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 Jafir 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 *zemindaris* 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 Farokhsir 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 Amils, or rulers for the time being, distressed the inferior *zemindars* by every possible mode, until they were reduced to the necessity of selling their *zemindaris* 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 zemindarís 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 *zemíndar* 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 land, 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

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[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 *zemindaris*, 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.

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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 *zemindari*, but not always. The larger *talúkdars* were *huzúri*, i. e. they were immediately under the Supreme Government, to which they paid their revenue direct: while the smaller ones were *maskúri* or specified, *i. e.* in the *sanad* of the *zemindar*, through whom they paid their revenue. Doubtless all were originally *huzúri*, 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 *id.*

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.

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[4] 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 Talúkdars and other actual Proprietors of Land in Bengal, Bahár 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 lease-holders, 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 middle-man 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 *khudkahst 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*[2]—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.

[2] 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*.[1] 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,[2] which formed part of the Code of 1793, and

View of Collector of Chittagong in 1811.

[1] First collection of rent at the beginning of the year.

[2] Regulation XLIV of 1793.—That the opinion of the Collector of Chittagong was not remarkable will appear also from the following opinions given in 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-

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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.

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[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 *zemindari* 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 *21st 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 18th 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 *Jaglr*.

[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 Amíns 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 *chechar* 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 *nirkbandi* 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 kharif 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 *zemindari* 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] *Rapid and Extensive Reclamation.*

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] *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 *Diwání*. 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

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]

Opinion of Mr. Cornish, Judge of the Patna Court of Circuit, in 1814.

[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 *nirkbandí* 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]

§ 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*,

Provision for Disputes as to the Rates of Rent to be entered in the 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.

Complete Failure of the Patta Regulations.

§ 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

Causes of Failure.

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[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.

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[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 *semindar* 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 *semindar* will not admit this right, it is evident that no rules can be framed which can put a stop to disputes between the *semindar* 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 *semindar* 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 *semindars*, and that they cannot enforce the payment of more than they have agreed to pay."[9]

Opinions of the Government of India expressed in a letter to the Court of Directors in 1815.

§ 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

[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 levy anything in addition to the regular established rate. The *abwábs* were exactions which were submitted to of necessity, but which, as they were not sanctioned by the

[2] *Revenue Letter from Bengal, dated 7th October* 1815. I *Revenue Selections*, pp. 294-5. They further pointed out that the abolished offices of *Kanungoes* and *Patwaries* had been an affectual means to this end.

[3] "*Land Tenure and the Principles of Taxation*" by a Civilian.

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.

§ 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

The Huftum or Seventh Regulation of 1799—Preamble.

[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

Procedure to recover Arrears of Rent not realizable by Distraint of Personal Property. Arrest of the Tenant and Attachment of the Tenure.

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

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.

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.

Tendency 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

Injurious Effects of the Legislation of 1799.

[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 *Kazi* 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]

Raiyats forced to pay double rent when Zemindars at feud.

§ 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.

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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 *nugdi* 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 *pattidar*,[7] 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;

[7] 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.

[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.

§ 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

Two Safeguards for payment of the Revenue: (1) Term of Leases limited to Ten Years, (2) Avoidance on Sale.

[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*."

Proposal to regulate Landlord's general Right to Enhance Rents.

§ 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

[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."[1]

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.

[1] 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 *mustajir* 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.

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[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.

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[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.

Baldore, 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.

Rise of the Maratta Power.

§ 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

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."

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[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.

§ 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

Berar or Nagpur.

Cession of the Province of Cuttack.

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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

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[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

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[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.

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]

Commissioners report against an immediate Permanent Settlement.

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,[2] 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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[2] *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-

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[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 Diwání 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 Diwání 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 Diwání 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]—

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 Khúdkasht Kadímí Raiyats.

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[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 Diwáni 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]

§ 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 I of 1845.

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 *zemindari* 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.

§ 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[4] 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

Provisions of Regulation VII of 1822 not carried into immediate effect.

