

MINISTRY OF CULTURE · GOVERNMENT OF INDIA

C.S.L

2.

A BRIEF SKETCH

OF THE

LAND SYSTEMS OF BENGAL AND BEHAR

BY

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TO

The Hon'ble Mr. P. C. Lyon, C.S.I., I.C.S.,

VICE-PRESIDENT, EXECUTIVE COUNCIL,
GOVERNMENT OF BENGAL.

THIS HUMBLE WORK

Is Respectfully Dedicated by the Author
as a Token of High Esteem
and Gratitude.

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PREFACE.

In the following pages I have attempted to present a bird's-eye view of the present and past conditions of landholding in Bengal and Behar. At its inception, the book was undertaken as a labour of love without any eye to publication, but I came later on to entertain the idea that it might prove useful to students of the land systems of this country, and in some measure also to those engaged in the administration and practice of the law on the subject. It is the first volume of a series dealing with the theory and practice of land-revenue and rent. The present treatise is a critical and historical survey carried up to date, while the next will deal with the statute and case law now in force. The first two Chapters of this volume follow the lines of two similar Chapters in Field's Introduction to the Bengal Regulations but I have had to enlarge considerably on Field's work, as it had become obsolete and out of date having been written before the passing of the Bengal Tenancy Act of 1885 which has ushered a new era in agrarian history. Moreover, the researches of modern jurists of the historical school and the labours of settlement-officer have opened up rich mines of information which were still unexplored in the days of Field.

I have used great care in the selection of materials which I have endeavoured to gather at first hand from original sources, such as bluebooks published by authority, Survey and Settlement reports and other standard works. But I confess however that, being stationed in the Mofassal, my opportunities of access to rare works of reference such as can be had only in metropolitan libraries, were of a rather limited nature and I am afraid that the book, which has been written in the intervals of a busy official life, is not free from imperfections. My only hope is that the indulgent reader will make a liberal allowance for a work carried out under difficulties. If it is given to me to bring out a second edition, I shall spare no pains to remove any defects that may come to my notice.

I have supplemented the book with an Appendix, consisting of three parts. The first contains the leading cases on land tenures as decided by the highest courts of justice ; the second is a reprint of the famous minutes of Lord Cornwallis and Mr. Shore, exhibiting opposite sides of the controversy which raged round the Permanent Settlement of Bengal and Behar ; the third is an epitome, as complete as I could make it, " within a limited compass," of subordinate interests in land existing in the different parts of the Province. I have placed all this voluminous matter at the end in order that it may not overcrowd the main perspective which the book is intended to present before the reader, while it may provide him with access to materials which will

aid him in forming an independent judgment. I take this opportunity to acknowledge my obligations to the Honourable Messrs. P. C. Lyon and N. D. Beatson Bell, Members of the Bengal Executive Council; Mr. N. Bonham Carter, Commissioner; The Honourable Mr. J. H. Kerr, Revenue Secretary to the Bengal Government, and Mr. J. A. Woodhead, Collector, for having encouraged me in my work; and, lastly, to Babu Upendra Kumar Roy, Vakil, High Court, for having assisted me in revising the proof.

CALCUTTA,
21*st January*, 1915.

ATUL CH. GUHA.

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ERRATA.

Page 6, in footnote 2, *for* " I. L. R., 13 Mad., 93," *read* " I. L. R., 13 Mad., 89."

" 15, in line 1, footnote 6, *for* " under " *read* " in."

" 35, in line 5, footnote 2, *for* " Ib., 593," *read* " Ib., 159."

" 46, in line 6, *delete the clause* " in order of the aggregate of interest held together " *with the commas before and after it.*

" 98, in line 6, *insert* inverted commas after the word " assessed."

" 99, in line 4, *for* " having regard to " *read* " taking into account "

" 109, *delete* lines 3, 4 and 5.

" 149, in line 29, *delete* the word " the " after the words " resort to."

" 163, in line 19, *delete* the word " allowable."

" 175, in line 11, *for* " natural " *read* " national."

" 177, in line 8, footnote 2, *for* " at " *read* " of."

" 178, in line 3, footnote 2, *for* " complaints " *read* " complaint."

" 180, in line 7, *for* " lands " *read* " laws."

" 190, in line 3, footnote 2, *for* " he " *read* " the raiyat."

" 191, in line 25, after " Midnapur " *add* " Bankura, Jessore, Rajshye, and Noakhali."

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CHAPTER I.

Land Tenures, past and present.

Definition of "Land Tenure."

The term "Land Tenure" is used in this chapter in a comprehensive sense. It includes all kinds and degrees of interest in land and not merely that of a "Tenureholder" as defined in the Bengal Tenancy Act.[1]

The primitive forms of land-tenure in Bengal and Behar were, in the main, copied from similar institutions founded by Aryan colonists in the north-western frontier of India. It is well known that in the pre-historic past India was the scene of a series of tribal immigrations from the table lands of Central Asia. The waves of Aryan immigration gradually extended to the far south-east and swept over Behar and the lower province of Bengal. The enterprising newcomers travelled to the remotest parts and soon converted the Dravidian and aboriginal chiefs to Hindu ideas. Aryan priests, adventurers, merchants and artificers found their way to Bengal and beyond; and by their superior intelligence and culture succeeded in gradually engrafting their customs and institutions upon the primitive indigenous systems. The ideas which the colonists brought with them exercised a powerful influence over the institutions of the new country and moulded the system of land-tenures till it became in many of its features a reproduction of the forms of tenancy current in northern India. Though the scope of this book is confined to Bengal and Behar it would be an

Land-tenures in Bengal modelled on the systems prevalent in Northern India.

[1] In the Bengal Tenancy Act of 1885 the term is used in a more restricted sense. It denotes the interest of a tenure-holder (who is usually a middleman) as distinguished from that of a proprietor, rayat or under rayat.

interesting digression to turn aside for a moment and trace the history of ancient land-tenures in north-western India which furnished a model for the Bengal and Behar systems.

The sources of information regarding the system of land-tenures which prevailed during the reign of the Hindu kings are very scanty, as few records of these times have been handed down to posterity. At the dawn of the historic period, the Aryan Hindus had settled down in the land of the five rivers after exchanging their nomad habits for agricultural pursuits. The earliest reference to proprietary right is to be found in the Code of Manu which was probably composed in the fifth century before Christ. The passage runs thus "Sages pronounce cultivated land to be the property of him who cut away the wood or who cleared and tilled it."[1] The Aryan immigrants found in India an abundance of culturable land and virgin forests. They acquired a decided preference for agriculture and called themselves "tillers." (Sanskrit Ri—to till), in contradistinction to their barbarian neighbours who lived on precarious game and wild fruits. It was natural, therefore, that they should jealously guard the rights of the cultivator.[2]

Manu on property in land.

Manu's conception of property corresponds to the doctrine of "occupatio" which prevailed in Rome in later times.[3] The occupatio contemplated by the Roman law, as also by

Manu's conception corresponds to Roman occupatio.

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[1] Chap. IX, Sec. 44.

[2] Cultivation was in those early days strongly insisted on and penalties were prescribed for failure on the part of the raiyats to till the land. This was a matter of necessity in those days, when the extent of uncultivated area was very large. Vyasa says. "If a man after taking a field with the object of cultivating it, fails to do so, he should be made to pay to the owner a proportionate share of the corn, which the field could have yielded if it were cultivated and in addition a fine to the king (Quoted in Vivad Ratnakar). Narada and Jagnavalkya write in the same strain (Narad Smriti, Chap. XI, sec. 24; Jagnavalkya, Bombay Edition, p. 218).

[3] The above theory was practically identical with the one which was held by the Jurists during the seventeenth and eighteenth centuries. By

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ancient Indian sages, was not confined to partial acts of dominion but extended to full and effective possession. Modern jurists of the historical school are of opinion that this theory about the origin of property has no foundation in fact. Sir Henry Maine has discussed it at length and come to the conclusion that "though this theory in one form or another is acquiesced in by the great majority of speculative jurists, the application of the principles of occupancy to land dates from the period when the "jus gentium" was becoming the Code of nature and that it is the result of a generalisation effected by the jurisconsults of the golden age."[1] However this may be, the fact remains that the juridical conceptions of Manu who lived and thought at a time when Rome was in its infancy were identical with the notions developed at a much later stage of civilisation in other classic countries. The Code of Manu does not, however, lay down any general theory of land-rights, far less does it declare who is the absolute owner of the soil. The passage quoted from Manu at the outset of

Manu does not formulate any theory of land-rights.

"Occupatio" things which are not already the subject of property, became the property of the first occupant; "for natural reason gives to the first occupant that which had no previous owner" (Sandar's Justinian, p. 172).

[1] Ancient Law, Chapter VIII, pp. 246, 247. It may be noted here that the researches of the historical school of jurisprudence, though they have done much to elucidate the growth of property, tell us next to nothing about its origin. This is not to be wondered at, as Maine began his researches at an advanced stage of human progress, as that known as the patriarchal stage when mankind was grouped in tribes, leading a pastoral or agricultural life, each tribe being composed of groups of related families, all living under the authority and protection of the "Patriarch." But the precarious physical possession of the wandering patriarch over his family and physical objects in their use is not the source of proprietary rights. The real origin of property lies in that stage of progress when a right of possession and user was recognised independently of the physical power of possession and use; *e.g.*, when a body of savages agree to respect the acquisitions of each other (Bentham's Theory of Legislation, Chap. VIII, p. 113).

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this chapter does not throw much light on the extent or form of the property acquired, whether absolute and exclusive or limited; whether in the soil itself or only in the right to cultivate it. The evolution of definite theories about rights in land belongs to a later stage of progress but the ancient Hindu notions on this subject are distinctly in advance of the times and illustrate the rapid progress attained by the Indo-Aryan branch of the human race.

Further development of proprietary notions.

The crude notions which prevailed in the days of Manu attained greater perfection in the process of time. This subsequent development recognised in adverse possession an important factor for the modification of the rights of the first cultivator and foreshadowed the much more modern doctrine of the great German Jurist, Von Savigny, who holds that property arose from adverse possession, ripened by prescription. By the time the Sutras were composed, the effect of adverse possession on the creation of prescriptive right was well understood and recognised. The institutes of Vishnu laid down that possession for three generations made up for deficiencies of title.[1] Vrihaspati dealt with the matter at greater length and held that possession for 30 years created an absolute and indefeasible title. "He whose possession has been continuous from the time of occupation and has never been interrupted for a period of 30 years cannot be deprived of such property."[2] Vyasa whose authority in these matters is very high held that "if the land of one is possessed by another for 20 years, his right to sue for possession ceases." Raghunandan who lived in Nadia in the fifteenth century after Christ and who has a large following in Bengal is of opinion that possession for more than 20 years perfects title by prescription.[3] It will

Adverse possession in Hindu Law.

1 Jolly's Institutes of Vishnu, Chap. V, p. 40.

2 Vrihaspati, Chap. IX, p. 310.

3 Vyavahartatwa. Madhusudan Smritiratna's Edition, p. 32.

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thus be seen that the period of adverse possession necessary to create a prescriptive title was gradually reduced from three generations or 99 years to twenty years. The law of England as to acquisition of right by prescription passed through similar stages until the period of limitation was reduced to 20 and recently to 12 years.

Nature of the right of occupancy.

The right of occupancy acquired by the cultivator was heritable from the very beginning of the historical period. The Sutras which may be described as the primary source of the Hindu law laid down that land once acquired was property which was for the benefit of all generations to come. At first the cultivator had no power to alienate his interest, but in course of time the right of transfer was conceded to him. Vijnanesvar recognised the right in a limited form but Jimutavahan held that the cultivator was competent to transfer his interest unconditionally by gift or sale.

Ownership of land vested in the general community.

The question of the ultimate ownership of the soil and of the existence of rights of various degrees in it has been a subject of some controversy. The trend of authorities seems to be inclined in favour of the theory that the ownership is vested in the community as a whole but that the cultivator was entitled to the usufruct and had full possessory rights in it. The aphorisms of Jaimini who, according to European authorities lived some centuries before Christ, go to show that the cultivator's right was confined to the usufruct and did not extend to the soil itself. According to Sayana's commentaries on Jaimini's aphorisms, "the soil is the common property of all and they through their own efforts, enjoy the fruits thereof."[1] This doctrine seems to have furnished a foundation for the opinion held by Sir Henry Maine and the jurists of his school that in ancient

[1] Nayamala Vistara, p. 358.

India land was considered to be communal property.[1] Subject to this limitation, the right of the cultivator to the beneficial use of land was recognised from the earliest times. Sir Charles Turner gave expression to the following opinion on this subject—"According to what may be termed the Hindu common law, a right to the possession of land is acquired by the first person who makes a beneficial use of the soil. The crown is entitled to assess the occupier with revenue and if a person who has occupied land omits to use it and the claim of the crown is consequently affected, the sovereign is entitled to take measures for the protection of the revenue."[2] This leads us to the nature of the sovereign's rights. What was the right which the king had in the lands comprised in his kingdom? There is a singular unanimity among the Indian sages on the relation of the State to its territorial possessions. From the Rigveda, which is regarded as one of the earliest records of human thought, down to the Dayabhaga of comparatively recent times, all authorities are agreed that the sovereign was not the proprietor of the soil. No doubt he was entitled to a share of the produce but this was due to him, not as the owner of the land but as the protector of his subjects. The following passage occurs in the tenth *mandal* of the Rigveda "May Indra (the king of heaven in Hindu mythology) ordain that your subjects pay to you *vali* (tax)." Narada adds by way of commentary that the *vali* is payable to the king as a reward for protecting the life and property of his subjects. The text, and the gloss of Narada go to

The rights of the crown in land.

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[1] Among civilised nations this principle still survives. Each modern nation claims a special ownership in the fisheries within a certain distance of its coasts; but among the inhabitants of these coasts, there is a common right to fish in the water thus reserved. So also each modern State recognises the shores as far as high watermark and the estuaries with their harvest of wild fowls, as the common property of its subjects.

[2] I. L. R., 9 Mad., 175. *Vide* also I. L. R., 13 Mad., 93.

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show that even at the earliest stage of civilisation, the crown had no pretensions to any right of property in the land but received a share of the produce in consideration of the protective duties of the State. There is no indication in the Code of Manu that the crown laid any claim to the ownership of land. Of course the king had his own private land, as he had a private privy purse, but "as a ruler of the whole country, his right is represented, not by a claim to general soil-ownership but the ruler's right to the revenue, taxes, cesses and the power of making grants of waste lands."[1] The later authorities—Jajnavalkya, Bauddhyana, Vasistha, Vishnu,— all follow in the same strain. Parasara who is reputed to be the latest of the Sutra writers supports this doctrine of the sovereign's rights. Coming down to still later times, we find that the same keynote runs through the Mimansa aphorisms of Jaimini, and the commentaries of Sayana and Savara. The latter discussing the nature of the king's rights says "He can not make a gift of his kingdom as it is not his; he is entitled to a share of the produce by reason of his affording protection to his subjects."

Hindu jurisprudence did not recognise the sovereign as the owner of land.

From the institutes of Manu it would appear that the king's revenue consisted of a share of all agricultural produce, varying from one-twelfth to one-sixth, according to the nature of the soil and the labour necessary to cultivate it, of taxes on trade and commerce and of compulsory service of handicraftsmen.[2] In times of emergency the king's share of the produce might be raised to one-fourth.[3] The limitation of the respective shares of the king and the cultivator, as

King's share of the produce of land.

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[1] Baden Powell's Land Revenue Systems, Vol. I, p. 129.
[2] Chap. VII, sec. 130.
[3] Chap. X, secs. 118, 120.

also the rights and obligations incidental to each, would seem to indicate something less than an absolute or exclusive right to the soil in either.

The village communities which, from the earliest times, formed a characteristic feature of the tenure of land in the Upper Provinces, call for a passing notice, though they do not seem to have struck root in Lower Bengal. The recent researches of Baden Powell, Lyall and other followers of the historical method of investigation, the numerous settlement reports and other valuable records in the archives of Government, have thrown much new light on the nature of the ancient village systems and dispelled many erroneous notions which prevailed on the subject.[1] The growth of these communities seems to have run in more or less parallel lines all the world over.[2] Commencing in community of tribal possession,[3] property in land in the Aryan colonies of Northern India gradually localised itself in village communities.[4] In

Village communities.

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[1] All writers on the subject down to a time later than the publication, not only of Maine's "Ancient Law" but of his "Village Communities" had to generalise on incomplete materials.

[2] The village community can no longer be claimed as an institution specially characteristic of the Aryan races. M. De Laveleye following Dutch authorities, has described these communities as they are found in Java and M. Renan has discovered them among the obscure Semitic tribes in Northern Africa. Though we do not usually meet with any complete and parallel survival of a common prehistoric stock of institutions, it is interesting to note how easily parallel types may be developed at very distant times and places. The resemblance between the Indian village council of Five (Panchayat) and the English "Reeve and Four men" which flourish in Canada to this day, that between the Indian system of dividing land so as to give every individual a share of every quality and the mediæval common field system is perhaps more than a curious coincidence.

[3] Baden Powell holds that there is no historical evidence of the existence of this stage of property.

