the tenure or holding ordered to be sold, and shall also be published in such manner as the Local Government may, from time to time, direct in this behalf.

(4) Notwithstanding anything contained in section 290 of the said Code, the sale shall not, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days, calculated from the date on which the copy of the proclamation has been fixed up on the land comprised in the tenure or holding ordered to be sold.

[Under section 290 of the Civil Procedure Code, the thirty days are to count from the date on which the copy of the proclamations has been fixed up in the Court-house of the Judge ordering the sale, which may be an earlier date than that provided by the above sub-section.]

Sale of tenure or holding subject to registered and notified incumbrances, and effect thereof.

164. (1) When a tenure or a holding at fixed rates has been advertised for sale under the last foregoing section, it shall be put up to auction, subject to registered and notified incumbrances; and, if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs, including the costs of sale, the tenure or holding shall be sold subject to such incumbrances.

[This is a new provision, borrowed in some measure from the existing law of revenue sales, and it is a very just one. Incumbrances are usually created upon payment of a fine or premium to the tenure-holder. When the tenure is sold free of incumbrances, the tenure-holder, on receiving the surplus sale-proceeds after discharging the landlord's rent, really pockets the value of the incumbrances which he has already received, and the sale law thus enables him to perpetrate a fraud. This result is obviated without prejudice to the landlord, if the sale of the tenure subject to the incumbrances realizes enough to satisfy the landlord's claim for rent. The legislature has, however, wisely given the benefit of this provision to *registered and notified incumbrances* only. If it had been given to all incumbrances, there would have been a temptation to a species of fraud too common in India, *viz.* the subsequent creation of antedated interests.]

(2) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance upon the tenure or holding not being a registered and notified incumbrance.

Sale of tenure or holding with power to avoid all incumbrances, and effect thereof.

165. (1) If the bidding for a tenure or a holding at fixed rates put up to auction under the last foregoing section does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree-holder thereupon desires that the tenure or holding be sold with power to avoid all incumbrances, the officer holding the sale shall adjourn the sale and make a fresh proclamation under section 289 of the Code of Civil Procedure, announcing that the tenure or holding will be put up to auction and sold with power to avoid all incumbrances upon a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement; and upon that day the tenure or holding shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance on the tenure or holding.

Sale of occupancy-holding with power to avoid all incumbrances, and effect thereof.

166. (1) When an occupancy-holding has been advertised for sale under section 163, it shall be put up to auction and sold with power to avoid all incumbrances.

[But see section 168, *post*.]

(2) The purchaser at a sale under this section may, in manner provided by the next following section, and not otherwise, annul any incumbrance on the holding.

Procedure for annulling incumbrances under the foregoing sections.

167. (1) A purchaser having power to annul an incumbrance under any of the foregoing sections and desiring to annul the same, may, within one year from the date of the sale or the date on which he first has notice of the incumbrance, whichever is later, present to the Collector an application in writing, requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled.

(2) Every such application must be accompanied by such fee for the service of the notice as the Board of Revenue may fix in this behalf.

(3) When an application for service of a notice is made to the Collector in manner prescribed by this section, he shall cause the notice to be served in compliance therewith, and the incumbrance shall be deemed to be annulled from the date on which it is so served.

(4) When a tenure or holding is sold in execution of a decree for arrears due in respect thereof, and there is on the tenure or holding a protected interest of the kind specified in section 160, clause (*c*), the purchaser may, if he has power under this chapter to avoid all incumbrances, sue to enhance the rent of the land which is the subject of the protected interest. On proof that the land is held at a rent which was not at the time the lease was granted a fair rent, the Court may enhance the rent to such amount as appears to be fair and equitable.

This sub-section shall not apply to land which has been held for a term exceeding twelve years at a fixed rent equal to the rent of good arable land.

[It has long been settled law that the effect of a sale is not *ipso facto* to annul and avoid incumbrances, but that they are *voidable* merely at the option of the purchaser—3 B. L. R. 431: 9 C. L. R. 449: 12 C. L. R. 304: S. C. I. L. R. 9 Calc. 683. The object of the above provisions is to provide undoubted evidence of the fact of this option having been exercised—a fact not always easy of proof after the lapse of time, even when true; while in too many instances it has been sought to prove it though not true, when in consequence of subsequent disputes a landlord has wanted to get rid of a tenant.]

Power to direct that occupancy-holdings be dealt with under foregoing sections as tenures.

168. (1) The Local Government may, from time to time, by notification in the official Gazette, direct that occupancy-holdings or any specified class of occupancy-holdings in any local area put up for sale in execution of decrees for rent due on them shall, before being put up with power to avoid

all incumbrances, be put up subject to registered and notified incumbrances, and may by like notification rescind any such direction.

(2) While any such direction remains in force in respect of any local area, all occupancy-holdings, or, as the case may be, occupancy-holdings of the specified class in that local area, shall, for the purposes of sale under the foregoing sections of this chapter, be treated in all respects as if they were tenures.

Rules for disposal of the sale proceeds.

169. (1) In disposing of the proceeds of a sale under this chapter the following rules, instead of those prescribed by section 295 of the Code of Civil Procedure, shall be observed, that is to say:—

(*a*) there shall first be paid to the decree-holder the costs incurred by him in bringing the tenure or holding to sale;

(*b*) there shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made;

(*c*) if there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom any rent which may have fallen due to him in respect of the tenure or holding between the institution of the suit and the date of the sale;

(*d*) the balance (if any) remaining after the payment of the rent mentioned in clause (*c*) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application.

(2) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (*c*), the Court shall determine the dispute, and the determination shall have the force of a decree.

[The provisions of sub-section (1) clause (*c*), and sub-section (2) are new.]

Tenure or holding to be released from attachment only on payment into Court of amount of decree with costs, or on confession of satisfaction by decree-holder.

170. (1) Sections 278 to 283 (both inclusive) of the Code of Civil Procedure shall not apply to a tenure or holding attached in execution of a decree for arrears due thereon.

[Sections 278 to 283 of the Code of Civil Procedure are concerned with claims to attached property and the disposal of such claims.]

(2) When an order for the sale of a tenure or holding in execution of such a decree has been made, the tenure or holding shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of the decree, including the costs decreed, together with the costs incurred in order to the sale, is paid

into Court, or the decree-holder makes an application for the release of the tenure or holding on the ground that the decree has been satisfied out of Court.

(3) The judgment-debtor or any person having in the tenure or holding any interest voidable on the sale may pay money into Court under this section.

[See 6 W. R. Act X. 59; S. C. B. L. R. F. B. 519: 7 W. R. 183; S. C. B. L. R. F. B. 625: 13 W. R. F. B. 1; S. C. 4 B. L. R. F. B. 77: 18 W. R. 206: 20 W. R. 59: 21 W. R. 94; S. C. 12 B. L. R. 484: 7 B. L. R. Appen. 1: I. L. R. 4 Calc. 520: I. L. R. 10 Calc. 496.]