Reasons for want of progress.

[4] 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 9th 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 13th*, 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.

§ 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]

Settlement inadvisable where Rental not developed.

[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.

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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: *1st*, by the increased relative value of corn: *2nd*, 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.

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[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 persons 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 Jotedars of Rungpore.

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."

Effect of the Case-law upon the status of this class.

§ 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

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?"

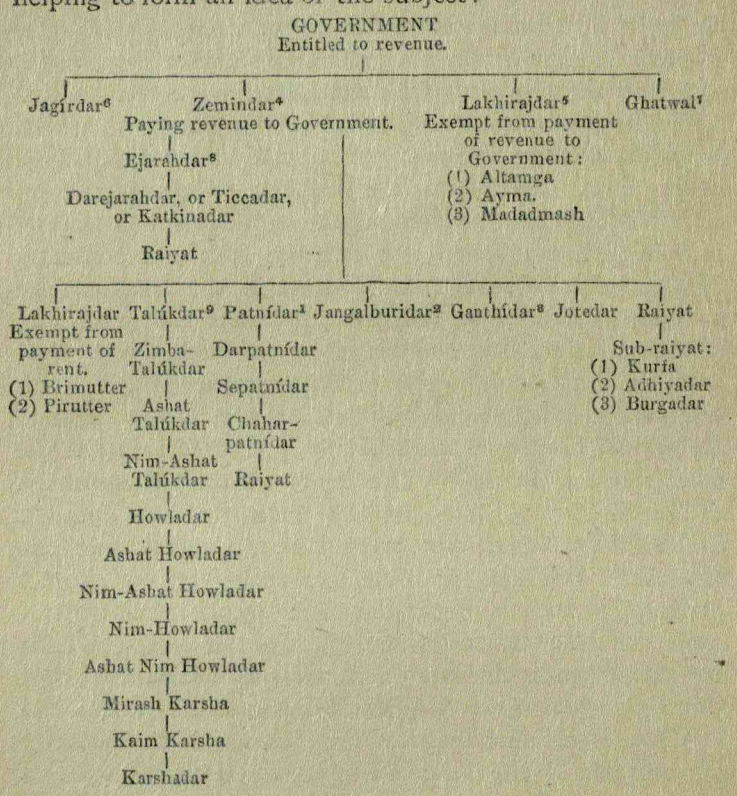
§ 397. "After the fullest consideration of the whole subject, it appears to us impossible to discover any principle of distinction between *raiyats* and tenure-holders or undertenure-holders, which will hold good universally or even in the large majority of cases. If cultivation be taken as the test 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 *salis* 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 Talúkdari 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*

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[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 prote[illegible]n 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 1 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 *námakmúl* 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 *behríwar*, 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 *behríwar* 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 *dchára* = 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) *Pattidarí 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.

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."

Lord William Bentinck's View of the Pattidari Tenure.

§ 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

Three classes of Raiyats according to Lord William Bentinck's View in 1832.

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, jadíd*, 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.

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[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 Jounpoor. 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*, *chappurband*, *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 *30th 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. 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

Birt Tenure.

Baikitát.

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[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 (*rassadi*) 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 *Máfi 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, *biswídár*, 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.*

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[9] *Mâfi*, *mâfi* 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 *Dewuttar*. *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, Pálan, &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.

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[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

Abolition of Zemindars' power of compelling the attendance of the Raiyats.

§ 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.

[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 kadimí 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 519.
[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.[1] 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.

[1] 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*

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[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 *patwari* 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.

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

Operation of the Twelve Years' Rule.

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

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.

Third ground — Quantity of Land held by raiyat more than rent was previously paid for.