[4] The idea of associating together for mutual defence and assistance is based upon natural instinct. The situation of villages in most parts of India was such as to call for some kind of union, many of the village sites

the time of Manu the tribes had settled down and agriculture had been well established. Separate villages had been formed, with a headman over each and other officials over groups of villages. The cultivators living under a common headman, were practically the owners of their several family holdings and there is no trace of any superior land-lord class. This type of the village community has been called the "raiyatwari" type. It usually consisted of a disconnected set of families, who severally owned their separate holdings. The community in the aggregate had no joint claims to the lands of the village nor were they jointly liable for the burdens imposed by the State. The revenue was assessed upon individual cultivators and the village government vested in a hereditary headman (known in different localities by different names), who was responsible for the collection of the Government revenue. As this type was early supplanted in Northern India, and did not obtain currency in Bengal, we may dismiss it from further consideration.

Two types of village communities—Raiyatwari and Zemindari.

In course of time another distinct type was developed which has been named the joint or landlord type by Baden Powell. It is marked by the distinguishing feature that there is a body of proprietors, intermediate between the king and the cultivators who claim rights over the entire village. It was, according to Baden Powell, "a growth among and over the villages of the first type.[1]

The landlord or zemindari type, a growth among and over villages of the raiyatwari type.

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were reclamation from dense jungle and men had to keep close together in order to protect themselves from the wild beasts. There was also the need to present an united front against local robbers and armies on the move.

[1] Sir Alfred Lyall is of opinion that the oldest form of village was not, as is usually supposed, a group of cultivators having joint or communistic interests, but a disconnected set of families who severally owned their separate holdings.

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The landlord villages are of widely different origin. Some of them may be traced to special movements of colonising bodies who swooped down upon land already in the occupation of cultivators whom they reduced to the humbler position of tenants. In many instances they arose from the dismemberment of the Chief's estates, from grants made by the rulers to courtiers, favourites and others, from the growth and usurpation of Government officers and revenue farmers, and from the establishment of special clans and families by conquest or occupation.[1] It is this type of village to which the well known description in Maine's "Village Communities" is alone applicable and here the co-proprietors are in general a local oligarchy with the bulk of the village population as tenants or labourers under them. Pollock thus describes the constitution and history of the landlord type of villages. "In the joint or landlord villages of Oudh, the United Provinces and the Panjab, we find a dominant family or clan, oligarchs and in fact landlords as regards the inferior majority of inhabitants and more or less democratic among themselves. This type of village which is in some ways curiously like a smaller reproduction of a Greek city state, may be due to several causes. Conquest may produce it or a deliberate new settlement or joint inheritance among descendants of a single founder."[2]

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[1] Baden Powell's Land Systems, Vol. I, p. 130. The effect of colonisation and conquest is thus described. "The result of the Aryan immigration all over India was the fusion of the Aryan and Dravidian races and the general establishment of smaller and larger rulerships or States, whose component units were village groups. These villages were owned not by joint bodies but by aggregates of separate families of landholders. In the course of time, as the rulerships broke up and new conquering chiefs established themselves, the villages fell under the power of new families who soon formed joint communities claiming the whole village. This did not take place over the whole country but sporadically and occasionally, leaving large areas with the village in their former condition." Land Systems, Vol. I, p. 138.

[2] Pollock's Notes on Maine's Ancient Law, p. 50.

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The revenue was at first assessed upon the village as a whole. The incidence was distributed among the cultivating tenants and labourers but a certain amount of collective responsibility rested upon the joint proprietary body. The village organisation contained within its fold a staff of functionaries, artisans and traders who were originally remunerated by lands or fixed fees for their services to the community. From a revenue point of view, the most conspicuous functionaries were the headman and the accountant or Patwari. The latter used to keep the village records, showing the ownership of holdings and the payments due to Government or to landlords, maintained the village maps and was generally the scribe of the community.[1]

Further progress of the village communities towards individualisation.

At an advanced stage of progress, the village *community* turned out to be a misnomer and ceased to connote any community of proprietary rights except as regards waste and pasture lands. Gradually in the course of time increase of population began to bear on the soil, the productive powers of which were further impaired in the absence of any systematic use of manure. The cultivation of land therefore called for greater skill and labour, and those who had toiled hard on it would naturally guard it against the intrusion of others who had been less active. Last of all the desire to profit by one's own skill and to retain the fruits of industry set in a tendency to individualise the collective property of the community. The arable lands thus came to be divided first among the various households, and afterwards among the several individual members of the family; only

[1] The village government was at first vested in the Panchayat or group of heads of superior families. In Shore's minutes of 1789 will be found an account of the influence of the headman and "how it was exerted for their own benefit exclusively in parts of Bengal." Panchayat denotes five but the body so-called was not limited to this number. At the present day, many castes in towns and villages have also their own "Panch" which deal with social or religious matters affecting the caste as a whole.

the waste and pasture lands remained in common. Gradually as the proprietary body became more ramified, as the shares of the original members became divided and subdivided by the operation of a law of inheritance which did not acknowledge primogeniture and as the transfer of shares increased in frequency, new rights sprang into existence and the idea was created of individual claims at variance with common ownership. Baden Powell thus interprets the meaning of the term community as used in respect of ancient village groups in India. "Though we talk about village communities we ought not to give that term any meaning of such a kind as to indicate anything like a communistic or socialistic right or interest. The term "Community" might, if not explained, be apt to mislead. It can be correctly used only with reference to the fact that in many villages, families live together under a system which makes them joint owners; while in others the people merely live under similar conditions and under a sense of tribal or caste connection and with a common system of local government." Each of the families comprised in the village community had its own piece or pieces of land for homestead and cultivation. The waste lands, grazing ground, the watercourse, the village temples were the only property in which the families were interested in common and beyond this, there seems to have been no unity of proprietorship.[1]

The theory of descent from a common ancestor.

The Hindu village communities preserve a tradition of descent from a common ancestor who founded the village. But in many instances the sale of the rights of individual share-holders of the coparcenary body and the admission

[1] The personal relations to each other of the men who composed the village community are indistinguishably confounded with their proprietary rights and to the attempts of the English functionaries to separate the two may be assigned some of the most formidable miscarriages of Anglo-Indian Administration. (Maine's Ancient Law, p. 200.)

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of strangers as adopted members changed the whole leaven of these communities and often converted this traditional relationship into a mere fiction of law. Maine writes: "The village community is not necessarily an assemblage of blood relations but it is either such an assemblage or a body of co-proprietors formed on the model of an association of kinsmen."[1] There is no doubt that the original unity of bond was greatly weakened by the absorption into the brotherhood of strangers from outside.[2]

Introduction of strangers.

The introduction of strangers was effected in two ways—

(1) A member of the community might sell or mortgage his rights to a stranger who would ordinarily come and settle in the village.

(2) The original settlers finding that they had more lands than they themselves could cultivate would endeavour to make a profit of it through the labour of others. No method came easier than to assign it to persons who would engage to pay the Government share of the produce with an additional share to the community. Ordinarily these persons would not reside in the village but merely sojourn there for the purposes of cultivation.

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[1] Maine's Ancient Law, p. 264. Mitra remarks. "The different families that occupied or cultivated the lands of the village were not the descendants of the same parents and there was no necessary kinship among them as has sometimes been erroneously supposed. These families frequently belonged to different *gotras* and to different castes and if the members called each other cousins, it was not on account of any relationship of blood or marriage." Land Laws, p. 15.

[2] Maine observes. "It is further suspected by all who have examined their history that the village communities like the gentes, have been very generally adulterated by the admission of strangers." Ancient Law, p. 265. The results of the theoretical kinship gradually came to be confined to the duty of submitting to common rules of cultivation and pasturage and of abstaining from sale or alienation without the consent of the brotherhood.

There were thus three classes of persons having an interest in the soil—

Three classes of cultivators interested in the land.

(1) The original settlers, their descendants and successors in interest.

(2) The cultivators who had permanently settled in the village.

(3) The mere sojourners in the village or those who, without living in the village, cultivated land of the village.

The *Khudkast* rayats or permanent tenants.

The permanent tenants who had settled in the village were called *Khudkast* rayats, *i.e.*, rayats cultivating the land of their own village. The rights of this class have often been mistaken and they have been confounded with the village *zemindars* or peasant proprietors whose lands they cultivated. This was no doubt due to the fact that while in some parts of the country, the village zemindars were the actual cultivators, in other parts they had acquired a superior status and the manual labour of agriculture had come to be delegated to tenants. Where the original settlers were numerous and their descendants increased in numbers sufficient to cultivate all their culturable land, the cultivators would naturally be found to be the proprietors or village zemindars. Where the lands of the village were too extensive to be cultivated by the first settlers or their descendants, strangers would be introduced as tenants.[1] Thus the state of things would naturally vary in different parts of the country.[2] The Khudkast rayats had a hereditary right to

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[1] Field's Introduction to the Bengal Regulations, Chap. II.

[2] Elphinstone remarks. "Many of the disputes about the property in the soil have been occasioned by applying to all parts of the country facts which are only true of the particular tracts; and by including in conclusions drawn from one set of tenures, other tenures, totally dissimilar in their nature." History of India, p. 73.

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cultivate the lands of the village in which they resided.[1] Sir George Campbell is of opinion that this hereditary right amounted to no more than a "moral claim."[2] The right was really founded on the authority of custom[3] which, under a Government of absolute discretion, destitute of the modern appliances of legislation, was for all practical purposes the sole legislative power. The power of eviction might in theory have rested with the landlord but as there was no competition for land at that period, new tenants did not often present themselves to take the place of the old and so the practical exercise of the power was not frequent. It may therefore be safely asserted that the *Khudkast* rayats could not be ousted while they continued to cultivate their holdings and pay the customary revenue; but they could not originally transfer their holdings without the consent of the community.[4] There were, however, very few occasions for sale or voluntary transfer, as the cultivators had very little left to sell after paying the Government revenue[5] and as there was not much demand for land. By the lapse of time the original condition of transfer, *viz.*, the consent of the village community, ceased to be binding. We may therefore conclude that the Khudkast rayat's interest in the land, though inalienable at first, became transferable in the process of time.[6] But it fell short of a full proprietary right inasmuch as his power of

Incidents of the status of *Khud-kast* rayat.

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[1] Fifth Report, Vol. II, 299, 301; Harington's Analysis, Vol. III, 353; *Thakurani Dasi* v. *Bisvesvar Mukherjee*, B. L. R., Sup., Vol. 209.

[2] Campbell's Cobden Club Essay, 165.

[3] Fifth Report, Vol. I, 140, 162, 164; Harington's Analysis, Vol. III, 426 (*n*).

[4] Fifth Report, Vol. I, 488; Robinson's Land Revenue of British India, pp. 15, 41.

[5] Campbell's Cobden Club Essay, 170.

[6] Under the Bengal Tenancy Act, 1885, the transferability of an occupancy-holding which corresponds to the interest of a Khudkast, has been left to be regulated by custom.

disposal was subject, in theory at least, to a right of pre-emption in the other members of the cultivating group.

Paikast or temporary tenants.

The temporary tenants were generally residents of another neighbouring village, who could not obtain in their own village as much land as they were capable of cultivating and these were called Paikast[1] rayats, or rayats cultivating land near their own village. These have been held by all authorities to have no rights and to be mere tenants-at-will. They would appear to correspond to the *Fudihir* tenants of Ireland. They paid lower rates than the Khudkast rayats and had to be attracted by favourable terms, since the competition formerly was for cultivators and not for land.[2] They had no permanent interest in the land. Their rights were left to be settled by contract and were hardly allowed to come under the higher protection of custom which regulated all the more important and permanent concerns of rural life.[3]

Village communities being based on communal, as distinguished from individual rights were repugnant to Mahomedan and English ideas and fell into decay with the advent of Mahammadan rule.

Such in brief outline was the village community which possessed an inherent vitality in itself that enabled it to withstand to some extent the revolutions of power and the changes of dynasties. The village community was dominated by notions of *joint* as distinguished from *individual* rights and its principle was repugnant to the Mahomedan and English ideas of personal and individual rights. None of the philosophical theories which the genius of the Hindu race produced

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[1] *Pai*-new and *Kast*-cultivator.

[2] In many parts of Bengal, the contrary is now the case. Population has commenced to bear upon the soil and a certain degree of competition for land has been the result. Out-siders will thus pay higher rents than the old residents who enjoy a right of occupancy.

[3] Phillips' Law of Land Tenures, p. 23.

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are founded on a conception of the right of the individual, as distinguished from that of the group in which he is born but we have already referred to certain latter-day influences which led to the disintegration of family property in Hindusthan. The influence of Mahomedan ideas and the effect of a period of disorder and disruption seem to have checked the further progress of the village community which appears to have gradually lost its importance as a fiscal organisation, although it continued to retain its hold in social matters. In Bengal proper where the conception of personal rights rapidly attained a high degree of perfection,[1] the village community early fell into decay, if indeed it ever existed in its integrity.[2] It is a noteworthy fact that in Bengal not a single estate has been settled with a village community as such or with a village headman.

Agents superior to the village community.

It remains to notice the machinery for revenue collection so far as it consisted of agents superior to the village community. The officer to whom the headman paid the revenue was the fiscal head of the *pergana* or division, comprising a number of villages or *mouzas*. He was generally called a *Choudhury* or *Desmukh*, and with the assistance of a military force preserved the peace and collected the revenue of the division and remitted it to the Treasury. He retained ten per cent. of the collections as his remuneration; but was frequently paid by an assignment of the revenue of a certain

[1] In Bengal the joint-family system, which in principle is akin to the village community, has failed to secure as firm a footing as it has done in other parts of the country. Here it is most loosely connected and most easily dissolved; the rights of its members are alienable and freely alienated.

[2] Of late years there has been a tendency to remodel political institutions on the basis of the Hindu village organisation but the success of any such attempt is problematical in Bengal where the village community does not appear to have taken deep root. It would, however, be perhaps to the advantage of the district administration to utilise the influence and services of the village elders more freely than is being done at present.

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portion of the land. Such assignments were known as *Jagirs*. The zemindars of Mahomedan times grew in many cases out of the Hindu Choudhuries. It is not clear to what extent the office of zemindar or revenue collector prevailed in the Hindu village community. From the constitution of the earlier type of the village community and of the revenue agency superior to it, it would appear that there was but little room for the zemindar or revenue agent in that system. Yet, when the headman happened to be set aside, the revenue would sometimes be farmed out to official collectors of revenue or to outsiders. Again, there were rayats not forming part of any village community, from whom revenue had to be collected and the zemindar would ordinarily be employed for this purpose. It is positively alleged by some that there were in Hindu times hereditary officers corresponding to the zemindar but that they were only officials, though hereditary.[1] In any case it seems to be clear that there were no more than the rudiments of the zemindar[2] or revenue collector in the Hindu system.

Summary of the main features of the Hindu Land system.

The main features of the Hindu Land system may be summed up as follows:—Three parties were primarily interested in the land as far as its *produce* was concerned. These were the (1) King, (2) an oligarchical family having superior interest, and (3) the cultivator or tenant in actual occupation of the land. None of the parties had any absolute right in the land such as an English proprietor had in his estate and the cultivator or tenant enjoyed a customary status which was in many respects independent of his contractual relation with his landlord.

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[1] Fifth Report, Vol. II, 7.

[2] The word 'Zemindar' has a dual sense. It means a (1) landlord, (2) a collector of revenue—The term has been used here in the latter sense.

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The Mahomedan conquest of India began in the thirteenth century. According to Islamic law, a Mahomedan conqueror is at liberty to divide the country among Musalmans or leave it in the hands of the original inhabitants after imposing a tribute (Khiraj) or a capitation tax (Zezyat).[1] Every student of Indian history knows that the Mahomedan rulers did not distribute the lands among men of their faith though small portions were given away to soldiers, courtiers, etc., in the shape of *Jagirs* and *Aymas*. The term 'Khiraj' meant in its literal sense the whole of the surplus produce of land after deducting the cost of production but in actual practice two forms were recognised—one of which was more lenient than the other.[2] The more lenient form bore the name of *Khiraj Mukasima* and consisted of a division of the produce, which allotted to the sovereign about a fifth of the crop and was the exact counterpart of the old Hindu grain share. In the other form, the Khiraj was payable in money and was not restricted to any definite share of the produce. In fact the only limitation was the ability of the tenant to pay.[3] The Mahomedan rulers at first levied the Khiraj in kind but soon commuted it into a monetary payment which allowed considerable latitude in the assessment of revenue. Baden Powell says "As a matter of fact in the best days of Mogal rule, moder-

The Mahomedan theory of property in land.

[1] Hamilton's Hedaya, Vol. II, p. 209.

[2] Brigg's Land Tax in India, p. 115.

[3] Some fanatical rulers made an extreme use of their powers. The following conversation between Ala-u-ddin Khilji and a learned Quazi will serve as an index to some extreme notions on the subject.—Ala-u-ddin asked "From what description of Hindus is it lawful to exact obedience and tribute." The Quazi replied, "Imam Hanif says that the *jazia* or as heavy a tribute as they can bear may be imposed, instead of death, on infidels and it is commanded that the *jaziya* and *Khiraj* be exacted to the uttermost farthing in order that the punishment may approach as near as possible to death." "You may perceive," replied the king, "that without reading learned books, I am in the habit of putting in practice that which has been enjoined by the Prophet." Baden Powell's Land Systems, Vol. I, footnote to p. 267.

ation and control over collecting officers were duly observed, but no ruler ever dreamt that he might not from time to time (as he chose—there was no other principle) revise the assessments. Good rulers did so by a formal measurement and moderate additions. Indifferent rulers did so by the easier expedient of merely adding on "cesses" (known in revenue language as *hubub* and *abwab*). Bad rulers simply bargained with farmers for fixed sums, thus both compelling and encouraging the farmer to raise the assessment on the cultivators or, in other words, delegating to the farmer the proper functions of the state officer in revising assessments."[1] How the revenue farmer exercised this power to grind down the cultivators we shall see in the next chapter.