Amount paid into Court to prevent sale to be in certain cases a mortgage-debt on the tenure or holding.

171. (1) When any person having, in a tenure or holding advertised for sale under this chapter, an interest which would be avoidable upon the sale, pays into Court the amount requisite to prevent the sale,—

(*a*) the amount so paid by him shall be deemed to be a debt bearing interest at twelve per centum per annum and secured by a mortgage of the tenure or holding to him;

(*b*) his mortgage shall take priority of every other charge on the tenure or holding other than a charge for arrear of rent; and

(*c*) he shall be entitled to possession of the tenure or holding as mortgagee of the tenant, and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

[These provisions are new as regards holdings and tenures of the classes (2) and (3) mentioned in the note to section 160, *ante*, and they are an extension to them of the law relating to class (1) to be found in section 13 of Reg. VIII of 1819—See 13 B. L. R. 156: 11 C. L. R. 37: I. L. R. 8 Calc. 878, 954.]

(2) Nothing in this section shall affect any other remedy to which any such person would be entitled.

Inferior tenant paying into Court may deduct from rent.

172. When a tenure or holding is advertised for sale under this chapter in execution of a decree against a superior tenant defaulting, and an inferior tenant, whose interest would be voidable upon the sale, pays money into Court in order to prevent the sale, he may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord; and that landlord, if he is not the defaulter, may in like manner deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

Decree-holder may bid at sale; judgment-debtor may not.

173. (1) Notwithstanding anything contained in section 294 of the Code of Civil Procedure, the holder of a decree in execution of which a tenure or holding is sold under this chapter may, without the permission of the Court, bid for or purchase the tenure or holding.

(2) The judgment-debtor shall not bid for or purchase a tenure or holding so sold.

(3) When a judgment-debtor purchases by himself or through another person a tenure or holding so sold, the Court may, if it thinks fit, on the application of the decree-holder or any other person interested in the sale, by order set aside the sale, and the costs of the application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the judgment-debtor.

[The judgment-debtor is further liable to the penalty provided by section 185 of The Penal Code.]

Application by judgment-debtor to set aside sale.

174. (1) When a tenure or holding is sold for an arrear of rent due thereon, then, at any time within thirty days from the date of sale, the judgment-debtor may apply to have the sale set aside, on his depositing in Court, for payment to the decree-holder, the amount recoverable under the decree with costs, and, for payment to the purchaser, a sum equal to five per centum of the purchase-money.

[This gives the judgment-debtor, if he can raise the money, an opportunity of recovering his property, without proof of (1) material irregularity in publishing or conducting the sale, and (2) substantial injury by reason of such irregularity, both which he must prove in order to succeed under section 311 of the Code of Civil Procedure.—See *Supplement to the Gazette of India*, of May 9th, 1885, page 779.]

(2) If such deposit is made within the thirty days, the Court shall pass an order setting aside the sale, and the provisions of section 315 of the Code of Civil Procedure shall apply in the case of a sale so set aside :

Provided that, if a judgment-debtor applies under section 311 of the Code of Civil Procedure to set aside the sale of his tenure or holding, he shall not be entitled to make an application under this section.

(3) Section 313 of the Code of Civil Procedure shall not apply to any sale under this chapter.

[Section 313 of the Code of Civil Procedure allows the sale to be set aside at the instance of the purchaser on the ground that the person whose property purported to be sold had no saleable interest therein. This could not properly apply to tenures or holdings, the rent of which is a first charge on them, in whosesoever hands they are.]

Registration of certain instruments creating incumbrances.

175. Notwithstanding anything contained in Part IV of the Indian Registration Act, 1877, an instrument creating an incumbrance upon any tenure or holding which has been executed before the commencement of this Act, and is not required by section 17 of the said Registration Act to be registered, shall be accepted for registration under that Act if it is presented for that purpose to the proper officer within one year from the commencement of this Act.

[This affords a reasonable facility to persons who omitted at the time of their execution to register documents, the importance of which has been increased by the passing of The Tenancy Act.]

Notification of incumbrances to landlord.

176. Every officer who has, whether before or after the passing of this Act, registered an instrument executed by a tenant of a tenure or holding and creating an incumbrance on the tenure or holding, shall, at the request of the tenant or of the person in whose favour the incumbrance is created, and on payment by him of such fee as the Local Government may fix in this behalf, notify the incumbrance to the landlord by causing a copy of the instrument to be served on him in the prescribed manner.

Power to create incumbrances not extended.

177. Nothing contained in this chapter shall be deemed to enable a person to create an incumbrance which he could not otherwise lawfully create.

CHAPTER XV.

Contract and Custom.

Restriction on exclusion of Act by agreement.

178. (1) Nothing in any contract between a landlord and a tenant made *before or after the passing of this Act*—

(*a*) shall bar in perpetuity the acquisition of an occupancy-right in land, or

(*b*) shall take away an occupancy-right in existence at the date of the contract, or

[Under this clause the question may be raised, whether persons who have given up their occupancy-rights and lost their lands are entitled to recover them.]

(*c*) shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act, or

(*d*) shall take away or limit the right of a tenant, as provided by this Act, to make improvements and claim compensation for them.

(2) Nothing in any contract made between a landlord and a tenant since the 15th day of July, 1880, and before the passing of this Act

shall prevent a raiyat from acquiring in accordance with this Act an occupancy-right in land.

[The 15th July 1880 was the date of the orders of the Government of Bengal making public the Report of the Rent Commission.]

(3) Nothing in any contract made between a landlord and a tenant *after the passing of this Act* shall—

(*a*) prevent a raiyat from acquiring *in accordance with this Act* an occupancy-right in land ;

(*b*) take away or limit the right of an occupancy-raiyat to use land as provided by section 23 ;

(*c*) take away the right of a raiyat to surrender his holding in accordance with section 86 ;

(*d*) take away the right of a raiyat to transfer or bequeath his holding in accordance with local usage ;

(*e*) take away the right of an occupancy-raiyat to sub-let subject to and in accordance with the provisions of this Act ;

(*f*) take away the right of a raiyat to apply for a reduction of rent under section 38 or section 52 ;

(*g*) take away the right of a landlord or a tenant to apply for a commutation of rent under section 40 ; or

(*h*) affect the provisions of section 67 relating to interest payable on arrears of rent :

Provided as follows :—

(i) nothing in this section shall affect the terms or conditions of a lease granted *bonâ fide* for the reclamation of waste land, except that, where, on or after the expiration of the term created by the lease, the lessee would under Chapter V be entitled to an occupancy-right in the land comprised in the lease, nothing in the lease shall prevent him from acquiring that right ;

(ii) when a landlord has reclaimed waste land by his own servants or hired labourers, and subsequently lets the same or a part thereof to a raiyat, nothing in this Act shall affect the terms of any contract whereby a raiyat is prevented from acquiring an occupancy-right in the land or part during a period of thirty years from the date on which the land or part is first let to a raiyat ;

[See *Supplement to the Gazette of India of May 9th*, 1885, pp. 785-787.]