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*[8] 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

[8] 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—

$$\left.\begin{matrix}\text{Former gross}\\ \text{value of pro-}\\ \text{duce on aver-}\\ \text{age of 3 or 5}\\ \text{normal years}\end{matrix}\right\} : \left\{\begin{matrix}\text{Present gross}\\ \text{value of pro-}\\ \text{duce on aver-}\\ \text{age of 3 or 5}\\ \text{normal years}\end{matrix}\right\} :: \text{Former rent} : \left\{\begin{matrix}\text{Enhanced}\\ \text{rent.}\end{matrix}\right.$$

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 *patni* 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 *raiyatwárí* 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 *raiyatwari* 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.

[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 *patwari* 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.

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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—*1st*, as to the quantity and quality of the produce that he can fairly reckon on obtaining from the land; *2nd*, as to the expenditure necessary to raise this produce; and *3rd*, 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."

Conditions to which any theory of Rent must be adapted in India.

§ 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

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,[1] 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

[1] 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.

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[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 *talúkdars* 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

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[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.

Singular System of England not suited for other Countries.

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.

§ 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 *raiyatwari* 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

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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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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 mahâls 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. 83: 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.

Tenant not liable to transferee of landlord's interest for rent paid to former landlord, without notice of the transfer.

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.

[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.]

Liability for rent after transfer of occupancy-holding.

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.

[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.

Abwáb, &c. illegal.

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.

[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.]

Penalty for exaction by landlord from tenant of sum in excess of the rent payable.

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

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.

Definition of "improvement."

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.

(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.

Right to make improvements in case of holding at fixed rates and occupancy-holding.

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.

(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.

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.

Expenses of proceedings under chapter.

[The excepted case is where a settlement of the revenue is being made.]

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.

Presumption as to fixity of rent not to apply where record has been prepared.

[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.

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.

Saving as to khámár land.

[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.]

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 Government to order survey and record of proprietor's private lands.

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

Power for Revenue-officer to record private land on application of proprietor or tenant.

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.]

Payment into Court of money admitted to be due to third person.

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.

(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.]

Payment into Court of money admitted to be due to landlord.

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.

[This provision also is new and may be a check upon another kind of defence too often false.]

Provision as to payment of portion of money.

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.

[This is a concession to a defendant, who is really honest in the defence which he makes.]

Court to grant receipt.

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.

[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 pargana, 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.]

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.

Sale of tenure or holding subject to registered and notified incumbrances, and effect thereof.

[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.

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.

Sale of tenure or holding with power to avoid all incumbrances, and effect thereof.

(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.

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.

Sale of occupancy-holding with power to avoid all incumbrances, and effect thereof.

[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.

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.

Decree-holder may bid at sale; judgment-debtor may not.

(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.]

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.

Application by judgment-debtor to set aside sale.

[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.]

180. (1) Notwithstanding anything in this Act, a raiyat—

Utbandi, chur and dearah lands.

(*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.

181. Nothing in this Act shall affect any incident of a ghatwáli 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.

Saving as to service-tenures.

[As to Ghatwali tenures, see Reg. XXIX of 1814: Act V of 1359: 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.]

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.

Homesteads.

[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.]

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.

Saving of custom.

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.

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.

Limitation in suits, appeals and applications in Schedule III.

[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.

Power for landlord to act through agent.

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.

[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.]

Joint-landlords to act collectively or by common agent.

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.

[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 patní 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 ; Thánd
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 ; Thánd
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.			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 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			

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. 469; S. C. I. L. R. 7 Calc. 127: 12 C. L. R. 58, 318; I. 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.

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[1] It is proposed to bring the Act into force on the 1st November 1885.

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what tenants may be ejected for arrears of rent, s. 66.
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ENTRY UPON LAND:
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F.

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G.

GARDEN:
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GAZETTE:
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GHATWALS:
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GUMASHTAS :
to be recognized agents of landlords although resident within the jurisdiction, s. 145.

H.

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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.
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Court making decree for ejectment to determine amount of compensation, s. 82 (2).
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regard to be had to what considerations in estimating compensation, s. 83 (1).
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avoidance of, by sale of tenure or holding in execution of decree for arrears of its own rent, ss. 159-177—See *Sale for Arrears under Decree.*
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INTEREST:
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these provisions may not be affected by any contract made after the passing of The Tenancy Act, s. 178 (3) (*h*).
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on purchase-money of transferable tenure or holding when sale set aside, s. 174 (1).