The Mahomedan law did not recognise the sovereign as owner of land.

Both the Hindu and Mahomedan jurists are at one in their adherence to the doctrine that the king had no proprietary rights in land beyond a definite share of its produce. The Hindu authorities have been already quoted at length. The author of the Hedaya adopts the law of Manu that land is the property of the first cultivator. All Mahomedan jurists agree that the person who first appropriates and cultivates waste land becomes *ipso facto* the owner of the soil. Briggs has by quoting chapter and verse shown that, according to Mahomedan law, revenue paying land is the property of the person who pays the tax, even though he is conquered.[2]

The practice of Mahomedan Kings coincided with the theory of Mahomedan law.

The practice of the Mogul emperors coincided with this theory of the sovereign's rights. Akbar, Shah Jahan, Aurangzeb, Alumgir II, all purchased land which was required for their personal use or for forts,[3] which

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1 Land Systems, Vol. I, p. 268.

2 Present Land Tax in India, p. 128. *Vide* also Patton's Asiatic Monarchies.

3 Appendix No. 12 to Shore's Minute of 2nd April, 1788.

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proves that the ownership was not vested in them. As late as 1715, when the East India Company applied for a grant of thirty-eight villages near their Bengal factory, they were told that they would have to purchase the rights of the owners. Later still, the author of the Sayyar Mutakharin, an authority of no mean value, is reported to have expressed the opinion that "the emperor is the proprietor of the revenue, he is not the proprietor of the soil." According to Mahomedan law "he, who has the tribute from the land has no property in it."[1] Baden Powell is, however, of opinion that "while this reasonable doctrine is that of the earlier authorities, all the later kings and nawabs of the country claimed larger rights". He says: "In the first place, it should be remembered, that most of the later governments were either powers which had recently thrown off allegiance to the Mogul government, or other chiefs, like the Peshwa of the Mahrattas and the Maharaja of the Sikhs, who were recent conquerors and therefore had extravagant claims. Moreover history shows that the native rulers of later times all adopted more or less oppressive revenue assessments and this tended to make land a burden, so that private rights were hardly asserted. Then too the right of the State to waste or unoccupied land was never doubted and this would be an element in forwarding a general claim to the soil."[2] We have seen that even during Aurangzeb's reign (1658-1707) land had to be purchased when it was required for public purposes and the encroachment of the Crown upon private property referred to by Baden Powell seems to have been an indirect process which did not openly defy constitutional rights. There is no instance in which any Mahomedan king openly asserted the principle that might is right but their policy

Contrary views of Baden Powell.

[1] See authorities quoted in Appendix No. 12 to Shore's Minute of 2nd April (1788.)

[2] Land Systems, Vol. I, p. 230.

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of land assessment effected such a depreciation of private property that hardly anything remained of it but the shadow. In theory the commutation of the Khiraj from a grain, into a money payment entailed the forfeiture of the king's proprietary interest, while the imposition of the Khiraj in any form did not detract from the cultivator's right of property in his holding.[1]

The cultivator's right under the Mahomedan régime.

Under the Mahomedan Government the cultivator's right was alienable and the lands continued to be the property of the inhabitants who might lawfully sell or dispose of them.[2] The cultivator was protected from ejectment, so long as he tilled the land and paid rent for it. Whatever might have been his position under earlier Mahomedan rule, the distinct revival of the old Hindu system in the reign of Akbar, restored to the cultivator his former status which carried with it extensive rights of property, subject to the payment of a definite share of the produce. Theoretically the Mahomedan system did not recognise a landlord class intermediate between the king and the cultivator, and the aim of its policy was to wipe out the rights of the middlemen who sought to appropriate a portion of the produce of the soil. We shall see in the next Chapter how this policy was frustrated by the excessive growth of the farming system during the decadence of Mahomedan power.

At first the Mahomedan rulers left intact the Hindu revenue system.

In actual practice the Mahomedans made very few changes in the existing revenue systems or in the conditions of land-holding. Here it should be borne in mind that there is no clear line of division between the Hindu and Mahomedan periods; the conquest of the

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[1] Siraj-ul-Wahaj, p. 32. In the words of the Fatwa Alumgiri—"by the imposition of the Wazifa Khiraj the sovereign ceased to be a partner of the cultivators."

[2] Baillie's Land Tax., XX.

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whole country was never completed, although for short periods there may have been practically no other ruling power in India. There is therefore no precise period at which it could be said that the Mahomedans had conquered the country and had the opportunity of imposing their own system of Government on it. At first the conquerors put some of the Hindu princes under tribute without interfering with the internal government of their states,[1] though the more completely subdued states were from the first ruled direct by the Mahomedans. Ultimately the greater part of the country came under their immediate rule and the tributary princes were either expelled or sank into the position of tax collectors or zemindars. It was not until the days of Akbar that any serious effort was made to collect the *Khiraj* direct from the cultivators; even then the hereditary chiefs were not disturbed. Later on the apathy and carelessness of the Nabobs encouraged the growth of a policy of non-interference of which the Hindu Rajas and zemindars took the fullest advantage.

The early Pathan sovereigns of India appear to have maintained intact the revenue system of the Hindus. For sometime the Mahomedan rulers continued to collect the revenue through the Hindu Choudhuries and zemindars where they existed.[2] The Chowdhury afterwards became the Mahomedan *Crory* who subsequently developed into the zemindar. In the later periods of Mahomedan rule the system of farming the revenues came into very general use and to this may be traced the origin of most of the zemindars in Bengal[3] but the Mahomedans did not consciously alter

[1] Fifth Report, Vol, II, 6.

[2] Fifth Report, Vol. I, 257, 258. Fifth Report, Vol. II, 7, 14, 15 Harington's Analysis, Vol. III, 327.

[3] Fifth Report, Vol. II, 113, 114; Shore was of opinion that the extent of their jurisdiction had been considerably augmented during the time of Jaffer Khan and since, by purchases from the original proprietors by acquisitions in default of legal heirs or in consequence of the confiscation of lands of other zemindars.

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the rights of any of the land-holding classes. They strove to expel the hereditary principle with respect to the officers of revenue but they do not appear to have intended to alter the relation of the parties having interests in the land, as between themselves or in their relation to the State.

Creation of an aristocratic class superior to the village communities.

During the Mahomedan period, successive waves of conquest, assignments of revenue and the extension of the farming system resulted in the creation of an aristocratic class superior to the village communities. The Mahomedan conquerors usually allowed the Raja or chief of a subjugated State either to become a tributary, retaining his possession and receiving the revenue as before or to assume the position of a superior collector of revenue, receiving it from the Headman and making himself responsible for it to the Government. It often happened that powerful Chiefs or sovereigns were unable to pay their armies in money, for money did not exist in sufficient abundance, and so they assigned the royal revenue of specified tracts for their support. Similar grants were made in the exercise of royal munificience to favourites, for the support of civil officers, for the maintenance of temples and of holy men and for the reward of public services.[1] The farmers who were originally remunerated by a certain percentage on the collections, gradually usurped the status of contractors of revenue, who in return for a stipulated sum were allowed to appropriate the revenues to their own use. Successful farmers, who could contrive to make themselves useful to Government were seldom disturbed in their charge and according to the tendency of all Indian institutions, their position became in many instances hereditary. In these

[1] It must be carefully borne in mind that what was assigned in these cases was not the land itself but the right to collect the Government revenue. Misapprehension on this point has led some to suppose tha these grantees were originally landed proprietors.

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and other ways there came to exist between the sovereign and the village community a class of aristocracy interested in the revenue who subsequently under the name of zemindars posed as proprietors of land.

So far as can now be ascertained from imperfect historical records, it seems that the right to the soil itself was undisposed of under the Hindu and Mahomedan systems and it appears to have resided in the general community and the State as its representative. It is now generally held that ownership of land or such ownership as was within the conception of the time was with the *community*, which existed before kings or sovereigns.

Both under the Hindu and Mahomedan Kings the right to the soil did not vest exclusively in any individual or class.

On the 12th August, 1765, Shah Alum, the titular emperor[1] of Delhi, made a perpetual grant to the East India Company, of the *Diwani* or the revenue administration of the three provinces of Bengal, Behar and Orissa. The nature and incidents of the position to which the Company succeeded have formed the subject of some controversy. The language of the earlier Regulations claimed for the Company's Government absolute proprietary rights and assumed that all private property in land existed by their sufferance. In the preamble to Madras Regulation XXXI of 1802 (since repealed), it was said that the property in land belonged to the Government by ancient usage. On the other hand, Baden Powell is of opinion that the Company "claimed to succeed to the *de facto* position of the preceding ruler, only so far as to use that position for redistributing, conferring and

The grant of the Diwani.

[1] Most historians consider that the sovereignty of the Great Mogul terminated with Alumgir II, the predecessor of Shah Alum. Mill, speaking of Shah Alum, says "he never possessed a sufficient degree of power to consider himself for one moment as master of the throne." After the battle of Delhi in September, 1803, he put himself under British protection and from this date the Mogul Sovereignty terminated both in theory and practice.

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re-organising rights on a new basis."[1] The fact really is that the Company's claim could not at any time stand higher than that of the Great Mogul into whose shoes it stepped but this discussion does not now possess any more than an accademic interest, since the British Government has, by the Permanent Settlement, parted with its right, such as it was, in favour of the zemindars. The theory of the sovereign's right of property in land in so far as it is based on conquest has been exploded and it is now a settled maxim of international law that conquest does not interfere with private rights—a doctrine recognised, as we have seen, by ancient Hindu lawgivers.

Did private property in law exist before British rule?

Sir George Campbell sums up the subject as follows: The long disputed question, whether private property in land existed in India before the British rule, is one which can never be satisfactorily settled, because, it is like many disputed matters, principally a question of the meaning to be applied to words. Those who deny the existence of property mean property in one sense; those who affirm its existence mean property in another sense. We are too apt to forget that property in land as a transferable, marketable commodity, absolutely owned and passing from hand to hand like any chattel, is not an ancient institution but a modern development, reached only in a few very advanced countries. In the greater part of the world, the right of cultivating particular portions of the earth is rather a privilege than a property—a privilege first of the whole people, then of a particular tribe or a particular village community, and finally of particular individuals of the community. In this last stage land is partitioned off to these individuals, as a matter of mutual convenience, but not as unconditional property; it long remains subject to certain conditions and to reversionary interests

[1] Land Systems. Vol. I, p. 234.

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of the community, which prevent its uncontrolled alienation and attach to it certain common rights and burdens.[1]

The anomalous position of the zemindars at the beginning of British rule.

When the East India Company took up the administration of revenue in Bengal, the zemindar[2] was the most important figure in the revenue system and the nature of his rights puzzled the first English administrators in no slight degree.

The irregular growth of zemindar's rights.

As already noticed, the zemindars grew out of the ancient Rajas, Chiefs, and various Revenue officers, including the Headmen of the village communities and farmers of revenue.[3] Many of the superior zemindaries descended by primogeniture, a fact which perhaps points to their having been derived from the ancient Rajas, as a Raj was undoubtedly

[1] Campbell's Essay on Indian Land Tenures (included in Cobden Club Essays.)

[2] The article under the head "Zemindar" in the glossary to the Fifth Report prepared by Sir Charles Wilkins, the orientalist, explains the original and derivative meaning of the word. "A Zemindar" he says "is an officer who, under the Mohamedan Government, was charged with the superintendence of the lands of a district, the protection of the cultivators and the realisation of the Government share of the produce, either in money or kind, out of which he was allowed a commission, amounting to about 10 per cent. and occasionally a special grant of the Government share of the produce of the land of certain villages for his subsistence called *nankar*. The appointment was occasionally renewed, and as it was generally continued in the same person, so long as he conducted himself to the satisfaction of the ruling power, and even continued to his heirs, so in process of time and through the decay of the ruling power and the confusion which ensued, hereditary right, at best prescriptive, was claimed and tacitly acknowledged, till at length the zemindars of Bengal in particular, from being the mere superintendents of the land have been declared to be the hereditary proprietors of the soil." It should be remembered that the Bengal zemindars were something wholly distinct from the village zemindars referred to at the commencement of this Chapter and resembled the Talukdars of Upper India. In the United Provinces the Talukdar was superior and the zemindar inferior. The reverse was the case in Bengal.

[3] Most of the considerable zemindars of Bengal came into being during the last century and a half.

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heritable in this mode.[1] The inferior zemindars grew out of collectors, farmers and other officers of revenue, headmen and even robber chiefs.[2] They acquired in the course of time a right to collect the revenue and succeeded in displacing the ancient revenue collectors, whether headmen or rajas, and to absorb their privileges. It is doubtful whether the office was hereditary in its origin. Grant says "A possessive tenure of certain subordinate territorial jurisdiction called Zemindary, in virtue of a Sanad or written grant, determinable necessarily with the life of the grantee or at the pleasure of the sovereign representative, is universally vested in certain natives called zemindars, that is, technically holders of land merely as farmers-general or contractors for the annual rents of Government."[3] This passage appears to have reference to the original nature of the zemindar's office but in the confusion of later times, the zemindars assumed a hereditary right which the Government was too weak and powerless to resist.[4] The zemindar thus became by a kind of usurpation, a hereditary officer, with a right to engage with the Government for the payment of revenue and to pay over to Government what has been engaged for, after deducting his own emoluments.[5] He was a here-

[1] Harington's Analysis, Vol. III, 368. The Royroyan says "The zemindars of a middle inferior rank such as those of Mahammadaminpur, Sarfarajpur, etc., and the talukdars and muzkoories at large hold their lands to this day safely by virtue of inheritance; whereas the superior zemindars such as those of Burdwan, Nadia, Dinajpur, etc., after succeeding to their zemindaries on the ground of inheritance, are accustomed to receive, on the payment of a *Nazarana*, *peishcush*, etc., a dewani *Sanad* from Government. In former times the zemindars of Bishenpur, Pachate, Birbhum and Roshenabad used to succeed in the first instance by the right of inheritance and by the established practice of their respective families and to solicit afterwards, as a matter of course, a confirmation of the ruling power."

[2] Land Tenure by a Civilian, 73; Fifth Report, Vol. II, 156.

[3] Harington's Analysis, Vol. III, 361.

[4] Fifth Report, Vol. II, 156.

[5] Fifth Report, Vol. II, 12; Harington's Analysis, Vol. III, 340 and 363.

ditary officer but still only an *officer* and in theory was bound to account to the State for all he received, which was either to be paid over to the State or to be appropriated in the authorised way towards his allowances. But the zemindar afterwards still further encroached upon the rights of the State and of the cultivators and ultimately came to pay to the State a fixed sum (much less than the rents collected), and to appropriate the surplus, whether equivalent to the allowances or more. As the zemindar grew powerful and the State fell into confusion, the assessment which he bound himself to pay was not the whole net revenue which remained after deducting his authorised allowances. Although he was never theoretically released from his original liability to account, practically the revenue paid by him ceased by degrees to bear any proportion to the amount collected from the cultivators. The difficulty of constant and minute investigations tended to make the arrangements between the State and the zemindar as to the amount of revenue a mere continuation of existing engagements, with little reference to the actual assessment of the rayats. While this process was going on, the zemindar exploited new sources of income, over and above the rental upon which his revenue was calculated. He imposed illegal cesses or additions to the rent rates, realised rents for waste lands, levied dues on fisheries and tolls on markets. This practice of exacting unauthorised contributions, ultimately established itself so completely that at length it came to be considered that the zemindar was entitled to all he could squeeze out of the raiyats and he gradually grew to be looked upon as a sort of landlord in his relation to the rayats and a sort of tenant in his relation to the State. This appears to have been the general course of growth of the zemindar's influence and power. The zemindar thus translated himself from

The growth of zemindar's power.

the position of a mere collector of revenue to that of a contractor for a fixed amount.[1]

The origin of the zemindar's proprietary rights.

The origin of the proprietary rights of the zemindar is uncertain. According to some authorities, the Sanad by which the office of zemindar was conferred was the source of his rights[2] but it soon grew to be a mere form; a recognition by the State of rights, already existing independently of it.[3] The zemindar succeeded to his estate in later times as a matter of course and simply by inheritance, sometimes taking a Sanad afterwards, sometimes never taking one at all.[4]

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1 The process of transition is thus described in the Fifth Report. "They (Zemindars) were, as it is now pretty clearly ascertained, in general no other than the revenue servants of districts or sub-divisions of a province, who as the Committee have formerly explained were obliged by the conditions on which they held their office to account for the collections they made to the governing power in whose service they were employed and for which service they were in the enjoyment of certain remuneratory advantages, regulated on the principle of a percentage or commission on the revenue within the limits of their local charge; but having in the process of time and during periods of revolution or of weakness in the sovereign authority acquired an influence and ascendency which it was difficult to keep within the confines of official duty, it was found convenient to treat with them as contractors for the revenues of their respective districts, that is, they were allowed on stipulating to pay the State a certain sum for such advantage for a given period, to appropriate the revenues to their own use and profits; the amount of the sum for which they engaged depended on the relative strength or weakness of the parties; the ability of the Government to enforce or of the zemindar to resist."