(iii) nothing in this section shall affect the terms or conditions of any contract for the temporary cultivation of orchard land with agricultural crops.

179. Nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a permanently-settled area from granting a permanent mukarrarí lease on any terms agreed on between him and his tenant.

Permanent mukarrarí leases.

[Proprietors have had this right since 1812—See section 52 of Reg. VIII of 1793: sections 2 and 3 of Reg. V of 1812: section 2 of Reg. XVIII of 1812: and section 2 of Reg. VIII of 1819.]

Utbandi, chur and dearah lands.

180. (1) Notwithstanding anything in this Act, a raiyat—

(*a*) who in any part of the country where the custom of útbandi prevails, holds land ordinarily let under that custom and for the time being let under that custom, or

(*b*) who holds land of the kind known as chur or dearah,

shall not acquire a right of occupancy—

in case (*a*), in land ordinarily held under the custom of útbandi and for the time being held under that custom, or

in case (*b*), in the chur or dearah land,

until he has held the land in question for twelve continuous years; and, until he acquires a right of occupancy in the land, he shall be liable to pay such rent for his holding as may be agreed on between him and his landlord.

[*Utbandi* in Bengal is a custom under which raiyats are allowed to cultivate such parcels of land as they wish, the rent being paid upon the area under cultivation each year. The custom prevails in sparsely inhabited places, or where there is much poor land, in which latter case the same parcels are seldom cultivated two years successively. *Chur* or *dearah* land consists of alluvial soil thrown up by fluvial action. Such land is not at first fit for ordinary cultivation, though some kinds of crop can be grown on it.]

(2) Chapter VI shall not apply to raiyats holding land under the custom of útbandi in respect of land held by them under that custom.

[Chapter VI relates to non-occupancy raiyats.]

(3) The Collector may, on the application of either the landlord or the tenant or on a reference from the Civil Court, declare that any land has ceased to be chur or dearah land within the meaning of this section, and thereupon all the provisions of this Act shall apply to the land.

Saving as to service-tenures.

181. Nothing in this Act shall affect any incident of a ghátwáli or other service-tenure, or, in particular, shall confer a right to transfer or bequeath a service-tenure which, before the passing of this Act, was not capable of being transferred or bequeathed.

[As to Ghatwali tenures, see Reg. XXIX of 1814: Act V of 1859: I. L. R. 3 Calc. 262: I. L. R. 9 Calc. 388, 411: I. L. R. 10 Calc. 677: L. R. 9 I. A. 104; S. C. I. L. R. 9 Calc. 187: and the cases to be found in the Author's *Regulations*, pp. 430-39.]

Homesteads.

182. When a raiyat holds his homestead otherwise than as part of his holding as a raiyat, the incidents of his tenancy of the homestead shall be regulated by local custom or usage, and, subject to local custom or usage, by the provisions of this Act applicable to land held by a raiyat.

[It is to be observed that the provisions of this section apply to raiyats only—See the definition in section 5, *ante*. They do not apply to other persons holding *bastu* or homestead land in villages, towns, or cities, who continue to be governed by the existing law.]

Saving of custom.

183. Nothing in this Act shall affect any custom, usage or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provision.

Illustrations.

(1) A usage under which a raiyat is entitled to sell his holding without the consent of his landlord is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That usage, accordingly, wherever it may exist, will not be affected by this Act.

[It was much debated whether the occupancy-right should by law be made transferable; and it was ultimately decided to leave its transferability to be governed by custom. See the question discussed in Appendix I of the Author's *Digest of the Law of Landlord and Tenant in Bengal*—See clause (*d*), sub-section (3) of section 178, *ante*.]

(2) The custom or usage that an under-raiyat should, under certain circumstances, acquire a right of occupancy is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom or usage, accordingly, wherever it exists, will not be affected by this Act.]

CHAPTER XVI.

LIMITATION.

Limitation in suits, appeals and applications in Schedule III.

184. (1) The suits, appeals and applications specified in Schedule III annexed to this Act shall be instituted and made within the time prescribed in that schedule for them respectively; and every such suit or appeal instituted, and application made, after the period of limitation so prescribed, shall be dismissed, although limitation has not been pleaded.

[A provision similar to that contained in this last clause is to be found in section 4 of The Indian Limitation Act.]

(2) Nothing in this section shall revive the right to institute any suit or appeal or make any application which would have been barred by limitation if it had been instituted or made immediately before the commencement of this Act.

185. (1) Sections 7, 8 and 9 of the Indian Limitation Act, 1877, shall not apply to the suits and applications mentioned in the last foregoing section.

Portions of the Indian Limitation Act not applicable to such suits, &c.

[Section 7 provides that if a person is a minor, insane, or an idiot at the time from which the period of limitation is to be reckoned, he may institute his suit or make his application within the same period after the disability has ceased, as would otherwise have been allowed from the time prescribed by the law.

Section 8 provides that when one of several joint creditors or claimants is under such legal disability and a discharge can be given without his concurrence, time will run against them all; but if such discharge cannot be given, time will not run against any of them, until one of them becomes capable of giving such discharge.

Section 9 provides that when once time has begun to run, no subsequent disability or inability to sue stops it.]

(2) Subject to the provisions of this chapter, the provisions of the Indian Limitation Act, 1877, shall apply to all suits, appeals and applications mentioned in the last foregoing section.

[See *Report* of the *Rent Commission*, §§ 158-161.]

CHAPTER XVII.

SUPPLEMENTAL.

Penalties.

186. (1) If any person, otherwise than in accordance with this Act or some other enactment for the time being in force,—

Penalties for illegal interference with produce.

(*a*) distrains or attempts to distrain the produce of a tenant's holding, or

(*b*) resists a distraint duly made under this Act, or forcibly or clandestinely removes any property duly distrained under this Act, or

(*c*) except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing or otherwise dealing with any produce of a holding,

he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code.

[The punishment for which under section 447 of the Code is imprisonment of either description for a term which may extend to three months, or fine which may extend to five hundred rupees, or both.]

(2) Any person who abets within the meaning of the Indian Penal Code the doing of any act mentioned in sub-section (1), shall be

deemed to have abetted the commission of criminal trespass within the meaning of that Code.

[See sections 109 and 116 of the Indian Penal Code.]

Agents and representatives of landlords.

187. (1) Any appearance, application or act, in, before or to any Court or authority, required or authorized by this Act to be made or done by a landlord, may, unless the Court or authority otherwise directs, be made or done also by an agent empowered in this behalf by a written authority under the hand of the landlord.