IRRIGATION:
charges to be considered in proceedings for commutation of rent, s. 40 (4) (*c*).
preparation of land for, to be presumed an improvement, s. 76 (2) (*b*).

ISTEMRARI TENURE;
protected from avoidance on sale of estate for arrears of revenue, s. 37 of Act XI of 1859; s. 12 of Act VII (B.C.) of 1868.

J.

JOINT LANDLORDS:—See *Co-sharers.*
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JOINT UNDIVIDED ESTATE:—See *Co-sharers, Manager.*
appointment and removal of managers of, when co-owners dispute, ss. 93-100.

JUDICIAL PROCEDURE:—See *Agent.*
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naibs and gumashtas to be recognized agents of landlords, although resident within the jurisdiction, s. 145.
special register of suits between landlord and tenant to be kept in each Court in form prescribed by Local Government, s. 146.
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rules of procedure for suits to recover rent, s. 148.
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JUDICIAL PROCEDURE:—*Continued.*
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High Court may direct service of summons by registered letter, s. 148 (*d*).
no written statement without leave of Court, s. 148 (*e*).
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unless it is a decree for ejectment for arrears, s. 148 (*g*).
no execution by assignee of decree not being assignee of landlord's interest, s. 148 (*h*).
defendant admitting rent due, but pleading that it is due to a person other than plaintiff, must pay amount into Court, s. 149 (1).
notice of payment into Court to be given to such other person, s. 149 (2).
unless such person institutes a suit within three months, money to be paid to plaintiff, s. 149 (3).
this not to affect right of third person to recover it from plaintiff, s. 149 (4).
defendant pleading that amount claimed is in excess of what is due must pay into Court what he admits to be due, s. 150.
in these two cases Court may accept a reasonable portion of what is admitted to be due, s. 151.
Court to give receipt for money paid in; receipt to be a valid acquittance, s. 152.
no appeal in certain cases; District Judge's power of revision, s. 153.
decree for enhancement to take effect from what time, s. 154.
equitable relief to tenants against forfeiture, s. 155.
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in suit to eject trespasser, Court, if asked by plaintiff, may declare defendant liable to pay a fair rent, s. 157.
Court may, if asked by either party, determine boundaries, description of tenant, nature of tenancy, rent payable, &c., s. 158 (1)
may, to this end, direct local inquiry by Revenue-Officer, s. 158 (2).
order to have effect of decree, and be subject to appeal, s. 158 (3).

K.

KAMAT LAND:—See *Khámár*.

KHAMAR:
nothing in Chapter V of The Tenancy Act confers a right of occupancy in, s. 116.
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Local Government may direct Revenue-Officer to make a survey and record of, within a local area, s. 117.
Revenue-Officer may, on application of proprietor or tenant, ascertain and record whether land is or is not, s. 118.
provisions as to publication of record, decision of disputes, appeal, &c., s. 119.
what land to be recorded as *khámár* land, s. 120 (1) (*a*), (*b*).
regard to be had to local custom and other considerations, s. 120 (2).
Civil Courts to be guided by same rules as Revenue-Officers, s. 120 (3).

KHAS MAHALS:
included in term "estate," s. 3 (1).

KHUDKASHT RAIYATS:
protected from ejectment on summary sale of superior tenure for arrears of rent, cl. 3 of s. 11 of Reg. VIII of 1819.

KIND:
rent payable in—See *Produce-Rents.*

L.