2 Shore does not consider the Sanad to be the foundation of the tenure.

3 Fifth Report, Vol. I, 160.

4 The succession of the zemindars, specially where powerful, was assisted by the growing weakness of the Mogal power. Exactly the same thing happened in respect of the ancient benefices in Europe. Hallam says "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 his present into a due to the landlord, as it rendered the inheritance of the tenant indefeasible" Middle Ages, Vol. I, p. 160.

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Whatever was the origin of the zemindars, it was by persistent encroachments in times of weakness and confusion that they gradually consolidated their power, until at last there was such a disparity between their actual position and their theoretical rights, that according as the one or the other was looked at, they could be made out to be absolute proprietors or mere officers. The anomalous position of the Zemindar at the commencement of British rule has been thus described by Harington. "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 undertenants of land———allowed to succeed to his Zemindari by inheritance, yet in general required to take out a renewal of his title from the sovereign or his representative on payment of a *peishcush* (or fine of investiture) to the emperor and a *nazarana* or presents to his provincial delegate, the Nazim———permitted to transfer his Zemindari 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 Zemindari; 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 *Jagir* or altamgha——— authorised in Bengal since the early part of the eighteenth century to apportion to the parganas, village, and lesser divisions of land within his Zemindari the abwab or cesses imposed by the Subadar; yet subject to the discretionary interference of public authority either to equalise the amount assessed on particular divisions or to abolish what appeared to be oppressive to the raiyat———entitled to any contingent emoluments proceeding from his contracts during the period of his agreements; yet bound by the terms of his tenure to

Harington's definition of a zemindar.

deliver a faithful account 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 Mussulman Magistrate for trial and punishment."[1] It will thus be seen that the position and rights of the Bengal zemindars, as they stood before the advent of British power were incapable of exact definition. Under an arbitrary system of Government where so much depended upon the will of the ruler, rights were not demarcated by metes and bounds as they are under a sytematic constitution like that of Great Britian. To add to the difficulties of the situation there were at least two distinct classes of zemindars in Bengal differing in origin as in status. Those who looked chiefly at the one class of zemindars were convinced that a Zemindary was a hereditary proprietary right in the soil, very similar to, if not identical with an Englishman's right in his estate. Those who confined their attention to 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 offices to become hereditary in the east. The holders of the latter opinion argued that the principle of dividing the produce with the cultivators, annihilated the idea of a proprietary inheritable right, that the existence of the Sanad proved investiture essential, that a Zemindary is expressly called *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, all of 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

Two distinct classes of zemindars differing in historical origin.

1 Harington's Analysis, Vol. III, 398 to 400. The opinion of Harington who was in the Company's service from 1780 to 1823 is entitled to the greatest weight.

and this was not incompatible with the existence of proprietary rights, that a zemindary was inheritable by usage and prescription, 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 depending upon service in its inception may have become hereditary by usage 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 *Sanad* contained no definite term and the obvious inference was that the tenure was to continue as long as the conditions of the grant were observed.[1] According to Shore, the position of the zemindar before the conclusion of the Permanent Settlement was singularly anomalous. The zemindar's relation to Government and that of the raiyat to him was neither that of a proprietor nor of a vassal but a compound of both—the zemindar performed acts of authority unconnected with proprietary right, while the raiyat had rights without real property and the property of the one and the rights of the other were in a great measure held at discretion.

The East India Company sought to cure irregularities in the position of the zemindars by conferring on them rights similar to those of English landlord.

This was the state of things which the East India Company had to face on their accession to the *Dewani*. They were called upon to solve the vexed problem of the tenure of land and to decide the question—who owned the land ?[2] After some

[1] Shore's minute of the 2nd April, 1788.

[2] As a matter of fact no one can own land in any country in the sense of absolute ownership, such ownership as a man may have in movable

controversy[1] they arrived at the conclusion that the land belonged to the zemindars and by a process of false analogy they attributed to the zemindars a position similar to that which was held by landowners in England.[2] Now the fact really was that no class in Bengal owned the land in the

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property. Williams in his work on the Law of Real Property (pp. 1-20) says "The thing then the student has to do is to get rid of the idea of absolute ownership (in land), such an idea is quite unknown to English law. No man is in law the absolute owner of lands. He can only hold an estate in them." The word "estate" in legal phraseology means the quantity of interest in realty owned by an individual, the aggregate of rights over land vested in a particular person. The dimensions of this interest may vary considerably, *e.g.*, an estate for life, as estate tail, an estate in fee simple, none of which phrases carries the idea of owning the land itself. But in popular phraseology the word "estate" is applied to the land itself, and this is the way in which it was applied in India by the first administrators (*vide* cl. 2, s. 2, Reg. XLVIII of 1793; cl. 12, s. 2 Reg. XIX of 1795; and Holt Mackenzie's minute of 1st July, 1819). Had they started with the right use of the word, they would not have searched for an ownership which they never found, because no such thing ever existed; but would have sought to discover what were the *estates* in land in India; and it would have been clear to them that no estates existed similar to those in England. (Field's Introduction.)

[1] There were two important contributions to the discussion of the subject by Grant; these were his "Political Survey of the Northern Circars," dated the 20th December 1784 and his "Analysis of the Finances" of the 27th April 1786. These dissertations laid stress on the official position of the zemindar and the paramount right of the State to absolute property in the land. On the 2nd April 1788 Shore recorded an elaborate minute on the subject, giving a sketch of the Mahomedan system from which he deduces "that the rents belong to the sovereign and the land to the zemindar" in opposition to the opinion of Grant and to an opinion of the Board of Revenue (given in 1786) that a Zemindari was "a conditional office annually renewable and revocable on defalcation." On the 18th June, 1789, he recorded another minute which was to a great extent the basis of the Permanent Settlement.

[2] The first English administrators were inclined to uphold the rights of the raiyats and evidently did not regard the zemindars as the absolute proprietors of the soil (*vide* Colebrooke's supplement, p. 175, *et seq.*). The zemindars were at first entirely dispossessed and treated as mere officers of Government but soon a re-action set in and the authorities in India seem to have been in advance of the Home Government in the desire to restore the zemindars. This re-action ultimately produced the Permanent Settlement.

sense in which an Englishman owns his estate and there was no kind of ownership which corresponded to that aggregate of rights, the highest known to English law, termed the fee simple.[1] An English landlord or freeholder in fee simple has absolute liberty to dispose of all lands forming part of his estate, to oust his tenants, whether for life or for a term of years on the termination of their respective leaseholds, and to enhance the rents on the expiration of leases at his discretion.[2] The Bengal zemindars did not possess so unlimited a power over the *Khudkast* raiyats and other tenants and the earliest English administrators recognised the raiyats as having rights in the land, not inferior in validity, though subordinate in degree, to those of the zemindars. Harington observes:—"It is by attempting to assimilate the complicated system which we found in the country with the simple principles of landlord and tenant in our own and specially in applying to the Indian system terms of appropriate and familiar signification which do not, without considerable limitation, properly belong to it, that much, if not all, of the perplexity ascribed to the subject has arisen."[3] After some controversy, the authorities came to the conclusion that the zemindars in Bengal had acquired, if they did not originally possess, a proprietary right in the land which justified a permanent settlement with them as the

The Company's conclusion based upon false analogy.

[1] There seems to be the heaviest presumption against the existence in any part of India of a form of ownership conferring the exact rights which are given by the ownership in fee simple (Maine's Village Communities, p. 160).

[2] That the zemindar had not the full English proprietary rights is shown amongst other evidence, by the fact that the English rules as to things attached to the soil have no application in India. Thus things annexed to the lands do not in Bengal necessarily pass with the land but remain the property of him who put them there. 7 B. L. R., 152; *Ib.* 1593; 15 W. R., 363; 14 B. L. R., 201.

[3] Harington's Analysis, Vol. III, 398.

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nearest approach to an English holder in fee simple and as the most likely class to develop into the English landlord.[1] In a minute dated the 18th September 1789, Lord Cornwallis urged that in order to give value to the zemindar's rights, they must be made permanent. He said "Although, however, I am not only of opinion that the zemindars have the best rights, but from being persuaded that nothing could be so ruinous to the public interest as that the land should be retained as the property of Government, I am also convinced that failing the claim of rights of the zemindars, it would be necessary for the public good to grant a right of property in the soil to them or to persons of other descriptions. It is the most effectual mode for promoting the general improvement of the country, which I look upon as the important object for our present consideration."[2] This bias was shared by the Directors in 1792. In a minute dated the 17th September 1792, the Court of Directors observed: "We are for establishing real permanent valuable landed rights in our provinces and for conferring such rights upon the zemindars." It was therefore resolved to secure zemindars in the enjoyment of their rights by the Decennial and Permanent Settlements. The Decennial Settlement was from the first intended to be preparatory to a permanent settlement and when the Regulations of 1789 for the Decennial Settlement of Bengal were promulgated, Lord Cornwallis was autho-

The Court of Directors ultimately resolved to make a permanent settlement with the zemindars and to confer on them rights of ownership of land.

[1] It cannot be said that the expectation has been realised. The Bengal zemindars, as a body have done very little for the improvement of their estates but on the contrary have shown too eager a disposition to appropriate to themselves the whole of the unearned increment of the soil. In England, the rise in the value of agricultural land is only a fair return for the capital that has been invested in improvements and for the immense sums that have been lost in the experiments out of which the improvements have sprung.

[2] Fifth Report, Vol. I, 591.

rised to declare that, subject to the approval of the Directors in England, "the Jumma (Government demand) would remain fixed for ever." The Court of Directors signified their approval in their Revenue General letter of the 19th September 1792 and accordingly a proclamation was issued on the 22nd March 1793 announcing that the zemindars, with whom the Decennial Settlement had been made, and their heirs and lawful successors will be allowed to hold their estate at the same assessment for ever. The articles of this proclamation were enacted into Regulation I of 1793.

Harington's definition of a zemindar as constituted by the Permanent settlement.

Harington gives the following definition of a Zemindar as constituted by the Permanent Settlement. "A landholder possessing a Zemindari estate which is heritable 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 undertenants of land in his Zemindari, or from the alteration and improvements of untenanted lands; but subject nevertheless to such rules and restriction 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 respective tenures, and for protecting them against undue exaction or oppression. . . ."

The real extent of the rights conferred by the Permanent Settlement on the zemindars, as determined by judicial interpretation in the Great Rent case.

The extent of the right conferred on the zemindars by the permanent settlement was the subject of animated discussion for some time. According to some, it invested the zemindar with absolute property in the soil, leaving the rayats entirely dependent upon him, except in so far as he was protected by

express legislation; while, according to others, it did not convey any absolute property as against the raiyats or other subordinate holders. The matter was however set at rest by judicial interpretation. In the Great Rent Case[1] decided in 1865 it was held that the right of the zemindar was by no means absolute, being limited by the rights of the rayats and other tenants. The following extracts indicate the opinion of the majority of the judges :—

Justice Macpherson remarked "As regards the legislation from 1793 down to Act X (of 1859), it, in my opinion, shows clearly that the zemindars never were, and never were intended to be, the absolute proprietors of the soil but that they at all times have held subject to the rights of various classes of raiyats whom they had no power to eject so long as the proper rents were paid by them." Justice Trevor observed "Though recognised as actual proprietors of the soil, that is, owners of their estates, still zemindars and others entitled to a settlement were not recognised as being possessed of an absolute estate in their several Zemindaries; there are other parties below them with rights and interests in the land requiring protection; the zemindar enjoys his estate subject to, and limited by, those rights and interests." Justice Seton Karr was of opinion that "neither by Hindu, by Mahomedan or by Regulation law was any absolute right of property in land vested in the zemindar to the exclusion of all other rights; nor was any absolute estate, as we understand the same in England,[2] created in

[1] *Thakurani Dasi* v. *Bisvesvar Mukherjee*, B. L. R., Supp. Vol. 202.

[2] The proprietary right conferred by the Permanent Settlement was in some respects an estate of greater dimensions than the English fee-simple. By that law all subordinate estates created since the permanent Settlement were annulled in default of payment of the Government revenue by the zemindar and the higher estate was handed over to the purchaser free of all incumbrances. This annihilation of subordinate interests proved a fatal barrier to their transferability and the barrier had to be broken down by subsequent legislation.

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favour of that class of persons. The raiyat has by custom, as well as by law, what we may term a beneficial interest in the soil." Other judges including Norman and Campbell concurred in the opinions quoted above. In a later case[1] it was held that a settlement with a person under the Bengal system does not establish in that person a right to the land, if he did not already possess it;[2] but that a settlement is merely an arrangement for the payment of revenue. In the liberal arrangement which Government made with the zemindar, it could fairly give away no more than it possessed, that is, its own interest in the land and no further. The Regulations themselves save the rights of the raiyats which in the opinion of many authorities are of a proprietary nature.[3]

The term "*actual* proprietor" as used in the Regulations does not mean *absolute*[5] proprietor of the soil as against the raiyats nor is there anything to show that the terms used are meant to detract from the rights of Government except in the matter of an alteration of the public demand.[4] Lord

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[1] *Jagatmohini Dasi* v. *Sakhimani Dasi*, 17 W. R., 41.

[2] The Court of Directors observed in 1792 "Custom generally gave their (Zemindars) 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. 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." Harington's Analysis, Vol. III, 359.

[3] According to Sir Henry Maine, the distinction between proprietary rights and rights which are not proprietary is that the latter have their origin in a contract of some kind. The raiyat's rights were not derived from or carved out of the proprietary right of the zemindar, in the way that all interests in land in England are theoretically derived from or carved out of the fee simple.

[4] At p. 34 note, it has been shown that no one has absolute rights in land as against any other, and there is no proprietor of the actual

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Cornwallis writing in 1789, said "I understand the word 'permanency' to extend to the jumma only and not to the details of the settlement, for many regulations will certainly be hereafter necessary for the further security of

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soil, except the general community. Phillips in his "Law of Land Tenure in Bengal" has a very interesting discussion of the subject which is wound up thus. "At the time of the Permanent Settlement and afterwards three claimants for the right to the soil were put forward: The sovereign, the zemindar and afterwards the cultivator, either individually or as the village communities. The right was claimed for the sovereign because there was practically no limit to his power to take the profits. But some of those who considered the sovereign a proprietor, really looked upon him as representing the general community and as thus entitled to what is otherwise undisposed of; although with some inconsistency they seem to treat this right as part of the sovereign's specific share. Those who hold this view allow definite rights in the land to the village community or the individual raiyats, others again cut down, the sovereign's right, while still considering him full proprietor, to the right to receive the rent, probably including in this right, the English right of proprietorship so that while recognising no private proprietor, they consider the sovereign's receipt of rents either as carrying with it the right to the soil or as evidence of such a right. With regard to the claim on behalf of the sovereign on the ground that he can take all the profit of the cultivators, if he pleases, two answers may be made. The first is, that although he may do so by might, he cannot do so by right. We have seen that there are limits to his taking the produce both in express law and custom. The second answer is, that whatever his rights may have been, he never claimed any right to the soil itself as part of his share, nor ever exercised a right to anything beyond the natural or accidental produce of the soil.

"As to the zemindar we have seen that he derived his right from the sovereign on the one hand and the cultivator on the other. But it is said that a zemindary is a hereditary and alienable proprietary right in land. Such a right does not however, carry with it as a matter of course all the right not possessed by any body else: or the right of an English landlord. The Khudkast's right was hereditary, as were even offices in the Hindu System; it was also a proprietary right; and the alienability of a right, even if it were not, as in the present case, of modern growth, does not determine anything as to the extent of the right, but only as to power over that right enjoyed by the possessor. And the account which I have given of the zemindar tends I think to show that he was in no sense the absolute proprietor so as to be the proprietor of the soil itself.

"On behalf of the cultivator is alleged one of the strongest grounds—actual possession of the soil, from which, in the case of a Khudkast, he cannot be ousted; and the khudkast's right is hereditary and a proprietary

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the raiyats in particular.[1] The rights which the Government possessed were admittedly not exhaustive of all the interests in the land. Under the customary law of the country, as admitted by the authors of the Permanent Settlement the raiyats too had rights which the legislature could not interfere with and it is now settled law that the Permanent Settlement neither did nor could affect or prejudice these tenant rights in any degree whatever. Beyond fixing the Government demand for ever, the Permanent Settlement made no alteration in the status of the zemindars. Of course a great practical change was made, because the position of the zemindars was recognised and secured, while no safeguard was provided for the raiyats' rights, beyond a reservation[2] of the power "to enact such Regulations as the Governor-General in Council may think necessary for the protection and welfare of the dependant talukdars, raiyats and other cultivators of the soil" (Clause 1, Art. VII, Reg. 1 of 1793). Moreover, the zemindar having acquired the Government right in the revenue in perpetuity, was in a position of advantage for the purpose of absorbing all other rights.

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right—the permanent possession of the soil, if accompanied with the assertive exercise of absolute right to it, might create, and at any rate would be strong evidence of, such a right; but we have seen how far this is from having been the case; and the mere fact that a proprietary right is permanent and hereditary does not give us any clue to the extent of that right. If indeed it were absolutely necessary to import English ideas into the matter and to conclude that one of these claimants must be held to possess the right and that the right could not remain in the community undisposed of, like the right to light, air and *feræ naturæ*, the cultivator would seem to have as good a right as any of the competitors; but there does not seem to be any necessity for introducing such considerations, and even if we did introduce them, it is doubtful whether the question could be decided in the absence of all claim to or exercise of such rights."

[1] Fifth Report, Vol. I, 592.

[2] The right of interference was reserved but it was not exercised until 66 years after, when Act X of 1859 was passed.