Power for landlord to act through agent.

[It is not quite clear whether this provision is intended to modify sections 10 and 20 of "The Legal Practitioners Act," XVIII of 1879, which prohibits persons from *practising* unless they have obtained a certificate under the Act. There is, however, a difference between acting for one landlord in the cases concerned with his estate, and acting for all employers, which latter is practising.]

(2) Every notice required by this Act to be served on, or given to, a landlord shall, if served on, or given to, an agent empowered as aforesaid to accept service of or receive the same on behalf of the landlord, be as effectual for the purposes of this Act as if it had been served on, or given to, the landlord in person.

(3) Every document required by this Act to be signed or certified by a landlord, except an instrument appointing or authorizing an agent, may be signed or certified by an agent of the landlord authorized in writing in that behalf.

[It is to be regretted that the law has not required registration of the written authority to the agent in all these cases. The tenant will otherwise find it very hard in many cases to prove the authority, when it is the landlord's interest or advantage that it should not be proved.]

188. Where two or more persons are joint-landlords, anything which the landlord is under this Act required or authorized to do must be done either by both or all those persons acting together, or by an agent authorized to act on behalf of both or all of them.

Joint-landlords to act collectively or by common agent.

[As to the power of any one of two or more co-sharers, or co-parceners, or (as the Act now terms them) joint-landlords, there has been considerable doubt and litigation—see, as to the right of one of them to make a survey and measurement, 10 B. L. R. 397; S. C. 19 W. R. 280: 20 W. R. 385: 9 C. L. R. 444: I. L. R. 7 Calc. 684:—to enhance rent, 2 C. L. R. 370; S. C. I. L. R. 4 Calc. 96: 5 C. L. R. 545: 9 C. L. R. 37; S. C. I. L. R. 7 Calc. 633: 10 C. L. R. 331: I. L. R. 4 Calc. 96, 592: I. L. R. 5 Calc. 273, 574: I. L. R 7 Calc. 633, 751: I. L. R. 8 Calc. 353: I. L. R. 9 Calc. 864:—to eject, 9 C. L. R. 76: 12 C. L. R. 223: I. L. R. 4 Calc. 961:—to sue for his share of rent separately, 5 W. R. Act X, 68: 15 W. R. 243: 19 W. R. 168: 20 W. R. 76: 22 W. R. 229, 394:

23 W. R. 11: 25 W. R. 25: 3 B. L. R. A. C. 230: 12 B. L. R. 289, 290 *note*, 291 *note*, 293 *note*, 395: 3 C. L. R. 223: 8 C. L. R. 445: I. L. R. 4 Calc. 90, 350, 556: I. L. R. 5 Calc. 915, 941: I. L. R. 7 Calc. 150: I. L. R. 8 Calc. 277.]

Rules under Act.

Power to make rules regarding procedure, powers of officers and service of notices.

189. The Local Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act—

(1) to regulate the procedure to be followed by Revenue-officers in the discharge of any duty imposed upon them by or under this Act, and may by such rules confer upon any such officer—

(*a*) any power exercised by a Civil Court in the trial of suits;

(*b*) power to enter upon any land, and to survey, demarcate and make a map of the same, and any power exercisable by any officer under the Bengal Survey Act, 1875; and

(*c*) power to cut and thresh the crops on any land and weigh the produce, with a view to estimating the capabilities of the soil; and

(2) to prescribe the mode of service of notices under this Act where no mode is prescribed by this or any other Act.

Procedure for making, publication and confirmation of rules.

190. (1) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made, in the case of rules made by the Local Government or High Court, in such manner as may in its opinion be sufficient for giving information to persons interested, and, in the case of rules made by any other authority, in the prescribed manner:

Provided that every such draft shall be published in the official Gazette.

(3) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(4) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made.

(6) All rules made under this Act may, from time to time, subject to the sanction (if any) required for making them, be amended, added to or cancelled by the authority having power to make the same.

Provisions as to temporarily-settled districts.

Saving as to land held in a district not permanently settled.

191. Where the area comprised in a tenure is situate in an estate which has never been permanently settled, nothing in this Act shall prevent the enhancement of the rent upon the expiration of a temporary settlement of the revenue, unless the right to hold beyond the term of the settlement at a particular rate of rent has been expressly recognized in settlement-proceedings by a Revenue-authority empowered by the Government to make definitively or confirm settlements.

[This is a reproduction of existing law. See *Supplement to Gazette of India of May 9th*, 1885, pp. 789—791.]

Power to alter rent in case of new assessment of revenue.

192. When a landlord grants a lease, or makes any other contract, purporting to entitle the tenant of land not included in an area permanently settled to hold that land free of rent or at a particular rent, and while the lease or contract is in force—

(*a*) land-revenue is for the first time made payable in respect of the land, or

(*b*) land-revenue having been previously payable in respect of it, a fresh settlement of land-revenue is made,

a Revenue-officer may, notwithstanding anything in the contract between the parties, by order, on the application of the landlord or of the tenant, fix a fair and equitable rent for the land in accordance with the provisions of this Act.

[This provision is necessary in order to prevent the Government revenue from being endangered by grants of land, rent-free or at an inadequate rent.]

Rights of pasturage, &c.

Rights of pasturage, forest-rights, &c.

193. The provisions of this Act applicable to suits for the recovery of arrears of rent shall, as far as may be, apply to suits for the recovery of anything payable or deliverable in respect of any rights of pasturage, forest-rights, rights over fisheries and the like.

[This section reproduces and extends clause 4 of section 23 of Act X of 1859.]

Saving for conditions binding on landlords.

Tenant not enabled by Act to violate conditions binding on landlord.

194. Where a proprietor or permanent tenure-holder holds his estate or tenure subject to the observance of any specified rule or condition, nothing in this Act shall entitle any person occupying

land within the estate or tenure to do any act which involves a violation of that rule or condition.

[This is a new and a very proper provision. Were it otherwise, a tenant might, by his act, render his landlord liable to forfeiture or damages.]

Savings for special enactments.

Savings for special enactments.

195. Nothing in this Act shall affect—

(*a*) the powers and duties of Settlement-officers as defined by any law not expressly repealed by this Act;

[See Regulations VII of 1822, IX of 1825, and IX of 1833: and the Author's *Bengal Regulations*, Index, Title, *Settlement.*]

(*b*) any enactment regulating the procedure for the realization of rents in estates belonging to the Government, or under the management of the Court of Wards or of the Revenue-authorities;

See Act VII (B. C.) of 1868; and Act VII (B. C.) of 1880, "The Public Demands Recovery Act." The procedure for realization of these rents is this—The Collector makes a certificate that the amount is due; and unless the tenant proceeds in the Civil Court and has this certificate set aside, it can be executed as a decree. Proceedings must be taken to set it aside within one year after service upon the tenant of notice of its having been made and filed in the office of the Collector; and the tenant must first have stated in a petition to the Collector the grounds on which he claims to have the certificate cancelled, or must satisfy the Civil Court that he had good reason for not doing so. This procedure starts with the presumption that the rent is due, and throws on the tenant the burden of proving that it is not due. It is defended on the ground that the certificate is made only by a responsible public officer, who has no personal interest in the matter; that there is the highest improbability that he would make a certificate for rent not actually due; and that the accounts, being carefully kept in a public office, are a guarantee against error.]