LAKHERAJ LAND:—See *Revenue-free land.*

LAND:—See *Entry upon Land.*

LANDLORD: See *Agent, Produce-Rents, Receipt, Record of Rights, Transfer.*
definition of the term in The Tenancy Act, s. 3 (4).
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may not impose abwabs on his tenants, s. 74.
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).
damages against landlord suing for rent without reasonable or probable cause s. 68 (2).
acquisition by, of land for building or other useful purpose, s. 84.
may enter on holding surrendered and let or cultivate himself, s. 86 (5).
so as to holding abandoned, but must give notice to Collector, s. 87.
not bound by division of tenure or holding, or distribution of rent made without his written consent, s. 88.
notification to, of incumbrances created on tenures and holdings, s. 176.
conditions binding proprietor or permanent tenure-holder bind persons occupying land within their estates or tenures, s. 194.

LANDLORD AND TENANT:
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.
relation of, how affected by partition of joint revenue-paying estate, ss. 111, 128, of Act VIII (B. C.) of 1876.

LAND REGISTRATION ACT:
receipt of person registered under, as proprietor, manager, &c. is a good discharge for rent, s. 60.
person not registered under, as proprietor, manager, &c. may not distrain for rent, s. 121 (1).

LEASE: See *Incumbrance.*
of land under management of Court of Wards, s. 9 of Act IV (B.C.) of 1870.
by managers of lunatics' estates, s. 14 of Act XXXV of 1858.
by managers of minors' estates, s. 18 of Act XL of 1858.
by Beerbhoom ghatwals, s. 1 of Act V of 1859.
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.

LIMITATION:

period of one month, for objecting to price-list published by Collector, s. 39 (3).

of six months after expiry of term, for suit to eject non-occupancy raiyat, s. 45.

of three months from refusal to execute agreement for enhanced rent, for suit to eject non-occupancy raiyat on ground of such refusal, s. 46 (1).

of three months from date of payment, for suit for penalty for withholding receipt, s. 58 (1).

for suit for penalty for withholding receipt in full or statement of account, s. 58 (2).

period of six months, for suit against landlord for penalty for exaction, s. 75.

of twelve months, for application for registration of landlord's improvement, s. 80 (3).

for suit by raiyat to recover possession of holding alleged by landlord to have been abandoned, s. 87 (3).

period of two years, for measurement by purchaser otherwise than by voluntary transfer, s. 90 (2) (*c*).

suits, appeals, and applications to be instituted and made within time prescribed by Sched. III of Tenancy Act, s. 184 (1).

suit for ejectment of tenure-holder or raiyat on account of breach of condition within one year from breach, *art.* 1 of Sched. III.

suit for recovery of arrear of rent due before deposit of rent, within six months from service of notice of deposit, *art.* 2 (*a*) of Sched. III.

suit for recovery of arrear of rent in other cases, within three years from last day of year in which it fell due, *art.* 2 (*b*) of Sched. III.

suit to recover possession by occupancy-raiyat, within two years from dispossession, *art.* 3 of Sched. III.

appeal from decree or order of District or Special Judge, within thirty days from date of decree or order, *art.* 4 of Sched. III.

appeal from order of Collector, within thirty days from date of order, *art.* 5 of Sched. III.

application for execution of decree or order, not being a decree for money exceeding Rs. 500, within three years from date of final decree or order, *art.* 6 of Sched. III.

but where execution prevented by force or fraud, Indian Limitation Act to govern, *art.* 6 of Sched. III.

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).

sections 7, 8 and 9 of Indian Limitation Act not to apply to suits and applications under Tenancy Act, s. 185 (1).

the other provisions of the Indian Limitation Act to apply, s. 185 (2).

LOCAL GOVERNMENT:

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.*

may, with similar sanction, extend the whole or any part of the Act to Orissa, s. 1 (3).