One effect of the Permanent Settlement was to wipe out all other rights, save those of the zemindar.

One of the effects of making a permanent settlement with the zemindars was that all other rights in land were effaced. It swept away the distinction between the different classes of zemindar, as also between raiyats having customary right and others of a precarious footing dependent on mere contract. The rights which now exist are nearly all of recent creation dating from or after the Permanent Settlement.

A brief outline of landed interests[1] whether created by the Permanent Settlement or since is given below.

Lakhiraj estate.

The estate which carries the highest aggregate of rights is termed *lakhiraj* (Revenue free). The incidents are identical with those of a zemindari (Revenue paying estate), but as it pays no revenue to Government, it is not liable to sale for arrears of revenue.[2] 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 lakhirajdar.

The term *lakhiraj* is derived from *la*=not and *khiraj*= tribute or revenue and means land which does not pay revenue to Government. The Regulations of 1793 divide revenue free grants into two classes—Badshahi and Non-Badshahi. The former comprise grants made by the sovereign for the support of pious or learned men, or of religious or charitable institutions.[3] There are different varieties of

Badshahi and Non-Badshahi grant.

[1] In classifying landed interests under the heads—estate, tenure including undertenure, and holding—the definition given in the Bengal Tenancy Act has been followed. The first is regarded as a proprietary interest, while the rest are merely leaseholds.

[2] The rules relating to revenue free estates are contained in Regulations XIX and XXXVII of 1793.

[3] Revenue-free grants to Brahmins are known in Bengal by the generic name *Brahmottar* and in Behar by the name *brit* and lands dedicated to the gods by the name *debottar* or *Bishenprit*. Revenue-free grants to persons or families other than Brahmins are called *Mahatran*.

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Badshahi Lakhiraj. Grants to military officers and servants of the State are called *jaigirs*. The Jaigirs are estates for life and expire with the life of the grantee unless otherwise stipulated in the grant.[1] In India, offices have a tendency to descend from father to son and jaigirs were frequently renewed in favour of the sons of previous holders. Originally of a feudal character but not hereditary, they were granted on condition of service. Under the British Government many *jaigirs* have by course of dealing become hereditary and alienable.[2] There are a few *jaigirs* in Bengal but in Behar the number is considerable. It should be borne in mind that *jaigirs* are not grants of lands but alienations of revenue. *Altamga* was a royal free gift, so called from two Turkish words signifying "red" and "seal," such grants having been formerly sealed with a red seal. The term was applied to any grant which was permanent and not revocable except for misconduct. The grant of the Diwani to the East India Company was called an *Altamga*. *Aima* and *Madadmash* were grants for the support of learned and religious Mahomedans or of benevolent institutions. These grants were in practice revocable at the will of the sovereign. The *Altamga*, *Aima* and *Madadmash* are all hereditary and transferable by gift, sale or otherwise.[3] Nazarat lands are public endowments created for the support of *Masjids*. Regulation XXXVII of 1793 declared the validity of all *Badshahi* revenue-free grants made previous to the 12th August 1765, provided the grantee had obtained possession before that date and had retained it since. All grants

Jaigirs.

Altamga.

Madadmash.

Nazarat grants.

[1] Regulation XXXVII of 1793 section 15.

[2] I. L. R., 9 Cal., 187. Many jaigirs created by the Emperor Shah Alum have since been treated as estates of inheritance.

[3] Regulation XXXVII of 1793, section 15.

made or confirmed since the Dewani, except under the authority of Government or its officers duly empowered in this behalf were held to be invalid.

Non-Badshahi lakhiraj grants were made by zemindars and officers of Government appointed to superintend the collection of revenue, generally under the pretext that the produce of the lands was to be applied to religious or charitable uses. Under Regulation XIX of 1793, such grants may be divided into their classes: (1) Grants of dates antecedent to 12th August 1765; (2) Grants posterior to 12th August 1765 but antecedent to the 1st December 1790; (3) Grants posterior to 1st December 1790.

Three classes of Non-Badshahi grants.

With respect to the first class, all grants, by whatever authority made, were declared valid, if the grantees had got possession and the land had not been charged with revenue. With respect to the second class, all grants which were not made or ratified by the Government for the time being or by any officer duly empowered by it in this behalf, were declared invalid. Grants made by the chiefs of the provincial councils were held to be valid and so were grants of less than ten bighas, the produce of which was *bonâ fide* appropriated for the endowment of temples or for the maintenance of Brahmins or other religious or charitable purposes, provided that these latter grants were of dates antecedent to the Bengali year 1178. Grants of the second class so declared invalid were sub-divided into grants exceeding 100 bighas and grants not exceeding 100 bighas. The revenue assessable on the former was declared to be the property of Government and those grants when assessed were to become independent *taluks*, that is their revenue was to be paid direct to Government and not through any zemindar. The revenue assessable on grants of less than 100 *bighas* was made over by Government to proprietors of estates within which these grants were situated, and they were

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authorised to levy rent from the lakhirajdar without being liable to pay any additional revenue. These grants were to become dependent taluks. The third class includes grants made since the 1st December 1790 and these were declared null and void, whether they exceeded 100 bighas or not. Lands included in grants of the first two classes were excluded from the Permanent Settlement and Government expressly reserved the right to assess these grants for its own benefit,[1] while lands included in the grants of the third class were comprised in the Settlement of 1793 and in the estates for which engagements were executed by the zemindars, who were therefore entitled to collect the rents of these lands. After the Permanent Settlement Government can not alienate the rents payable to the zemindars by their tenants and the zemindar has full powers to assign, by way of gift, sale or mortgage, the rents of any of his dependent *taluqs* or leases.[2]

Distinction between Revenue-free & Rent-free grants.

Grants of land made since 1790 are really rent-free and not revenue-free. The distinction between revenue-free and rent-free grants is apt to be lost sight of, as the vernacular term 'lakhiraj' is applicable to both classes and used indiscriminately. The Bengal Tenancy Act of 1885 has defined the term 'tenant' as one who is, or who but for a contract or

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[1] In the Proclamation announcing the Permanent Settlement the Governor-General in Council retained the power to "impose such assessment, as he might deem equitable, on all lands at present alienated and paying no public revenue which had been or might be proved to be held under illegal or invalid titles. (Regulation I of 1793, sec. 8.)

[2] The study of the law relating to the resumption of lakhiraj land held under invalid or illegal titles is now of little practical utility, as the rules of prescription and limitation have almost entirely quieted titles, however disputable at one time. Mitra observes "No title to *lakhiraj* land created before the 1st May 1793, the date of the Permanent Settlement, can now be disturbed. I presume there can now be no cases of resumption of revenue-free lands, as they are by lapse of time sufficiently protected. (Land Law of Bengal, p. 79.)

grant would be, liable to pay rents for the use and occupation of land. The definition covers cases in which a lakhirajdar holds land situated within the ambit of an estate under grants made by a proprietor subsequent to the Permanent Settlement.

Zemindari Estate.

Next to the lakhiraj, in order of the aggregate of interest held together, stands the zemindari estate as created by the Permanent Settlement. Both these denominations of landed interest form the envelop of identical rights in realty, the only difference being that the former is exempt from the liability to pay revenue while the latter is not.[1] The incidents of the zemindari estate have already been discussed at some length. It may be described in short as a heritable and transferable right of proprietorship, subject to the payment of a fixed amount of revenue to Government. The right of the zemindar is however limited by the rights of their tenureholders and raiyats and also by the Government prerogative to sell the estate in default of full payment of revenue on the due date. In the event of a sale for arrears, the purchaser acquires the estate free of all incumbrances created since the Permanent Settlement and obtains a statutory title.

Tenant rights created by the Bengal Tenancy Act of 1885.

The Bengal Tenancy Act (1885) divides the holders of interests subordinate to estates (whether revenue free or revenue paying) into three classes (1) Tenure-holders (including under-tenure-holders). (2) Raiyats. (3) Under-rayats. It is often difficult to distinguish between the first two classes but broadly speaking a tenure is an intermediate

[1] The only species of land-tenure which attain to the diginity of "estates," as defined in the revenue nomenclature of Bengal and Behar are lakhiraj and zemindari. The quantum of interest covered by other forms of tenancy does not amounts to an estate, as defined by the Indian legislature.

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interest between an estate and a holding which has been defined as the interest of the cultivating raiyat. A tenure-holder can freely transfer his right, while that power has been denied to raiyats, except those who pay fixed rent and a certain favoured class called occupancy-raiyats whose interest is alienable according to custom. The onus of proving custom lies on the party who alleges its existence. In regard to sub-letting, too, the tenure-holder is allowed a free hand, while the *raiyat* labours under certain disabilities. On the other hand the position of a settled raiyat, who acquires a right of occupancy in *all* lands held by him in the village, is often coveted by the tenure-holder, as the right carries certain exclusive privileges of considerable value.

Tenures.

Tenures[1] are known under a variety of local names and may be divided into four classes according to their origin :—(1) Tenures existing from before the Permanent Settlement. (2) Permanent tenures created since the Permanent Settlement. (3) Patni Taluks. (4) Temporary tenures including farms, ijaras, etc.

The first class of tenures is known by the generic term of *shikimi*[2] or dependent *Taluks*. Many ancient tenures existed before the creation of the zemindaries to which they are now subordinate. At the time of the Permanent Settlement, many of these tenures, known as taluks, were separated from the zemindaris and formed into distinct estates, paying revenue direct to Government, while a smaller number remained subordinate to the zemindars.

[1] Also called Muzkoorie in some places. It has been stated above that tenure includes under-tenures, the incidents being identical.

[2] Derived from *Shikim* the belly, hence subordinate or dependent. These taluks are subordinate to the zemindari in which they are included.

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The rent at which they are held cannot be enhanced except upon proof of a special right by custom to enhance or of a right depending on the conditions of the grant or on the ground that the talukdar, by receiving abatements, has subjected himself to the increase and that the lands are capable of affording it. If the rent has never been enhanced since the Permanent Settlement, it cannot now be enhanced and in order to relieve the talukdar of so difficult a burden of proof, the law creates the presumption that payment of rent at a uniform rate for 20 years indicates that the tenure has been held at the same rent since the Permanent Settlement.

The majority of the tenures of the second class was created by the zemindars with a view to protect their property from the ruin which involved so many estates after the Permanent Settlement. Tenures created since the Permanent Settlement and held immediately under the proprietors of estates may be protected by registration (under Act XI of 1859) from avoidance by a sale for arrears of revenue. The law provides for two kinds of registration : (*a*) common and (*b*) special. The former secures tenures and farms against any auction-purchaser at a sale for arrears of revenue except Government and the latter secures the protected interest against Government also.

Patni Taluk.

The Patni Taluk constitutes another important class of subordinate tenures. It originated on the estate of the Raja of Burdwan and has since spread over other parts of Bengal. It is in substance a perpetual lease of a *Zemindari*, the rent being fixed in perpetuity and the tenures being saleable by the Collector at the zemindar's instance for arrears, precisely in the same way as the parent estate. The patnidar is required to furnish collateral security for payment of rent and for his conduct generally, though he may be absolved

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from this liability at the discretion of the zemindar. On the sale of a Patni for arrears of rents, all leases granted and incumbrances created by the defaulting Patnidar are voidable by the purchaser. Patnis are a common feature of land-tenure in western Bengal, while they are rarely to be met with in the eastern districts. In some parts of the country the process of subinfeudation has proceeded much further; the *Patnidar* has given his lands in permanent lease to *dar-patnidars* who in his turn have carved out their interest to *sepatnidars*. In these alienations, the proprietors, as a rule, have made excellent terms for themselves. Ordinarily a *patni* is granted on payment of a premium which represents the capitalised value of many years' increased rents. The origin and incidents of this class of tenures are fully set forth in Regulation VIII of 1819.

Tenures of the first three classes are heritable and transferable by sale or otherwise. The remedy for non-payment of rent is not by ejectment but by bringing the tenure to sale. The purchaser is entitled to avoid incumbrances created by the defaulting proprietor. Tenures are either permanent or temporary, according as the term which they create is absolute or limited. Tenures are invested with a permanent character (*a*) by express provision of law, as in the case of *Patni* and other similar taluks, (*b*) by contract, (*c*) by custom or the course of dealing therewith. The word "taluk" by itself, in the absence of evidence to the contrary implies a permanent interest (22 W. R., 326). A grant containing the words "from generation to generation" clearly creates an absolute and hereditary *mokrari* grant (I. L. R., 1 Cal., 391).

The nature and incidents of tenures vary so greatly in different parts of the country that it is next to impossible to frame a description of any particular tenure which will apply equally to various forms of it known under the same name in different districts. In the appendix we have endeavoured to catalogue the numerous details as far as our

limited scope would allow and we enumerate below some of the more important tenures in Bengal.[1]

Different classes of tenures in Bengal.

Istimrari tenures are tenures granted in perpetuity; *Mukarari* tenures are those granted at a fixed rent not liable to enhancement. Generally speaking however the two conditions are now found combined. The law declares that, where the rent has not been changed since the Permanent Settlement, it cannot be enhanced and a statutory presumption has been brought in to facilitate the means of proof and thus many tenures have become *Mukarari* which were not so in their inception.

The *Osat* tenure is very common in the Bakargunj District and denotes a subordinate *Taluk; Nimosat* is a sub-division of *osat*. *Howla* is the name for a small taluk; *Nimhowla* is a sub-division of a *Howla; Osat Howla* is a general name for tenures intermediate between those of the zemindar and the raiyat. Again a tenure subordinate to a *Howla* is called a *Zimma* (Jimba). In Rungpur there is a tenure called *Upan chathi*, the incidents of which are similar to those of a *Maurashi Mokarari* tenure.

Reclamation leases are common in the littoral regions. Perpetual leases at low rents are needed to pursuade the capitalists to undertake the heavy initial and recurring expenditure required for the protection of reclaimed areas and similar leases are often granted in the case of waste land when heavy expenditure has to be incurred in felling dense forests and under-growths.

There is another class of tenures which is probably the most numerous of all, which may be described as the land-

[1] Field in his Introduction to the Bengal Regulations says:—"I have never met with a complete list of tenures or a description of their incidents and even in the district in which a particular tenure is most usual, I have in vain endeavoured to get an accurate description of its origin and peculiarities."

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jobbing tenure. It is a perpetual lease of agricultural land at stereotyped rent rates.[1] The system may best be illustrated by taking the simplest case of a zemindar who has given a perpetual lease to a *raiyat*. The raiyat grows rich and the zemindar is in need of money and he offers to raise the raiyat's holding to the superior status of a tenure at a reduced rent, upon payment of a bonus equivalent to 20 years' purchase of the difference between the two rents. If the raiyat refuses, a third person is offered the tenure and he probably squeezes a cess out of the raiyat. The same process is repeated shortly afterwards, either by the zemindar who may create a tenure between himself and the new tenure-holder or by the latter who creates an under-tenure between himself and the raiyat. The creation of each new tenure is the occasion for the payment of a substantial bonus, for which the lessee recoups himself by exacting a cess from the holder of the interest next below him, which is ultimately passed on to the raiyat.

Sub-letting.

The zemindars have made a free and liberal use of the power of sub-letting conferred on them by the later Regulations. At first the zemindar's power of granting leases was confined to a term of ten years but the restriction was removed by Regulation V of 1812. The bestowal of unlimited power was fraught with

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1 This class is to be distinguished from the reclamation leases described above. It is found in enormous numbers in the Bakargunj District where, probably owing to the depredations of Arakanese raiders in the seventeenth and eighteenth centuries reclamation in the littoral tracts was arrested and where comparatively small expenditure on embankments is required. The profits of agriculture are very considerable in the district, as the rich soil, periodically fertilised by silt deposits from the overflow of great rivers, yields plentiful crops which find a good market in Calcutta and other places. The price of rice is also steadily rising, owing to the rapid growth of population, and to the inflation of the currency caused by the export of jute from East Bengal. The profits of agriculture are therefore steadily increasing and with it the practice of granting these land-jobbing tenures.

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important consequences. On the one hand it increased the value of landed property by rendering it more effective as a means of raising money; while on the other it enabled the proprietors in the absence of any law of entail, to alienate a portion of the future rental to the impoverishment of their posterity. It had a tendency to convert proprietors into mere annuitants on their estates, the best part of the usufruct of which was granted away under perpetual leases. In 1858, Mr. Sconce, a member of the legislative council, and a gentleman of great experience in Bengal, wrote: "The bane of the landed interest in India 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 realising extortionate rents, and who, being neither landlords nor cultivators are permitted to absorb such an amount of the profits of the land as is calculated to paralyse the efficient operations of those, with whose property, the property of the entire country is most nearly identified. The growth of the custom of sub-letting or selling aliquot shares of the whole superior tenure entailed considerable inconvenience on under-tenants by compelling them to pay their rents to a number of landlords. The custom has sometimes been carried to excess. For instance in the estate of Kotalipara in the district of Faridpur, there are no less than 500 sharers, each of whom is in the possession of an infinitesmal interest in the property.

Temporary farming leases are common in the Government Estates. They are granted for a short term either at a fixed rent or a percentage of the rental of the farm.

Raiyats.