(*c*) any enactment relating to the avoidance of tenancies and incumbrances by a sale for arrears of the Government revenue;

[See, as to such sales of estates in permanently-settled districts, section 37 of Act XI of 1859; and, as to such sales in districts not permanently-settled, section 52 of the same Act. As to sales of tenures for arrears of revenue, see sections 11 and 12 of Act VII (B. C.) of 1868: Act II (B. C.) of 1871: I. L. R. 8 Calc. 230.]

(*d*) any enactment relating to the partition of revenue-paying estates;

[See Act VIII (B.C.) of 1876, "The Estates Partition Act."]

(*e*) any enactment relating to patní tenures, in so far as it relates to those tenures; or

[See Regulation VIII of 1819. The first seven sections of this enactment are concerned almost exclusively with patni tenures. Section 8 and following

sections provide a procedure for recovering rent by summary sale without suit or decree; and this procedure is applicable not only to patni tenures, but to all tenures "upon which the right of selling or bringing to sale for an arrear of rent may have been specially reserved by stipulation in the engagements interchanged on the creation of the tenure."]

(*f*) any other special or local law not repealed either expressly or by necessary implication by this Act.

[As for example, "The Chota Nagpore Tenures' Act," II (B. C.) of 1869: "The Chota Nagpore Landlord and Tenant Procedure Act," I (B. C.) of 1879: "The Hooghly and Burdwan Drainage Act," V (B. C.) of 1871, section 33: "The Bengal Embankment Act," VI (B. C.) of 1873, sections 49, 51: "The Bengal Survey Act," V (B. C.) of 1875, section 38. A "special law" is defined in the Indian Penal Code to be a law applicable to a particular subject; and a "local law" to be a law applicable only to a particular part of British India.]

Construction of Act.

Act to be read subject to Acts hereafter passed by Lieutenant-Governor of Bengal in Council.

196. This Act shall be read subject to every Act passed after its commencement by the Lieutenant-Governor of Bengal in Council.

[By "the Indian Councils' Act, 1861," 24 and 25 Vict. Cap. 67, s. 42, the Lieutenant-Governor of Bengal in Council has power to make laws and regulations for the peace and good government of the Bengal Division of the Presidency of Fort William, and for that purpose to repeal and amend any laws and regulations *made prior to the coming into operation of the Councils' Act by any authority in India*. It has been considered by some that these provisions negative by implication the power of repealing and amending any Act made by the Governor-General in Council *after* the coming into operation of the Councils' Act. If this view be sound, a question may be raised as to whether the above section is not *ultra vires* so far as regards any provision of a subsequent Act of the Bengal Council, which may repeal or amend the Tenancy Act. It may be said that it is only the Governor-General's Council which can repeal or amend any of the provisions of The Tenancy Act, and that it cannot delegate its legislative powers. See, however, L. R. 5 I. A. 178, as to the distinction between conditional legislation and the delegation of legislative power.]

SCHEDULE I.

(*See section* 2.)

REPEAL OF ENACTMENTS.

Regulations of the Bengal Code.

Number and year.	Subject of Regulation.	Extent of repeal.
VIII of 1793 ...	A Regulation for re-enacting with modifications and amendments the rules for the Decennial Settlement of the Public Revenue payable from the lands of the zamíndárs, independent taluqdárs and other actual proprietors of land in Bengal, Behar, and Orissa, passed for those Provinces respectively on the 18th September, 1789, the 25th November, 1789, and the 10th February, 1790, and subsequent dates.	[1] Sections 51, 52, 53, 54, 55, 64 and 65.
XII of 1805 ...	A Regulation for the settlement and collection of the Public Revenue in the zila of Cuttack, including the parganas of Pattaspur, Kummadichour, and Bagrae, at present included in the zila of Midnapur.	[1] Section 7.
V of 1812 ...	A Regulation for amending some of the rules at present in force for the collection of the Land revenue.	[1] Sections 2, 3, 4, 26 and 27.
XVIII of 1812 ...	A Regulation for explaining Section 2, Regulation V, 1812, and rescinding Sections 3 and 4, Regulation XLIV, 1793, and Sections 3 and 4, Regulation L, 1795, and enacting other rules in lieu thereof.	[1] The preamble and sections 2 and 3.

[1] See the Table, page xxi of the Author's *Digest of the Law of Landlord and Tenant in Bengal.*

SCHEDULE I.

Regulations of the Bengal Code.—(Contd.)

Number and year.	Subject of Regulation.	Extent of repeal.
XI of 1825 ...	A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea.	In clause 1 of section 4, from and including the words "nor if annexed to a subordinate tenure" to the end of the clause.

Acts of the Bengal Council.

Number and year.	Subject of Act.	Extent of repeal.
VI of 1862 ...	An Act to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal).	[2] The whole Act.
IV of 1867 ...	An Act to explain and amend Act VI of 1862, passed by the Lieutenant-Governor of Bengal in Council, and to give validity to certain judgments.	[2] The whole Act.
VIII of 1869 ...	An Act to amend the Procedure in suits between Landlords and Tenants.	The whole Act.
VIII of 1879 ...	An Act to define and limit the powers of Settlement-officers.	The whole Act.

Act of the Governor General in Council.

Number and year.	Subject of Act.	Extent of repeal.
X of 1859 ...	An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.	[2] The whole Act.

[2] These Acts are still in force in the Division of Orissa, see section 3 of The Tenancy Act.

SCHEDULE II.

FORMS OF RECEIPT AND ACCOUNT.

(See sections 56 and 57.)

FORM OF RECEIPT.

PARTICULARS OF THE HOLDING (LANDLORD'S PORTION).

—:o:—

1. Serial number of Receipt
2. Estate ; Village ; Tháná
3. Tenant's name , Son of
4. Particulars of the holding—
   Nukdi,[3] Bighás ; rent Rs.
   Baouli,[4] Bighás ; Maunds ; or Rs.
   Government Cesses { Julkur,[5] Rs. / Bunkur,[6] Rs. / Phulkur,[7] Rs. / Road Cess, Rs. / Public Works Cess, Rs.
5. Signature of the Landlord or his Authorized Agent

FORM OF RECEIPT.

PARTICULARS OF THE HOLDING (TENANT'S PORTION).