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.

to appoint Special Judges to hear appeals from Revenue-Officers making such Record, s. 108 (1).

may, with sanction of Governor-General in Council, in the interests of public order &c., empower Revenue-Officer to settle and reduce rents, s. 112.

to direct proportions in which expenses of making survey and Record of Rights shall be defrayed by landlords and tenants, s. 114.

may direct Revenue-Officer to make survey and record of *khámár* land in a local area, s. 117.

may make rules for ascertaining and recording *khámár* land, s. 118.

may prescribe by rules the charges for distraint and sale, s. 134 (1).

may, in special cases, authorize distraint without application to Civil Court s. 14 (1):

and may rescind its order, s. 141 (3).

to prescribe form for special register of suits between landlord and tenant, s. 146.

may specially empower Judicial Officers to exercise final jurisdiction in suits for rent not exceeding Rs. 50, s. 153 (*b*).

LOCAL GOVERNMENT:—*Continued.*
may authorize Revenue-Officers to make local enquiries when directed in certain cases by Civil Courts, s. 158 (2).
may direct occupancy-holdings to be sold in execution subject to registered and notified incumbrances, s. 168 (1).
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).
procedure to be followed by, in making rules under Tenancy Act, s. 190.
has power to amend, add to, or cancel rules made by itself, s. 190 (6).

LOCAL INQUIRY:
to ascertain the prevailing rate paid by occupancy-raiyats, s. 31 (*b*).
by Revenue-Officer empowered by Government, may be directed by Civil Court in certain cases, 158 (2).

M.

MAHTUT:—See *Abwabs.*

MANAGER:
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.
if they do not appoint and there is no prospect of a satisfactory arrangement, District Judge may:
(*a*) direct management of estate or tenure by Court of Wards, if Court consents, s. 95,
or (*b*) appoint a manager, s. 95.
Local Government may nominate a manager of all estates and tenures for local area, s. 96.
The Court of Wards Act to apply to management by Court of Wards, s. 97.
remuneration, powers, and duties of manager appointed by District Judge, s. 98.
High Court may make rules defining powers and duties of managers, s. 100.
manager removable by order of District Judge, and not otherwise, s. 98 (8).
District Judge may, in any case, restore management to co-owners, s. 99.
person assuming charge of estate as, to register in Collectorate, s. 42 of Act VII (B. C.) of 1876.
failing to do so, may not recover rent, s. 78 *id.*
receipt of registered manager is a full acquittance for rent, s. 79 *id.*

MANUFACTORIES:
leases of land for, protected on sale for arrears of revenue, ss. 37, 52 of Act XI of 1859; s. 12 of Act VII (B. C.) of 1868.

MAP:
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).
but not oftener than once in ten years without tenant's consent or Collector's permission, s. 90 (2), (3).
unless in certain excepted cases, s. 90 (2).
landlord desiring to measure may apply to Civil Court for order to tenant to attend and point out boundaries, s. 91 (1).
map or record of measurement presumed correct against tenant omitting to attend after order, s. 91 (2).
to be made by acre, unless otherwise directed, s. 92 (1).
acre to be converted into local measure by which rights of parties are regulated, s. 92 (2).
Local Government may make rules declaring local standards, s. 92 (3).
such declaration to be presumed correct until contrary shown, s. 92 (3).

MINES:
lease of land for, protected on sale for arrears of revenue, ss. 37, 52 of Act XI of 1859.

MINOR:
lease granted by manager of minor's estate, s. 18 of Act XL of 1858.

MORTGAGEE:
no tenant bound to pay rent to a, who is not registered in the Collector's register, s. 78 of Act VII (B. C.) of 1876.
if registered, his receipt is a full acquittance for rent, s. 79, *id.*

MUKARRARI LEASE:
Tenancy Act not to prevent grant of permanent, on any terms agreed upon, s. 179.

MUKARRARI TENURES:
protected from avoidance on sale of estate for arrears of revenue, s. 37 of Act XI of 1859; s. 12 of Act VII (B. C.) of 1868.

N.

NAIBS:
to be recognized agents of landlords, though resident within the jurisdiction, s. 145.

NIJ-JOT LAND:—See *Khámár*.

NON-OCCUPANCY RAIYATS:—See *Raiyat*.
meaning of the term, s. 4 (*c*).
law relating to, ss. 41-47.