I now turn to the lowest grade of interest in land, *i.e.*, the interest of the cultivating raiyat or under-raiyat. The old distinction of raiyats into [*khudkast* and *paicast*] disappeared with the Permanent Settle-

ment. Since then the first attempt at a new classification of rights was made in Act X of 1859. When Lord Cornwallis made the Permanent Settlement, he apparently intended to confer upon the raiyats an immunity against excessive enhancement of their rents and power was reserved to legislate in future for the protection and welfare of the tenantry. The matter was however lost sight of for more than half a century. In 1799 special powers were given to the zemindars to arrest a defaulting raiyat and to distrain his crops summarily. These powers were abused and led to much oppression, but it was not until 1859 that a remedy was found. Act X of that year conferred on the raiyats a right of occupancy in lands cultivated by them for 12 years and protected occupancy-raiyats from enhancement of rent except on certain specified grounds; the landlords' power of distraint was also restricted. This Act failed however to give the needed protection to the tenantry and after prolonged discussion a new Tenancy Act was passed in 1885 which provided that every raiyat who has held any land in a village for 12 years acquires thereby a right of occupancy in all the land he may hold in the village. The result has been that a proportion of all the raiyats in the province, varying from four-fifths to nine-tenths have occupancy-rights in their lands. In the case of such raiyats, enhancement by contract is limited to an addition once in 15 years of not more than one-eighth to the previous rents and a Civil Court can only enhance the rent on certain specified grounds, and even then, only once in 15 years. Occupancy-rights are heritable but their transferability depends upon local custom. A small number of raiyats holds at fixed rates of rent and the remainder are known by the general designation of non-occupancy raiyats. The interests of the former class are both heritable and transferable. While the latter are more or less tenants-at-will, whose status corresponds to some extent to that of the Fuidhirs of Ireland. No raiyat can be ejected

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except in the execution of the decree of a competent court nor can their rents be enhanced at shorter intervals than 5 years. The raiyats have restricted powers of sub-letting and their tenants are termed "under-raiyats." An under-raiyat's term cannot exceed nine years except with the consent of his superior landlord.

Landed rights in *urban* areas.

The law relating to land-tenure as sketched above has no application to *urban* areas. Land legislation in India was framed with a special eye to agricultural interests which predominate all over the country.[1] In Calcutta and other Municipal areas to which the Bengal Tenancy Act has not been extended by special notification in the Gazette, the general incidents of tenancy are governed by the Indian Contract Act, the Transfer of Property Act, supplemented, in the absence of specific provision, by the rules of justice, equity and good conscience. In these tracts, the absolute proprietary right resides in the landlord. He may carve out his interest by creating a subordinate tenure but the tenant in actual occupation has no statutory right beyond that stipulated for in the contract between him and his landlord. Custom and usage may however import rights and liabilities not inconsistent with the express covenants in the contract. The lessor[2] may create

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[1] More than 56 millions or 71 per cent. of the entire population of Bengal live by agriculture. This is in marked contrast to the state of things in England, where the majority of the people live in big cities. In England, all the interests of busy life centre round the towns; in India, the whole outlook is agricultural and the state of the crops is the all absorbing question of life. The agricultural harvest dominates the fate of India, it is to this that the Government looks for its revenue, the landlord for his rent, the merchant for his profits and the labourers and artisans for their wages.

[2] A lease is a transfer of the leasehold premises to be held by the lessee under the covenants and conditions expressed in the contract or implied by law.

any interest in the lessee, sanctioned by the policy of law, within the limits of his own interest in the property.[1] A full owner in possession may demise land on any terms and conditions consistent with the policy of law. In the absence of a contract or local usage to the contrary leases are transferable absolutely or by way of mortgage, but the original lessee does not cease, notwithstanding the transfer, to be subject to the liabilities attaching to the lease. The right of a lessee is heritable and is capable of being bequeathed according to the laws of testamentary and intestate succession.

The revenue system of Calcutta.

The city of Calcutta has a revenue system of its own. In 1698 the East India Company purchased the talukdari right of Calcutta and the two adjacent villages of Sutanati and Govindapur, subject to an annual payment of Rs. 1,195 as revenue to the Great Mogul. The ground rent payable to the East India Company is revenue within the meaning of 21 George III, c. 70, and the High Court in its Ordinary Original Civil jurisdiction has no power to interfere with it. There are many revenue-free tenures in Calcutta and lands held exempt from assessment for 60 years were declared by the Act XXIII of 1850 to be valid *lakhiraj*. The revenue-paying holdings in Calcutta are estates in the ordinary signification of the term. The provisions of Bengal Land Registration Act have been extended to all lands,—though most of the other incidents of estates in the mofassal do not apply to them. The Government has no proprietary interest in these lands, though it is entitled to receive fixed sums as revenue or quit rent. The proprietary right is vested in the actual holders of land. The tenure of land is of the nature of a freehold and though *pattas* are

[1] I. L. R., 12 Cal., 327.

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often taken from the Collector of Calcutta, they are not considered as muniments of title.[1]

The subject of riparian ownership and of rights in alluvial land calls for a passing notice in a country like Bengal where the huge torrents that descend from the Himalayas possess such enormous powers of disintegration that large tracts of land are sometimes washed away from one place and thrown up in another in the course of a single freshet. Regulation XI of 1825 contains rules for the determination of claims (1) to land gained by alluvion or by dereliction of a river or the sea, (2) to island *chars* thrown up in the beds of rivers. Clause 1, sec. 4, of the Regulation runs thus:—"When land may be gained by *gradual* accession whether from the recess of a river or of the sea, it shall be considered an increment to the tenure of the person to whose land or estate it is thus annexed, whether such land or estate be held immediately from Government by a *Zemindar* or other superior landholder, or as a subordinate tenure by any description of under-tenant whatever; provided that the increment of land thus obtained shall not entitle the person in possession of the estate or tenure to which the land may be annexed to a right of property or permanent interest therein beyond that possessed by him in the estate or tenure to which the land may be annexed; and shall not in any case be understood to exempt the holder of it from the payment to Government of any assessment for the public revenue to which it may be liable under the provisions of Regulation II of 1819 or of any other regulation in force; nor if annexed to a subordinate tenure held under a superior landholder shall the under-tenant, whether a *khudkast* raiyat holding a Maurashi Istimrari tenure at a fixed rate of rent per *bigha* or any

"Alluvial lands."

[1] *Gardner* v. *Fell*, 1 M. I. A., 299. This paragraph is abridged from Mitra's Land Law of Bengal.

other description of under-tenant liable by his engagements or by established usage to an increase of rent for the land annexed to his tenure by alluvion, be considered exempt from the payment of any increase of rent to which he may be justly liable." It will be seen that this rule corresponds closely to the doctrine of *incrementum latens*[1] which means an accretion formed by a process so slow and gradual as to be *latent* and imperceptible in its progress.

The doctrine of "incrementum latens."

The law relating to island *chars* is contained in clause 3, section IV, "When a char or island may be thrown up in a large and navigable river (the bed of which is not the property of an individual) or in the sea, and the channel of the river or sea between such island and the shore may not be fordable, it shall according to established usage be at the disposal of Government.[2] But if the channel between such island and the shore be fordable at any season of the year, it shall be considered an accession to the land, tenure or tenures of the person or persons, whose estate or estates may be most contiguous to it, subject to the several provisions specified in the first clause of this section with respect to increment of land by *gradual* accession."

Island chars.

The above rules are subject to a very important proviso, introduced by courts of justice in consonance with the

[1] Where there is an acquisition of land from the sea or a river by a gradual, slow and imperceptible means, there, from the supposed necessity of the case and the difficulty of having to determine, year by year to whom an inch or a foot or a yard belongs, the accretion by alluvion is held to belong to the owner of the adjoining lands (*Per* Lord Justice James in *Lopez* v. *Madan Mohan Thakur*, 5 B. L. R., 521).

[2] In *Khelat Chandra Ghose* v. *The Collector of Bhagalpur* (Civil rule 73 of 1864), Norman, J., said: "We are of opinion that the words 'at the disposal of Government' mean that the property in and absolute right of disposal of the same is vested in the Government and not that the Government have merely a right to the revenue. The Legislature throughout the Regulation is dealing with the right of property in newly formed lands and not merely providing for the right to assess revenue upon them."

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general principles of equity and justice which the legislature requires them to follow (*vide* clause V, sec. 4, Regulation XI of 1825). That proviso may be briefly summed up thus :—

Reformation *in situ*.

Where land is formed on a diluviated but ascertainable site or where an ascertainable site is discovered by the recession or subsidence of waters, such land or discovered site belongs to him who has a subsisting title thereto.[1] This is called the doctrine of 'reformation *in situ*' and it rests upon the principle that in the contemplation of law land covered by water is the same as land covered by crops. The doctrine is thus set out in a work of great authority, Hale, deJure Maris, p. 15. "If a subject hath land adjoining the sea, and the violence of the sea swallow it up, but so that yet there be reasonable marks to continue the notice of it; or though the marks be defaced, yet if by situation and extent of quantity and bounding upon the farm land, the same can be known or it be by art or industry regained, the subject doth not lose his property. If it be freely left again by the reflux and recess of the sea the owner may have his land as before, if he can make out where and what it was, for he cannot lose his property of the soil, although it for a time becomes part of the sea, and within the Admiral's jurisdiction while it so continues. This principle is one not merely of English Law, nor a principle peculiar to any system of Municipal Law, but it is a

[1] 5 B. L. R., 521. In this case, the plaintiff continued to pay the original revenue for the entire estate, although a great portion of it had been diluviated and when the land reformed on its original site, he merely recovered what he had been paying revenue for all along. Had he received from Government any abatement on account of the diluvion, he would not have been entitled to recover the re-formed lands (19 W. R., 89). Where, however, a purchaser bought the estate itself and the diminished area was a mere matter of description at the sale, and the purchaser continued to pay the revenue originally assessed on the estate, he was held to be entitled to the re-formation (21 W. R., 115.)

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principle founded in universal law and justice; that is to say, that whoever has land wherever it is, whatever may be the accident to which it has been exposed whether it be a vineyard which is covered by lava or ashes from a volcano or a field covered by the sea or river, the ground, the site, the property remains in the original owner."

Rights in beds of rivers.

Under the law of India, the ownership of the bed of a navigable river is vested *primâ facie* in the Government as trustees for the public.[1] The foreshore of a tidal navigable river belongs to Government.[2] When the river ceases to be navigable, the foreshore is the property of the riparian proprietors. The beds of small and shallow streams and of rivers above the point where they cease to be navigable, *primâ facie* belong to the riparian proprietors *ad medium filum aquæ*, i.e., as far as the middle thread of the stream.[3] The foreshore and bank of a non-navigable river belong to the riparian proprietors.

Private riparian rights may exist in a tidal navigable river subject to and controlled by the public right of navigation. They are the same as riparian rights in non-navigable streams.[4] These rights are natural rights inherent in the riparian soil. The Government is the owner of the soil of the sea within a distance of three miles around the coasts of British India.[5] The soil of the beds of bays, gulfs and estuaries *primâ facie*, belongs to Government.[6]

Other rights in land.

There are a few other rights connected with land in Bengal which may be briefly noticed. Service-tenures (chakran) are found in some parts of the country, being a remnant of the old system under which public officers were paid by grants in land. Somewhat similar are the Ghatwali[7]

[1] 6 Moo. Ind. App., 267.
[2] 6 Moo. Ind. App., 267.
[3] L. R., 17 Ind. App., 62.
[4] 1 App. case, 662.
[5] I. L. R., 2 Bom., 19.
[6] I. L. R., 2 Bom., 19.
[7] *See* Reg. XXIX of 1814.

tenures in Birbhum and elsewhere, granted for guarding the mountain passes against the Mahratta and other invaders. Leases of land 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 wherein mines have been sunk, enjoy special privileges and may be protected by registration against a revenue-sale.[1] A *Khas Mahal* is an estate owned by Government. Small portions of waste land situated within the limits of permanently-settled estates belong to the proprietors of such estates but there are large tracts of waste land in parts of Bengal and Assam which belong solely to Government. There are in India, as in England, incorporeal rights in land; but, owing to the much less artificial state of the law of real property, these rights, in Bengal at least, are not by any means varied or intricate. *Jalkar* or the right of fishery in all large natural waters in a zemindari belongs to the zemindar. The right of fishery in all but the largest rivers has generally been alienated by Government to private persons, having been included in the assets on which the permanent settlement of estates was based but in some cases the fishery itself is a separate estate. Where the Government grants a right of fishery, the grantee can follow the shifting river so long as the waters form part of the river system with the up-stream and down-stream limits of his grant (*Raja Sreenath Roy* v. *Dinobundhu Sen*). A settlement of a *jalkar* does not necessarily involve a right to the soil. Evidence of facts and circumstances may, however, be given to show that the settlement of a *jalkar* conveys the right to the soil.[2] In tanks the right of fishing vests in the owner or occupant; in the Bay and large rivers fishing is free to all. *Bankar* or the right of cutting wood in jungle, or waste land is often enjoyed by the raiyats of cultivated land in the vicinity.

[1] Secs. 37 and 43, Act XI of 1859. [2] I. L. R., 10 Cal., 50.

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CHAPTER II.

History of Land Revenue from the beginning of the Hindu period to the Permanent Settlement (1793).

Definition of land-revenue, as distinguished from rent.

The term 'land-revenue' may be broadly defined as the amount of money or quantity of produce payable to the State by persons in occupation of, or otherwise interested in, land.[1] Modern terminology draws a line of distinction between revenue and rent. Revenue is used to denote the tax imposed by the State upon the owners of land and rent is used to designate the amount payable by a tenant of land to its owner or in cases in which there are two or more degrees of subinfeudation, to the owner of the next higher grade of interest. Rent is essentially in the nature of a price payable for the use and occupation of land, while revenue partakes of the character of a royalty payable by persons interested in land, whether in actual occupation or not. A considerable confusion of ideas prevailed on this subject during the Hindu and Muhammadan periods, as well as during the earlier British rule; and the precision of terms just referred to is a comparatively recent development. The first attempt to differentiate revenue

[1] It includes the money or produce payable to Government by the actual occupier of the soil in cases in which there is no intermediary between the two. When the paramount title of the State carrying with it the right to receive revenue and the proprietary right to receive rent unite in Government, the proprietary interest becomes merged in the paramount title and rent in such cases becomes revenue. There is however one exception to this general rule. Farmers of estates, the property of Government, are treated as tenure-holders who pay rent while the farmer of an estate which belongs to a recusant proprietor, takes the place of such proprietor and pays revenue.

from rent is to be found in the change of nomenclature adopted in re-enacting Regulations II and III of 1793, when the term "revenue" was substituted for "rent" and henceforth the words were used in different senses. At one time the tendency was to regard the ruler as the ultimate landlord or owner of the soil; and revenue was then synonymous with rent. But the Permanent Settlement having conferred the proprietary right on the zemindars, divested the State of its status of a land-owner and it is impossible now to say that the revenue payable to Government is rent due to it as the proprietor of land. The utmost that can now be said is that the land is hypothecated to Government as an ultimate security for the revenue assessed upon it. There are no doubt cases in which Government is the immediate owner of the soil, as for instance all waste and unoccupied land but the extent of such land is small, compared with the total settled area and the only function which the Government now exercises as a landlord is to promote the general well-being of the landed classes by making advances to cultivators to sink wells or effect other improvements on their holdings or to meet agricultural exigencies and by suspending or remitting the demand for revenue during famine or seasonal calamities. For all practical purposes it may be said that the proprietary right vests in private persons and not in the Crown and in this view of things the land-revenue is a tax on agricultural income—a contribution to the State out of the surplus profit of agriculture, just as the income-tax is a contribution out of the proceeds of other industries and occupations. In an agricultural country like Bengal, land-revenue forms a most appropriate source of income to the State.[1] No other impost would perhaps con-

[1] The place which is occupied by the land-tax in English finance is very small, the receipts amounting to less than one per cent. of the total public income, whereas in Bengal the land-revenue receipts form more than 15 per cent. of the whole income of the State.

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stitute a more suitable or more efficient substitute. It is acquiesced in most readily throughout the country as part of the natural order of society and this is an important test of sound taxation.[1]

The merits of the land revenue impost.

In comparison with other known forms of taxation, it has merits which should not be overlooked. As the impost seeks to tap the profits on the staple industry of the country, it does not entail enhancement of prices or diminution of general consumption. In Bengal where the present tenancy law provides a safeguard against improper enhancement of rent, it falls on that part of the produce which goes, not to the cultivators but to the intermediary rent receiver. Even in respect of the latter it is a charge the burden of which was discounted at the time of the Permanent Settlement. It would not therefore be expedient that a form of revenue which has these merits should be exchanged in any wholesale manner for other kinds of taxation involving unpopular and inquisitorial methods.

The history of land-revenue during the early British period is a comparatively obscure chronicle. Historians while recording the triumphs of British arms and diplomacy, seldom refer to the achievements of men like Shore, Grant, Holt Mackenzie, Duncan, Munro or Thomason who have, by their labours in the department of land-revenue, profoundly influenced the daily life and destinies of the millions who form the backbone of the population in India. Another serious drawback to the study of Indian land-revenue is the mass of vernacular technical terms with which the literature on the subject is loaded. It is no wonder therefore

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[1] The essential requirements of a good tax are (i) that the people should be accustomed to it; (ii) that it should be collected with the minimum risk of oppression on the one hand and evasion on the other. The land-tax as collected under the British revenue system fulfils both these conditions.

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that the history of Indian land-revenue fails to present any attractions to the average Englishman. Moreover, the system of land-tenure in Great Britain is so radically different from that which prevails in this country, there is so little in England corresponding to the peasant holdings or to the cadastre of continental nations, that an English enquirer approaches the land problems of India from a standpoint even more remote than that of the inhabitants of the rest of Europe. It is therefore most difficult to provide, particularly for the English student, a conspectus of Indian land-revenue administration which within a small compass, shall be at once lucid and accurate.