—:o:—

1. Serial number of Receipt
2. Estate ; Village ; Tháná
3. Tenant's name , Son of
4. Particulars of the holding—
   Nukdi,[3] Bighás ; rent Rs.
   Baouli,[4] Bighás ; Maunds ; or Rs.
   Government Cesses { Julkur,[5] Rs. / Bunkur,[6] Rs. / Phulkur,[7] Rs. / Road Cess, Rs. / Public Works Cess, Rs.
5. Signature of the Landlord or his Authorized Agent

Section 55 of the Bengal Tenancy Act, 1885, provides as follows:—

(1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

(2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

3 "Nukdi" means land held at a money rent.
4 "Baouli" means land held at a rent payable in kind.
5 "Julkur" means fishery rights.
6 "Bunkur" means forest rights.
7 "Phulkur" means the right of taking fruit.

SCHEDULE II.—*(Contd.)*

DETAILS OF PAYMENTS (TENANT'S PORTION).													DETAILS OF PAYMENTS (LANDLORD'S PORTION).											
Date of payment, and name of person through whom paid.	Nukdi.		Baouli.		Julkur, &c.		Cesses.		Signature of the landlord or his authorized agent.	Cesses.		Julkur, &c.		Baouli.		Nukdi.		Date of payment, and name of person through whom paid.	Nukdi.		Baouli.		Julkur, &c.		Cesses.	
	Current on account of kists.	Arrear on account of year, kists.	Current on account of crop.	Arrear on account of year, crop.	Current on account of kists.	Arrear on account of year, kists.	Current on account of kist.	Arrear on account of year, kists.		Current on account of kists.	Arrear on account of year, kists.	Current on account of kists.	Arrear on account of year, kists.	Current on account of crop.	Arrear on account of year, crop.	Current on account of kists.	Arrear on account of year, kists.		Current on account of kists.	Arrear on account of year, kists.	Current on account of crop.	Arrear on account of year, crop.	Current on account of kists.	Arrear on account of year, kists.	Current on account of kist.	Arrear on account of year, kists.

[8] "Kist" means an instalment of rent payable in money.

FORM OF ACCOUNT.

1. Year
2. Tenant's name
3. Particulars of holding—(area, rent, &c.)

	Bighás	Rate	Rs.	A.	P.
Nukdi					
Government Cesses					

	Bighás	Maunds	Rs.	A.	P.
Baouli					
Julkur ...	...				
Bunkur ...	...				
Phulkur ...	...				

	Maunds	Rs.	A.	P.
4. Demand of the year ...				
5. Balance of former years (Bakaya)				
		Rs.	A.	P.
6. Total demand (current and arrear) ...				
7. Paid each on account of { Current demand				
{ Arrear demand				
	Maunds			
8. Paid in kind				
		Rs.	A.	P.

9. Balance outstanding at end of year
10. Signature of the Landlord or his authorized Agent

FORM OF ACCOUNT.

1. Year
2. Tenant's name
3. Particulars of holding—(area, rent, &c.)

	Bighás	Rate	Rs.	A.	P.
Nukdi					
Government Cesses					

	Bighás	Maunds	Rs.	A.	P.
Baouli					
Julkur ...	...				
Bunkur ...	...				
Phulkur ...	...				

	Maunds	Rs.	A.	P.
4. Demand of the year ...				
5. Balance of former years (Bakaya)				
		Rs.	A.	P.
6. Total demand (current and arrear) ...				
7. Paid each on account of { Current demand...				
{ Arrear demand ...				
	Maunds			
8. Paid in kind				
		Rs.	A.	P.

9. Balance outstanding at end of year
10. Signature of the Landlord or his authorized Agent

SCHEDULE III.

LIMITATION.—(*See section* 184.)

PART I. - *Suits.*

Description of Suit.	Period of Limitation.	Time from which period begins to run.
1. To eject any tenure-holder or raiyat on account of any breach of a condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach.	One year ...	The date of the breach.
2. For the recovery of an arrear of rent—		
(*a*) when the arrear fell due before a deposit was made under section 61 on account of the rent of the same holding.	Six months ...	The date of the service of notice of the deposit.
(*b*) in other cases ...	Three years ...	The last day of the Bengalí year[9] in which the arrear fell due, where that year prevails, and the last day of the month of Jeyt of the Amli or Fasli year in which the arrear fell due, where either of those years prevails.
3. To recover possession of land claimed by the plaintiff as an occupancy raiyat.	Two years ...	The date of dispossession.[1]

PART II.—*Appeals.*

Description of Appeal.	Period of Limitation.	Time from which period begins to run.
From any decree or order under this Act, to the Court of a District Judge or Special Judge.	Thirty days ...	The date of the decree or order appealed against.

[9] See I. L. R. 6 Calc. 325.

[1] See 9 C. L. R. 139, 253; I. L. R. 5 Calc. 246; I. L. R. 7 Calc. 442; I. L. R. 8 Calc. 365; I. L. R. 9 Calc. 147, 280, 423.

PART II.—*Appeals*—(continued).

Description of Appeal.	Period of Limitation.	Time from which period begins to run.
From any order of a Collector under this Act to the Commissioner.	Thirty days ...	The date of the order appealed against.

PART III.—*Applications.*

Description of Application.	Period of Limitation.	Time from which period begins to run.
6. For the execution of a decree or order made under this Act, or any Act repealed by this Act, and not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree; except where the judgment-debtor has by fraud or force prevented the execution of the decree, in which case the period of limitation shall be governed by the provisions of the Indian Limitation Act, 1877.[2]	Three years ...	(1) The date of the decree or order; or (2) where there has been an appeal, the date of the final decree or order of the Appellate Court; or (3) where there has been a review of judgment, the date of the decision passed on the review.

[2] See 6 W. R. Act X, 8, 84; 24 W. R. 442; 4 B. L. R. F. B. 82; 8 C. L. R. 409; S. C. I. L. R. 7 Calc. 127; 12 C. L. R. 58, 318; 1. L. R. 3 Calc. 548; I. L. R. 6 Calc. 554; I. L. R. 9 Calc. 380, 711.

OBSERVATIONS.

The following observations may be useful to those who have to administer the Act:—

§ 1. The Act does not apply to the Division of Orissa or the Province of Assam. It may be extended to the Division of Orissa under the provisions of subsection 3 of section 1. Meanwhile Acts X of 1859, VI (B. C.) of 1862 and IV (B. C.) of 1867 are in force in this Division. As to Sylhet, which is now included in the Assam Chief Commissionership, see Notification of 24th February 1870, page 361 of the *Calcutta Gazette* of the 2nd March 1870; and Notification No. 1111 of the 22nd August 1868, p. 535 of the *Gazette of India* of 24th August 1878. As to the Province of Assam, see I. L. R. 6 Calc. 196: 9 Calc. 330. The Bengal Tenancy Act might be extended to the Province of Assam under the provisions of section 5 of The Scheduled Districts Act, XIV of 1874.