NOTICE:
of transfer of, or succession to, permanent tenure, ss. 12-17.
of enhancement no longer necessary, *ante*, p. 893.

NOTICE :—*Continued.*
of transfer of landlord's interest to be given by transferree, s. 72.
if not given, tenant not liable for rent paid to transferror, s. 72 (1).
of transfer of his holding by occupancy raiyat, s. 73.
to quit, in case of raiyat not having a right of occupancy, s. 45.
in case of under-raiyat, s. 49 (*b*).
of surrender of holding by raiyat not bound by lease, s. 86.
to landlord of deposit of rent tendered and refused, s. 63 (2).
by landlord of entry on abandoned holding, s. 87 (2).
of summary sale, for arrears of rent, of tenure on which right of selling for such arrears has been reserved, cl. 2, s. 8 of Reg. VIII of 1819.
of sale of distrained property, s. 127.
of sale of tenure or under-tenure to be sold in execution of decree for its own arrears, s. 163.
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.
of sale of tenure for arrears of rent due to Government, s. 11 of Act VII (B. C.) of 1863.

O.

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Y.

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SOME OPINIONS OF THE PRESS UPON THE FIRST EDITION.

"Mr. Justice C. D. Field has written an admirable and exhaustive work upon this important topic. . . . Mr. Justice Field appropriately commences his work with a review of the creation and development of early property in land, the landholding of the Roman Empire, and the appropriation of land by the Celtic races, by whom the Roman Empire was broken up. He then proceeds to treat of the incidents of feudal tenures, grants of fiefs, &c., with the feudal systems in England, villein tenures, copyholds, escuage, &c. In the following chapters the land-tenures are described of Prussia and the other German States, France, Austria, Belgium and the Netherlands, Italy, Spain, the Ionian Islands, &c. The next division of the great and comprehensive book affords a distinct view, at once historical and of immediate interest, of the relations between landowners and cultivators in Russia. European and Asiatic Turkey, and Egypt are subsequently introduced; and then follow four chapters in which the land-question in Ireland, in regard to past, present, and future, is elaborately discussed. The author, who has evidently bestowed much attention upon this pressing topic, considers various proposed remedies for existing evils and questions of compensation. . . . . A work such as this was urgently required at the present juncture of discussion upon the landholding question. Mr. Justice Field has treated this subject with judicial impartiality, and his style of writing is powerful and perspicuous."—*Notes and Queries, August 25th*, 1883.

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"It is a source of some regret to us that this valuable work has not fallen into our hands at an earlier date. Its general scope is sufficiently indicated by the title, and its object is to place on record the result of the long and varied experience of a man, whose capacities and education have combined to produce in him a careful observer and an accurate student. The first subject to which attention is called is the growth of the feudal system in Europe. From this the Author passes to the tenure of land and the relation of landlord and tenant in England. His inquiries are pursued upon the historical method, and the least that can be said of their result is, that the history of the growth of the present land system in England is outlined in as concise a complete a form as in any other book with which we are acquainted. . . . . The theory of rent is also somewhat minutely discussed, and the magnitude of the evils which follow upon the indiscriminate application of the English theory is indicated. We [illegible] of land-tenure on the Continent, [illegible] upon Ireland and India are [illegible]

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—*The Law Times, October 27th*, 1883.

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those who may wish to see what we ourselves deem a thoroughly impartial statement of
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least advantage to the general reader to know he will find in the few pages with which
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Mr. Justice Field is . . . . . thoroughly impartial."—*The Statesman and Friend of*
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Cottages and Allotments Act in 1882. Passing to Prussia, Mr. Field gives a good
the important land-legislation of the early part of the present century, and again in
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of a peasant proprietary. . . . . The chapters on Russia, Turkey, and the United
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e may have an opportunity of following Mr. Field in his very valuable contribution to
of land-tenure in India. In the meantime we strongly recommend his book to all who
ted in its subject."—*The Mark Lane Express, January 21st*, 1884.