Under the Hindu Kings the revenue varied from one-eighth to one-sixth of the produce of land.

The rights in land are so closely bound up with the revenue payable for it, that much of the contents of this chapter has been necessarily anticipated in the last. From very ancient times it was customary for the Hindu kings to take a share of the produce of the land, and in a society almost wholly dependent upon the cultivation of the soil, this agricultural impost formed the chief source of revenue, the collection and management of which was in consequence a matter of the first concern and importance to the Government. We have seen that the share varied from one-eighth to one-sixth, according to the difference of the soil and the labour necessary to cultivate it and might be raised even to one-fourth in times of war or other emergency. Though the sixth became a traditional share, the growing requirements of States in a perpetual condition of warfare, often pushed it beyond this limit, sometimes to the extent of one-fourth. Judged according to modern standards,[1] this assessment seems to be moderate enough at first

1 "Indian landlords of the present day not uncommonly take from their tenants one-half of the produce of such crops as are raised without expenditure on irrigation or manure." Fuller's Empire of India, p. 335.

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sight but on closer examination it will be found that it did not exhaust the demands of the State and really represented little more than a charge for the royal privy purse. No public works, army or police had to be maintained out of it. The army and the police were supported by contingents levied under the Feudal system. The tanks, bathing places, and other public works which excite the admiration of the modern world were made mostly by gratuitous labour or by labour fed at the expense of the people of the neighbourhood.

This share was exclusive of other special demands, such as charges for the maintenance of armies, public works, etc.

The revenue was generally levied in kind and the king's share of the produce was collected at first by the actual division of the grain heaped on the threshing floor, but later by a simple process of appraisement based on an estimate of the standing crops.[1] This crude method of realising the bulk of the State income appears to have been practically the only method in force throughout India until the sixteenth century of the Christian era. In the primitive stages of society when money is scarce, the payment of rent in kind offers many advantages. It does away with the necessity for making nice calculations of the cost and profit of cultivation, or of the productive powers of the land. By a self-acting machinery, it provides an insurance against the vicissitudes of the season and eliminates the effects of a total or partial failure of the crops; for, in

At first the revenue was levied in kind.

Produce and cash payment compared; the advantage and disadvantages of the two systems.

[1] Baden Powell thus describes the later process. In order to save the trouble of dividing and this was perhaps a step towards the dissolution of the system—a method of estimation would be allowed; a practised eye looked at a field and judged, "the reaping of such a field will give so many maunds of grain, of which so many go to the King" and the officers took that amount of grain, whether more or less than was actually harvested (Land Systems of British India, Vol. I, p. 269).

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lean years there is little to divide and thus revenue relief follows automatically. Under this system, there is no necessity for any provision for the enhancement or reduction of rent on the ground of rise or fall of prices; for, being a share of the gross produce, the rent adjusts itself to the fluctuations of the agricultural market. In the days of imperfect communications it is no small advantage to the cultivator to be spared the trouble and expense of carrying his produce to a suitable market. But as population grows and cultivation extends, as the administrative machinery becomes more complex and attains larger dimensions, the collection of the revenue in kind becomes a task of increasing difficulty. Unless the process of appraisement or division of produce is actively supervised, the peasantry conceal or make away with the grain and local collectors, on their part, cheat both the peasant and the treasury. On the other hand, the expansion of trade and the improvement of communications remove the more serious drawbacks of the system of cash rents. As the circulation of coin is quickened, as easier means of access to trade centres is provided, the cost of carriage is diminished and prices are pushed up in the locality. The way is thus paved for the substitution of cash rent for the king's share of the produce.[1] Sir Bampfylde Fuller thus accounts for the transition from produce to cash rents in India. "The more varied and the more costly activities of the Mahomedan rulers needed cash for their indulgence;

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[1] Baden Powell remarks "Grain-rents are both natural and useful in certain cases and in the early stages of society. If for instance in outlying and precarious tracts crops are liable to loss by flood or draught, or locusts or wild beasts, the tenant who had to give only fraction of the grain —actually produced and garnered, receives a practical reduction in bad years. But in other places where this ground does not exist, other objections come to light—fraud and concealment on one side, overestimate and extortion on the other and the loss to the tenant of a rise in value (Land Systems, p. 656.)

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payments in kind were converted into payments in money and under the pressure of ever-increasing expenditure their amounts were enhanced until they left but the barest pittance to the cultivators.[1]

The early Pathan sovereigns of India appear to have maintained intact the revenue system of the Hindus which continued until the time of Sher Shah (1540-1545 A.D.). He attempted to introduce a regular system of assessment and collection; but did not live long enough to carry his plans into effect. The first[2] systematic attempt for the substitution of cash for produce payments was made in the reign of Akbar with the help of his minister Todar Mall (1571-82 A.D.). In its inception, it was a settlement of the revenue in kind but after a few years it was revised in favour of a cash assessment.[3] It was, however, optional with the tenant to pay his rent in cash or kind. One-third of the average gross produce was adopted as the basis of assessment and the rates were fixed by calculating the price of staple food crops on an average of the previous nineteen years.[4] This period was selected, because nineteen years

First attempt to substitute cash for produce-rents made in the reign of Akbar with the help of his minister, Todar Mall.

[1] The Empire of India, p. 335.

[2] It was Timur who for the first time allowed a choice between cash and produce rent, but as he left India the year after he invaded it and never returned, his system could scarcely have had any practical operation.

[3] Phillips says that Todar Mall's aim was to substitute a money revenue at a fixed rate for a revenue in kind varying with the crop. But although one of the main features of the settlement was the change in the mode of paying the revenue, this mode was not obligatory and the old methods might still be continued at the option of the cultivator. The cultivator might choose to pay either in kind or in money but he was bound to make his choice of the two methods and to adhere to one of them. (Law of Land Tenures in Bengal, p. 72.)

[4] The rules of commutation embodied in the Bengal Tenancy Act (Act VIII of 1885) provide an average of ten years. Todar Mall's longer average seems to be a safer basis of calculation, as all the ordinary varieties of good and bad seasons are expected to come round during a cycle of 19 years.

being a cycle of the moon, the seasons were supposed in this time to undergo a complete revolution. The revenue-officers, who were closely supervised, had the power of reducing rents on account of failure of crops or other calamities of the season and considerable elasticity in the collection of revenue was allowed in bad years.[1] The rules of commutation were occasionally revised according to market-rates.

Todar Mall was a great financier and eminent revenue authority and his name has come down to posterity as a guarantee for sound assessment. His great settlement of the revenues of Bengal, Behar and Orissa (1582 A.D.) was the earliest systematic assessment known to have been made in the province and formed the basis of the revenue policy of successive Governments. As far as technique was concerned, the first step taken towards effecting an accurate assessment under Todar Mall's system was to make a comprehensive survey of land and establish one uniform standard of measurement. The principle of his settlement was to ascertain the produce of each field and to take as revenue a share estimated by different authorities at one-third or one-fourth. The land was divided into three classes according to its productive powers. *Pulej* or land cultivated for every harvest and never allowed to lie fallow, paid the full demand every year. *Perauti* or land which had to be left fallow occasionally in order to recruit its powers was charged only when it was under cultivation.[2] *Checher* or land which had lain fallow for three or four years in consequence of excessive rain, inundation or other cause paid

Todar Mall's Revenue Settlement was the earliest systematic assessment and formed the basis of the revenue policy of subsequent Governments.

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[1] Fifth Report, Vol. 1, p. 381.

[2] In Bengal, no manure is used nor rotation of crops practised. The only preventive resorted to against exhaustion of the soil is to let the land lie fallow at intervals. The result of modern researches goes to show that, where space is ample and the use of manure unknown, there is no sounder method of cultivation.

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two-fifths in the first year, three-fifths in the second year, four-fifths in the third and fourth years and the full rate in the fifth year. *Banjar* or land which was left out of cultivation for five years or more, was assessed at rates still more favourable. Todar Mall's assessment which works out to about Re. 1-8 per acre, appears to have been made after the most careful enquiries as to the actual produce.

Todar Mall's settlement compared with the Permanent Settlement of 1793, A.D.

In the central parts of the empire Todar Mall's settlement was preceded by a complete survey of every field and the preparation of a schedule setting forth the produce of each bigha of land. In these respects it compares favourably with the Permanent Settlement of Bengal which was carried out without a survey, without a detailed valuation of land or accurate information about its produce. Unfortunately, however, Bengal being an outlying province of the Mogul empire was not measured and Behar was only partially surveyed. So far as these provinces are concerned, the assessment was made on the basis of the reports of village accountants and cannot be said to have borne any ascertained relation to the produce of the soil. Such as it was, however, it furnished a model for all subsequent Mogul settlements and practically of the decennial settlement also.

Todar Mall's settlement was made direct with the raiyats and was liable to decennial revision. Merits of the system.

Todar Mall's settlement was made with the raiyats direct for a term of ten years.[1] Assessments were made liable to decennial revision with a view to secure an increase of revenue and this has furnished ground for the argument that the policy of the Mogul administration taxed improvements. It can scarcely be contended that all improvements are entitled to exemption

[1] Fifth Report, Vol. 1, p. 103. Phillips observes: "On the whole it can hardly be doubted that, for whatever reason, the settlement of Todar Mall was an attempt to return to the old Hindu system, as far as getting rid of the zamindars was concerned." (Law of Land Tenures in Bengal, p. 78.)

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from assessment but it is a well recognised principle that increments resulting from the expenditure of private labour or capital should not be taxed. The defect in the policy of the Moguls was that it drew no distinction between improvement effected by private enterprise and improvements due to causes unconnected with the individual, which may aptly be termed "unearned increments." If the merits of any reform are fairly judged by results, the revenue system named after Todar Mall must be held to have proved beneficial to the raiyats and just to the State, seeing that it lasted without material variation for more than a century, during which time cultivation flourished and the tenantry attained a high degree of prosperity.[1]

The increase of land-revenue from Todar Mall's time to that of Alivardi-khan.

Under Todar Mall's assessment, the revenue of the Subha of Bengal amounted to Rs. 1,06,93,152.[2] The assessment was enhanced by the successive Mogul Governors of Bengal, the increase being due partly to territorial acquisitions, partly to *abwabs* or proportional additions to the original assessment of Todar Mall and partly to the taxation of newly cultivated or improved lands. In 1658 Sujakhan increased the assessment to Rs. 1,31,15,907. The subsequent impositions of Jaffierkhan,[3] Sujauddin,[4] and Alivardi amounted to an increase of about

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[1] It is said that the institutes of Akbar continued in use until the time of Bahadur Shah, 1707-1712 A.D. (Appendix No. 16 to Shore's minute of 2nd April, 1788.)

[2] Fifth Report, Vol. I, pp. 103, 189.

[3] Jaffierkhan confined and put aside the zemindars and others who stood between the Government and the cultivators and collected the revenue direct from the raiyats. He employed Hindus only as collectors, many of whom subsequently developed into zemindars. His exclusive employment of Hindus goes a long way to account for the fact that on the acquisition of the Dewani in 1765, the English found all the zemindars to be Hindus, though the Government was Mahomedan.

[4] Sujauddin set at liberty the zemindars who were imprisoned by his predecessor. His Subadari was considered as the era of good government.

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33 per cent. on the assessment of 1658, while the increase of the zemindar's exactions from the raiyats could not have been less than 50 per cent.[1] By 1765, when the British acquired the Dewani or financial administration of the province, the nominal revenue had risen to 312 lakhs, though it is doubtful whether so large a sum was ever actually realised.[2] It should be borne in mind that these figures are not wholly reliable and do not furnish any safe basis of comparison as to the standard of assessment which was in force from time to time. The taxable area varied greatly at different periods, as districts were added at one time and lost at another. The items included under the designation of land-revenue also varied and were at different times disguised by the inclusion or exclusion of abwabs and a variety of local taxes known in the aggregate as *sayer*. Another important point to remember is that the area under cultivation and the population were much less during the Mahomedan period than now, while the purchasing power of the rupee was then twice or thrice as great as that of the corresponding coin of the present day.[3] The result was that during the Mahomedan period so much in the aggregate was taken by the State as to leave no margin which would give a selling value to the land, beyond that of the crop upon it.[4]

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[1] Shore's Minute of 18th June 1789, p. 41.

[2] According to Shore, there is no proof that this amount of revenue was ever actually realised. Even if it were realised for a year or two, the country was then incapable of bearing the assessment permanently. (Minute of 18th June, 1789, pp. 47 and 77.)

[3] In the Punjab, the United Provinces and Bengal, for instance, the assessment of Akbar was calculated to form the equivalent of some 4·8 million tons of wheat, while the present assessment of the same area corresponds approximately to 1·9 million tons. (*Vide* Prinsep's useful Tables, Chap. I, p. 77; Blochmann's Edition of Ain-i-Akbari, Chap. I, p. 62.)

[4] Hunter's Introduction to Bengal Records, p. 27.

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The collection of land-revenue by the later Muhammadan governors became a disorganised scramble for the greatest amount of income which could be wrung from the land. The last phase in the revenue administration of the Moguls is the excessive growth of the system of farming which marked the latter days of the Empire after the death of Aurangzeb. The system of farming the revenue for a fixed sum is usually the resource of a Government in its decline. It saves the trouble of local control and offers many other advantages. As the authority of the Mogul emperor grew less and less, the local governors of Bengal became more and more independent of the Court at Delhi. They also became careless of the details of administration, and the official organisation fpr the control of land-revenue disappeared. The farmers became masters of the situation and were allowed, on payment of the stipulated sum, to appropriate the revenue to their own use and profit and to do as they liked with the tenants. They were not slow to take advantage of the weakness of a tottering administration and fortify their position till they developed into great landlords, whose pretensions gradually extended to the ownership of the soil.[1]

The growth of farming which marked the decline of Mogul revenue administration.

On the 12th August 1765 the Emperor of Delhi assigned to the East India Company the *Diwani* of Bengal, Behar, and Orissa (which at the time comprised the district of Midnapur only) and this was the foundation of British revenue jurisdiction in these provinces. "Diwani" means the office, jurisdiction and emolument of the Diwan, an officer charged with the collection of the revenue and invested with extensive powers in all civil and financial cases and

The grant of the Diwani to the East India Company.

[1] In the majority of cases, revenue farmers developed into landlords, but in rare instances they retained nothing but overlord dues.

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the grant of the Diwani had the effect of transferring the control of the revenues from the Mogul Government to the East India Company.[1] When, as a result of the grant of the Diwani, it became necessary for the Company's servants to undertake the administration of the land-revenue, they were placed in a situation of no small difficulty and embarassment. In fact, their position was altogether unique in history. Having been occupied solely in the pursuit of trade, they were no doubt skilled in questions of commercial investment but were wholly ignorant of the conditions of land-holding in Bengal and were altogether lacking in any experience of revenue administration. Assessment was more or less speculative as the system of administration which existed in the country was not a system of written rules and plain principles, which they could learn by careful application. The difficulty of realising the revenue had been greatly increased by a famine of unprecedented severity which decimated the population in 1770. Except fragmentary and for the most part unreliable lists of estates with their nominal revenue rolls and indifferent accounts of past collections, there were no records of previous assessments, defective as they were. The country was overrun by farmers who screwed as much as they could out of the tenants. There was no survey, no staff of experienced native subordinates. The old revenue agency had fallen into decay and there was only a small and wholly inadequate staff of English district officials without any knowledge or experience of the indigenous land-revenue systems.

The initial difficulties of the East India Company in administering the revenues.

Todar Mall's system of assessment, as revised in 1685 and 1750, was in force when the English assumed the control

[1] The Committee of Circuit in their proceedings of the 20th August 1772, say : "The Diwani may be considered as composed of two branches- (1) the collection of the revenue, (2) the administration of justice in Civil cases.

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of the revenues of Bengal. In theory the assessment was based on a measurement of the cultivated area and classification of soil. But no survey was carried out in Bengal and other outlying provinces and large areas were let out in farm to *amils* or revenue collectors, who as observed before, were apparently left to make their own arrangements regarding assessment and collections. This accounts for the absence in Bengal of any village agency, which has from the very beginning of British rule seriously hampered the efforts of Government to regulate agrarian relations. At first no attempt was made to conduct the administration by British officers and for some time no interference with the native officials was contemplated. Motives of policy, natural but shortsighted, prompted Clive to leave the actual administration in the hands of the old Bengali functionaries, to be carried on in the name of the Subahdar. In 1767 Clive wrote to the Select Committee "We are sensible that since the acquisition of the Diwani, the power formerly belonging to the subahdar of these provinces is totally, in fact, vested in the East India Company; nothing remains to him but the name and shadow of authority. This name, however, and this shadow, it is indispensably necessary that we should venerate. To appoint the Company's servants to the offices of Collectors or indeed to do any act by any exertion of the English power, would be throwing off the mask and declaring the Company the subahdar of the province. Foreign nations would immediately take umbrage at this." Kaye has commented severely on this policy and characterised it as an attempt on the part of the Company to "gorge themselves on the revenue, leaving the responsibility." It seems however that it was with no desire to shirk responsibility, that the Subahdari staff was let alone but in a perfectly genuine belief that native rule was the most expedient and politic. The Company had only a small staff of merchants and writers

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barely enough to manage their commercial transactions and quite unequal, as Mr. Verelst wrote, to civil administration. No change was made in the existing system till 1769 when supervisors were appointed to superintend the collection of revenue by the Bengali officers of the former regime. But central control is of no use when the local agency is defective. The old Bengali staff had so deteriorated under the corrupt and feeble government which marked the decline of the Mogul Empire that this well meant supervision proved ineffective and in 1772 the British Government was compelled to undertake the direct administration of the revenues and the district supervisors were converted into Collectors. Very shortly afterwards Warren Hastings was appointed Governor-General and he at once set on foot measures for transforming the Company's merchants and writers into executive officers. At first the staff was small and various experiments were tried, now of posting Collectors to each of the districts, now of locating them in groups at certain important centres to form revenue councils or committees. No new land-revenue policy was introduced but an attempt was made to secure a better control of the collection by concluding a quinquennial settlement, for the most part, with farmers offering the highest bid.[1] It was believed that the natives of the country were better informed of the value of lands than their rulers and that few would engage to pay what they could not find means to discharge.[2] Experience showed this to be a mistake.