§ 2. With reference to the subject-matter of Chapter XXIX, *ante*, pp. 774-784, The Settlement Officers' Act, VIII (B. C.) of 1879, has been repealed by The Tenancy Act, and Government has now given up the special procedure by which it was able to enhance rents in its own estates upon principles and in a manner not available to other landlords. Government still, however, retains the special procedure for the recovery of rents in its own estates and in the estates of private individuals under the management of its Revenue Officers (see *ante*, pp. 781, 961), the basis of this procedure being that the rent is presumed to be due until the tenant proves that it is not due.

§ 3. The former Landlord and Tenant Acts (X of 1859 and VIII (B. C.) of 1869) were construed to apply only to land used or to be used for agricultural or horticultural purposes—2 W. R. Act X. 19: 19 W. R. 200: 20 W. R. 341: 23 W. R. 433: 2 B. L. R. Appen. 39: 3 B. L. R. A. C. 283: 9 B. L. R. 97, 101, 121: 1 Agra F. B. 15. See also Board's Rul. 47: W. R. Jan.—July 1864, p. 78: 2 W. R. Act X. 9: 8 W. R. 90, 250: 23 W. R. 61: Marsh. 401: 1 Ind. Jur. N. S. 428: 3 Agra Rep. 52: 9 B. L. R. 105 *note*, 108 *note*, 109 *note*, 116 *note*. When the Tenancy Bill was before the Legislative Council, it was proposed to introduce into it express

language limiting its application " to land which is the subject of agricultural or horticultural cultivation, or is used for purposes incidental thereto." But the proposal was negatived, and it was considered better to leave it to the Courts to apply the law—see pp. 640-643 of the *Supplement to the Gazette of India of April 4th*, 1885.

§ 4. The Tenancy Act does not reproduce the provisions of the old law about *pottahs* and *kabuliyats*, and *raiyats* being entitled to *pottahs;* but instead thereof the provisions of section 158 will be found more practically useful.

§ 5. The Tenancy Act does not contain any provisions as to *apportionment of rent*, which are very much required—See *Digest*, pp. 13 *note*, 14 *note:* I. L. R. 5 Calc. 902: I. L. R. 11 Calc. 284: 33 and 34, cap. 35. s. 1.

§ 6. The Tenancy Act does not reproduce the provisions of the old law as to suits for money or papers against agents employed by landlords in the management of land or collection of rents—or the special rule of limitation applicable to such suits. Such cases will now be governed by the general law.

§ 7. The provision of the old law that *surburakars* and *tehsildars* of estates under *khas* management may sue and be sued, has not been reproduced in The Tenancy Act—See *Digest*, p. 104.

§ 8. The Legislature refused to introduce into The Tenancy Act a provision to the effect that a non-occupancy *raiyat* shall be liable to ejectment for disclaiming the title of his landlord before any public officer or Court—See pp. 55-57 of the *Extra Supplement to the Gazette of India of 2nd May*, 1885. There has, however, been no repeal of the case-law which decided that a tenant is liable to forfeiture for directly repudiating the relation of landlord and tenant and setting up an adverse title in himself or in another—2 W. R. Act X. 2: 7 W. R. 145: 18 W. R. 465: 19 W. R. 95: 25 W. R. 147, 448: 1 C. L. R. 421: 2 C. L. R. 208: 12 C. L. R. 414: I. L. R. 6 Calc. 436: I. L. R. 10 Calc. 41.

§ 9. The provision of the old law (section 105 of Act VIII (B.C.) of 1869) as to the grant of free process, when a person is unable to pay the cost thereof, has not been reproduced in The Tenancy Act.

§ 10. The restriction that there may not be a review more than 30 days after judgment in Courts other than the High Court (section 103 of Act VIII (B. C.) of 1869) has not been reproduced.

§ 11. The provision of the old law (section 53 of Act VIII (B. C.) of 1869) for immediate execution in certain cases of ejectment has not been reproduced—See section 148 (*g*) *ante*.

§ 12. The provision (section 50 of Act VIII (B. C.) of 1869) that no warrant of arrest before judgment shall be issued in a suit for arrears of rent due in respect of a tenure liable to sale in execution of a

decree for its own rent, has not been expressly reproduced in The Tenancy Act: but under section 143 (1) the High Court can call such a provision into operation.

§ 13. The prohibition of the old law against simultaneous execution against person and property (section 57 of Act VIII (B. C.) of 1869: section 17 of Act VI (B. C.) of 1862) has not been reproduced.

§ 14. The old law that a tenure might not be sold in execution of a decree for arrears of rent while other process of execution was in force, has not been reproduced in The Tenancy Act: nor has the provision that a tenure may not be sold in execution of a decree obtained by a co-sharer for his share of the rent, until the judgment-debtor's movable property within the jurisdiction of the Court has been seized and sold (see *art.* 151 of the *Digest*).

§ 15. The special provisions of the Rent Law as to payment into Court, after suit brought, of money tendered or money not tendered before action (see arts. 170, 171 of the *Digest*) have been omitted from The Tenancy Act, the general provisions of Chapter XXIII, sections 376-379, of the Code of Civil Procedure being sufficient.

§ 16. The provisions of section 188 of The Tenancy Act as to joint landlords alter very materially the case-law on the subject; but these provisions apply only to *acts which the landlord is, under the Act, required or authorized to do.*

§ 17. The Tenancy Act does not make any express provision of limitation for a case in which the landlord is unable to sue for his rent in consequence of the relation of landlord and tenant being suspended for a time as the result of legal proceedings which are ultimately reversed by a superior tribunal. The case-law, therefore, remains unaltered—see 12 Moo. In. Ap. 244; S. C. 2 B. L. R. P. C. 11; S. C. 11 W. R. P. C. 5: 8 B. L. R. 536: 19 W. R. 18: 23 W. R. 281: I. L. R. 3 Calc. 6, 791, 817: L. R. 9 I. A. 82; S. C. I. L. R. 9 Calc. 255: 12 C. L. R. 129.

§ 18. The Index which follows is, as it purports to be, an Index to the law of landlord and tenant in Bengal. The portions of it which refer to The Tenancy Act are in ordinary type; while those portions are in *Italics* which refer to *the law which is to be found elsewhere than in The Tenancy Act.* This distinction may be found useful for practical purposes by those who have to administer the law; and may assist the work of future codification, if undertaken hereafter.

INDEX

TO THE

LAW OF LANDLORD AND TENANT

IN BENGAL.

N.B.—Those portions of the following Index which refer to The Bengal Tenancy Act are in ordinary type. Those portions which refer to *the law not included in that Act*, are in *Italics*.

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[1] It is proposed to bring the Act into force on the 1st November 1885.

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may make rules declaring that portions of Civil Procedure Code shall not apply or shall apply with modifications to suits between landlord and tenant, s. 143 (1).
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to publish draft of rules which it proposes to make under authority conferred by Act, s. 109 (1) (2).
and with draft notice of date not earlier than one month when draft will be taken into consideration, s. 190 (3).
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I.

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non-occupancy raiyat entitled to construct wells and dwelling-houses, s. 79 (1).
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application by landlord to Revenue-Officer for registration of improvements, s. 80.
application by landlord or tenant of holding to have evidence recorded relating to improvements, s. 81 (1).
record made to be admissible in evidence between landlord and tenant, s. 81 (2).
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Court making decree for ejectment to determine amount of compensation, s. 82 (2).
ejectment may be conditional on payment of compensation to raiyat, s. 82 (2).
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ISTEMRARI TENURE ;
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J.

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defendant admitting rent due, but pleading that it is due to a person other than plaintiff, must pay amount into Court, s. 149 (1).
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unless such person institutes a suit within three months, money to be paid to plaintiff, s. 149 (3).
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defendant pleading that amount claimed is in excess of what is due must pay into Court what he admits to be due, s. 150.
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K.

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what land to be recorded as *khámár* land, s. 120 (1) (*a*), (*b*).
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Civil Courts to be guided by same rules as Revenue-Officers, s. 120 (3).

KHAS MAHALS:
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L.

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may not compel attendance of tenants, or enforce payment of rent otherwise than according to law, note to s. 2 of Tenancy Act, *ante*, p. 880.
entitled, unless restrained by contract, to enter on and measure all land in his estate or tenure, s. 90 (1).
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acquisition by, of land for building or other useful purpose, s. 84.
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relation of, how far affected by transfer of landlord's interest, s. 72.
relation of, how far affected by transfer of tenant's interest, ss. 12-17, 73.
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of land under management of Court of Wards, s. 9 of Act IV (B.C.) of 1870.
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by managers of minors' estates, s. 18 of Act XL of 1858.
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for permanent building, garden, tank, well, canal, &c. &c. protected from avoidance on sale of estate for arrears of revenue, ss. 37, 52 of Act XI of 1859.

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of six months after expiry of term, for suit to eject non-occupancy raiyat, s. 45.

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of three months from date of payment, for suit for penalty for withholding receipt, s. 58 (1).

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of twelve months, for application for registration of landlord's improvement, s. 80 (3).

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suits, appeals, and applications to be instituted and made within time prescribed by Sched. III of Tenancy Act, s. 184 (1).

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suit or appeal instituted and application made after period of limitation must be dismissed, though limitation not pleaded, s. 184 (1).

nothing in these provisions to revive suit, appeal or application barred before commencement of Act, s. 184 (2).

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may, with previous sanction of Governor-General in Council, fix date of commencement of Tenancy Act.[1] s. 1 (2).

[1] It is proposed to fix the 1st November, 1885.

LOCAL GOVERNMENT:—*Continued.*
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may appoint Officer to discharge any of the functions of a Collector under the Act, s. 3 (16).
or of a Revenue-Officer, ss. 3 (17), 31 (*b*).
may fix local areas of staple food crops for preparation of price-lists, s. 39 (1).
may direct preparation of price-lists for past times, s. 39 (2).
shall cause publication in Gazette of lists of average prices, s. 39 (5).
shall make rules as to what shall be staple crops, and for preparation of price-lists, s. 39 (7).
may appoint Court or Officer for filing agreement for enhanced rent to be tendered to non-occupancy raiyat, s. 46 (2).
may make rules authorizing tenants to pay rent by postal moneyo rder, ss. 54 (2), 64 (2).
may prescribe or sanction modified form of receipt for rent and counterfoil, s. 56 (3).
shall cause to be prepared for sale forms of receipts with counterfoils and statements of account, s. 59.
to prescribe fee payable on deposit of rent, s. 61 (2).
may appoint Revenue-Officer for registration of improvements, s. 80 (1).
may make rule for verifying application for such registration, s. 80 (2).
may make rules for Assessors for assessing compensation for improvements, s. 82 (5)
may prescribe manner of publishing notice of landlord's entry on abandoned holding, s. 87 (2).
may make rules declaring local standards of measurement, s. 92 (3).
may nominate for local area a manager of all estates and tenures of which District Judge appoints manager upon dispute between co-owners, s. 96.
may direct survey and preparation of record of rights, ss. 101-115—See *Record of Rights.*
may make rules to regulate proceedings of Revenue-Officers in making Record of Rights, s. 107.
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may, in special cases, authorize distraint without application to Civil Court s. 14 (1):
and may rescind its order, s. 141 (3).
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and may rescind any such direction, s. 168 (1).
may fix fee chargeable by registration-officers for notifying incumbrances to landlords, s. 176.
may make rules to regulate procedure of Revenue-Officers, and may confer certain powers on them, s. 189 (1).
may prescribe mode of service of notices when Act is silent, s. 189 (2).
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M.

MAHTUT:—See *Abwabs.*
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District Judge may, in certain cases of dispute, call upon co-owners to show cause why they should not appoint a common manager, s. 93.
if they fail to show cause within a month, District Judge may make order directing them to appoint, s. 94.
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or (*b*) appoint a manager, s. 95.
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Local Government may empower Revenue-Officer to enter on land and make a map of it, s. 189 (1) (*b*).

MEASUREMENT:
alteration of rent on alteration of area proved by, s. 52—See *Rent*.
landlord, unless restrained by contract, entitled to enter on and measure all land in his estate or tenure, s. 90 (1).
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MINES:
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MINOR:
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MORTGAGEE:
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N.

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of surrender of holding by raiyat not bound by lease, s. 86.
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any notice required by Tenancy Act may be served on agent empowered in writing by landlord to accept service, s. 187 (2).
Local Government may prescribe mode of service of notices, where Act is silent, s. 189 (2).
of filing certificate for recovery of arrears of rent due to Government, s. 10 of Act VII (B. C.) of 1880.
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O.

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ORCHARD LAND :
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ORISSA :
The Bengal Tenancy Act does not extend, but may be extended to, s. 1 (3).
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P.

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of revenue-paying estate, effect of, on relation of landlord and tenant, ss. 111, 128 of Act VIII (B.C.) of 1876.

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persons occupying land within, bound by rules and conditions binding on tenure-holder, s. 194.
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of correctness of map or measurement against raiyat disobeying order to attend and point out boundaries, s. 91 (2).
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presumption that such notice was given to be made in certain cases, s. 86 (3).
raiyat may serve notice of surrender through Civil Court, s. 86 (4).
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SURVEY:—See *Bengal Survey Act, Measurement, Record of Rights.*
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T.

TALU'K, TALU'KDAR:—See *Patni, Registry, Tenure, Tenure-holder.*
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V.

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Y.

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SOME OPINIONS OF THE PRESS UPON THE FIRST EDITION.

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