At first the company made no changes in the existing system of revenue administration but in 1772 Warren Hastings reformed its essential character by converting the company's writers into collectors of revenue.

[1] Under these arrangements, many of the existing zemindars were set aside. The complaint of the dispossessed zemindars reached across the seas to the House of Commons and attracted the notice of the home authorities. It was soon found necessary to restore the zemindars and annual leases were accordingly issued to them.

[2] Shore's Minute of 18th June 1789, p. 95.

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Ignorant of the real capabilities of the country and incited by the hopes of profit formerly realisable under a Government which took no notice of oppression or extortion practised in collecting its own dues, speculators readily agreed for sums which they found themselves unable to pay when the time for payment came.[1] The remissions and irrecoverable balances under the farming system exceeded two and a half millions sterling.[2] After the expiry of the quinquennial settlement in 1777, annual settlements were made for several years. The Company's government were however strongly impressed that such settlements were injurious to the landholders and their tenants, discouraging to all improvements of agriculture and consequently inimical to the general prosperity of the country. The evils of the system were thus set forth by the President in Council.

Successive short-term settlement.

The evils of such settlement.

"The farmer who holds his farm for one year only having no interest in the next, takes what he can with the hand of rigour; which even in the execution of legal claims is often equivalent to violence. He is under the necessity of being rigid and even cruel; for what is left in arrear after the expiration of his power, is at best a doubtful debt, if even recoverable. He will be tempted to exceed the bounds of right and to augment his income by irregular exactions and by racking the tenants, for which pretences will not be wanting, where the farms pass annually from one hand to another. What should hinder him? He has nothing to lose by the desertion of the inhabitants or the decay of cultivation. Some of the richest articles of tillage require a length of time to come to perfection. The ground must be manured, banked, watered, ploughed and sowed or planted. These operations are begun in one season and cost a heavy expense, which is to be repaid by the crops

[1] Harington's Analysis, Vol. II, p. 58.

[2] Mill's History of India, Vol. IX, p. 13, Ed. 1840.

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of the succeeding year. What farmers will either give encouragement or assistance to a culture of which another is to reap the fruits? The discouragements which the tenants feel from being transferred every year to new landlords, are a great objection to such short leases. They contribute to injure the cultivation and dispeople the lands.''

In 1784 detailed enquiries ordered and proposals made for a Permanent Settlement of revenue.

In 1784 was passed Pitts' India Act which ordered an enquiry into the complaints of the dispossessed zemindars and directed the Company to take steps ''for settling and establishing upon principles of moderation and justice, according to the laws and constitution of India, the permanent rules by which the tributes, rents and services of the Rajas, Zemindars, etc., should be in future rendered and paid to the united company.'' In furtherance of these provisions, orders were transmitted to Government in India for making an enquiry into the condition of landholders and for the establishment of permanent rules for the collection of revenue, founded on the local laws and usages of the country. The Court of Directors at the same time expressed their opinion that it would be most in accordance with the spirit of the Act to fix a permanent revenue on a review of the collections of former years[1] and that the settlement should in every practicable instance be made with the zemindars, *rules being at the same time made for maintaining the rights of other classes according to the usages of the country.* The settlement was to be made for ten years and when it was completed, all the papers were to be sent to the Directors to enable them to form

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[1] Baden Powell is, however, of opinion that the Act did not in any way direct a permanent settlement to be made, as is sometimes supposed. It only sought to put an end to injustice to the zemindars and to repeated changes—now farms—now annual leases in the revenue management. It was not till six years afterwards that the settlement was proposed to be made permanent.

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"a conclusive and satisfactory opinion, so as to preclude the necessity of further reference or future change."

Lord Cornwallis was appointed Governor-General to carry out these instructions. He arrived at Calcutta in the autumn of 1786 and with him came Mr. (afterwards Sir) John Shore, newly appointed to the Board of Revenue—two persons, who more than any other, were instrumental in introducing the zemindari settlement[1] in Bengal, a measure which has powerfully influenced for weal or for woe the destinies and daily lives of millions of human beings. On their arrival they instituted the most careful and elaborate enquiries regarding the past and present condition of land-tenures in Bengal. The results of these enquiries are embodied in Shore's famous minutes of 1788 and 1789[2] which will always remain as enduring monuments of his ability and statesmanship, his mastery of revenue problems and soundness of judgment.

The results of enquiries embodied in Sir John Shore's famous minutes of 1788 and 1789.

The two main issues before Government.

The question before the Government practically resolved itself into two main issues :—

(I) Who, among the various rival candidates, were the persons best entitled to settlement ?

(II) What should be the term of the settlement ?

As regards the first point, it was found that there were different classes of claimants. Of these, the most eligible were the zemindars who were of widely different origin. The first class of Bengal zemindars were territorial chiefs

The status of the Bengal Zemindars.

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[1] While advocating a settlement with the zemindars, Shore was opposed to making it permanent.

[2] The minutes of 1789 are printed in the Appendix to the Fifth Report. The minute of 1788 with its appendices, describing the rise and growth of the Zemindari title, is given *in extenso* in Harington's Analysis, Vol. III.

before the Mahomedan conquest or ancient landed families holding manorial rights on a semifeudal tenure and were land-owners in the true sense of the term, while a more numerous class consisted of farmers and revenue collectors who had usurped the status of landlords under false pretences. The framers of the Permanent Settlement had thus to deal with a heterogeneous body of zemindars differing in historical origin and actual status.[1] Zemindars of the first class had clearly a title to their estates, differing from that of mere revenue agents of the ruling power. But it was difficult to formulate the difference which represented various degrees of independence and customary status. In fact, the Bengal zemindars were the resultant of two sets of influences. The long continued weakness of the Provincial Government favoured the growth of their independence down to the end of the seventeenth century. The stringent fiscal policy of Jaffier Khan *alias* Murshid Kuli Khan which aimed at the supersession of the zemindars in the early part of the eighteenth century, followed by the farming system of the East India Company from 1769 to 1789 tended to reduce the zemindars to mere agents for the collection of the revenue. It was this composite body of zemindars which was dealt with as a homogeneous whole by the Permanent Settlement.[2] The territorial magnates like the zemindars of Nadia, Bardwan, Dinajpur, Bishnupur and Roshanabad occupied a dual position. By virtue of their *sanad* or official title they held their lands for the specific purpose of collecting the Government revenue. In the light of long established custom they regarded themselves as independent owners of their estates,

The dual aspect of the zemindar's status.

[1] The result of the Permanent Settlement on the status of the zemindars was to place all classes of them on a dead level of equality and to obliterate the previous difference in the customary status of the several classes which had grown out of differences in origin.

[2] Hunter's Introduction to the Bengal Records, p. 35.

subject to the payment of land-revenue. It is this double title by Sanad and by custom which explains the anomalies so puzzling to British legislators of the eighteenth century.

Uniform status provided for all zemindars.

The framers of the Permanent Settlement endeavoured to cut the Gordian knot by establishing a uniform tenure for all zemindars. They conceived the new system of tenure in a liberal spirit with a view to give effect to all rights which any zemindar had enjoyed *de facto*. Out of the imperfect or inchoate rights formerly enjoyed, whether by virtue of *Sanad* or of custom, the Company's Government built up a complete proprietary title, saleable, heritable and subject only to the payment of a fixed land tax. "This statutory title bore a superficial similarity to the land system of England; a similarity which doctrinaire economists mistook for and an *á priori* historian (James Mill) exaggerated into an intended imitation."[1]

Lord Cornwallis in a minute, dated 18th September, 1789, observed "Although however I am not only of opinion that

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[1] Hunter's Introduction to Bengal Records, p. 46; The Permanent Settlement of Bengal was neither consciously nor unconsciously an imitation of the English system of landed property. Lord Cornwallis carried out in good faith and with due care and caution, the injunction of the Pitts' Act of 1784 and the instructions of the Court of Directors to establish permanent rules for the land-revenue according to the laws and constitution of India. Field, MacDonnell and some other authorities are of opinion that helped by feudal notions of property in land, the zemindari party secured the upper hand. Field, in a passage marked more by eloquence than by fidelity to facts, observed: "Having a patriotic respect for the blessings enjoyed by Englishmen and for the institutions which were the source of them, both sides believed that the same blessings would be secured for India, if the same institutions were planted there. Thus, when it was argued that, if the zemindars were not landowners in the English sense, they ought to be made so, they who strongly maintained the negative side of the general question were not prepared to gainsay a proposition, to question which would have been to doubt the excellency of those institutions which have always been the boast of every Briton."

the zemindars have the best right but from being persuaded that nothing could be so ruinous to the public interest as that the land should be retained as the property of Government, I am so convinced that failing the claim of the right of the zemindars, it would be necessary for the public good to grant a right of property in the soil to them or to persons of other description. I think it unnecessary to enter into any discussion of the grounds upon which their right appears to be founded. It is the most effectual mode for promoting the general improvement of the country, which I look upon as the important object for our present consideration." Reasoning in the way, Lord Cornwallis came to the conclusion that the zemindars in Bengal were the proper persons to be settled with.[1] In vesting the zemindars with the status of land-owners and in recognising their rights, not so much according to a theoretical view of their original position, as according to existing facts evolved after the growth of a century, Lord Cornwallis was in entire accord with Mr. Shore and most of the other civil servants.[2] Apart from the question of policy, there is no doubt that the Government was perfectly justified in the course they had taken. The zemindars who had since the beginning of the eighteenth century been allowed to contract for the revenue of large areas were the only well established revenue machinery ready to hand. They were generally solvent persons, capable of keeping a contract and no agency was more

Lord Cornwallis's views.

Settlement with zemindars decided on.

[1] The result of the Permanent Settlement on the status of the zemindars was to place all classes of them on a dead level of equality and to obliterate the previous difference in the customary status of the several classes which had grown out of difference in origin.

[2] Lord Cornwallis in a minute, dated 18th September 1789, observed that Mr. Shore has "most successfully argued in favour of the rights of the zemindars to the property of the soil and in order to give value to those rights they must be made permanent."

suitable for the collection of revenue. A century's growth had given them a firm hold as *de facto* landlords and to ignore them would have been an unjust interference with their prescriptive rights. All previous attempts to put aside the zemindars and dispense with their agency, remarkably those made in the reign of Akbar and during the governorship of Jaffierkhan, and, lastly, by the East India Company in 1772, had resulted in failure. No village communities or coparcenary cultivating bodies came forward to engage for the land-revenue in Bengal or Behar. Moreover, direct settlement with the raiyats was not compatible with the strength of the European agency available.[1] Baden Powell writes: "Even when each enormous district (as it then was) had its one European Collector, it would have been quite impossible for him to deal with thousands of detailed holdings".[2] In these circumstances the zemindars were admitted to settlement, not as a matter of mere chance but in pursuance of a deliberate policy and for the sake of administrative convenience. In 1790-91 the decennial settlement with the zemindars, which in 1793 was declared permanent, was carried out by British officers and the total assessment including that of two districts in Assam (Goalpara and Sylhet) amounted to 286 lakhs of rupees. It was made on the basis of preceding temporary settlements, as detailed enquiries regarding the outturn and rates of rents were expressly forbidden by the Directors, who were anxious to avoid any investigation of an inquisitorial character.

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[1] The tahsildars and all the host of trained local officials in Northern India of the present day are the product of a century of British rule. In 1789 no such officers were in existence.

[2] Baden Powell's Land Systems of British India, p. 402. Even at the present day the Bengal districts are considered too heavy and unmanageable and the aim of Government is to secure greater decentralisation by splitting them up into smaller administrative units. Quite recently a committee consisting of members of the Indian Civil Service has been appointed to devise measures for the improvement of the district administrative machinery in Bengal.

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The settlement in perpetuity of the land-revenue of Bengal and Behar was the subject of prolonged consideration ever since the assumption of the Diwani by the East India Company and long before 1793, preliminary enquiries were started with the object of ascertaining the assets of the various estates. But the information then gathered was merely of a general character and imparted a very inadequate knowledge of the real assets of land, as only in a few districts was any attempt made to institute detailed enquiries or to establish a record of rights. In these circumstances Shore was opposed to settlement in perpetuity but his advice was rejected and a permanent settlement was made without any definite knowledge of the resources of the country and without any precise record of the reciprocal relations of landlord and tenant. Lord Cornwallis was alone responsible for making the settlement permanent upon imperfect information and without adequate provision for protecting the rights of the raiyats and other subordinate holders. Lord Cornwallis thought that the grant of a secure title to the zemindars would not be productive of much good unless it was accompanied by permanency of assessment. In the minute of 18th September, 1789, he wrote "I may safely assert that one-third of the Company's territory in Hindustan is now a jungle inhabited only by wild beasts. Will a ten years' lease induce any proprietor to clear away that jungle and encourage the raiyat to cultivate his land, when at the end of that lease he must either submit to be taxed *ad libitum* for the newly cultivated lands or lose all hopes of deriving any benefit from his labour, for which perhaps by that time he will hardly be repaid."[1] Shore replied

Lord Cornwallis decided in favour of a permanent settlement, in opposition to Sir John Shore (afterwards Lord Teignmouth).

Controversy between Lord Cornwallis and Sir John Shore.

1 Fifth Report, Vol. I, p. 590.

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that ten years would in the estimation of the natives be equivalent to perpetuity.[1] He remarked that although he did not know whether one-third of the land was still jungle, cultivation had much advanced since 1770. He recommended the grant of waste land free of revenue for five years upon a talukdari tenure and quoted the opinion of the Court of Directors that "a definite term would be more pleasing to the natives than a dubious perpetuity."[2] Shore was of opinion that it would be advisable to await the result of further enquiry before making the decennial settlement permanent.[3] Lord Cornwallis recognised the value of such an enquiry but shrank from the delay which it involved. Shore urged that the relations between the zemindars and raiyats should be defined and adjusted and rules for the enhancement of rent laid down, before the Government demand was limited for ever.[4] In advocating the necessity for interposition between the zemindars and the raiyats, he said "much time will, I fear, elapse before we can establish a system perfectly consistent in all its parts and before we can reduce the com-

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[1] Fifth Report, Vol. I, pp. 594, 595. Baden Powell says "does any landholder really believe in or realise permanency? For example, will any one seriously contend that, looking at all the ups and downs of history, a zemindar in 1793 realised that the Government would last for ever or even for a long period of years? Would not a promise of fixity for thirty or twenty years, even then, have seemed to him a period longer than he could count on." Baden Powell's Land Systems of British India, p. 347.

[2] Fifth Report, p. 596.

[3] But unfortunately, the self-confidence which the protracted enquiries of Lord Cornwallis inspired in him and his despair of bringing a depopulated province into cultivation by any temporary measure led him to recommend that the seal of permanence should be placed on this settlement, instead of leaving it to his successor to do so at the end of ten years. Lord Cornwallis believed that the time for experiment had gone by and that, if the tentative efforts at administration of the past quarter of a century had not provided a basis for definite action, there was but slight hope of increased knowledge from further delay (Introduction to Bengal Records, pp. 24 & 76).

pound relations of a zemindar to Government and of a raiyat to a zamindar to the simple principles of land-lord and tenant. But substance is more important than forms. If the propositions of the collectors for correcting the prevailing abuses be examined, they will be found defective, and the regulations which our experience has enabled us to establish will, when considered, appear indefinite, where they ought to have the utmost precision. Orders which should be positive are tempered by cautious conditions, nor am I ashamed to distrust my own knowledge since I have frequent proofs that new enquiries lead to new information.[1] Notwithstanding repeated prohibitions against the introduction of new taxes, we still find that many have been established of late years. With the exception of an arbitrary limitation in favour of the Khode and Khaust raiyats, the regulations for the new settlement virtually confirm all these taxes, without our possessing any records of them and without knowing how far they are burthensome or otherwise. At present they are in many places so numerous and complicated that after having obtained an enumeration of the whole, the amount of the *Ausil* with the proportionate rates of the several *abwabs*, 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."[2] He added "until the variable rules adopted in adjusting the rent of the raiyats are simplified and rendered more definite, no solid improvement can be expected from their labours upon which the prosperity of the country depends." With the true foresight of a statesman

[1] Field says "one important piece of information which subsequent enquiries have afforded us is that competition rents did not exist in India and that where customary rents alone prevail the principles of land-lord and tenant are anything but simple." (Field's Introduction to the Bengal Regulations, p. 35 footnote.)

[2] Fifth Report, Vol. I, p. 601.

Shore further predicted that "if the zemindars were left to make their own arrangements with the raiyats without restriction, the present confusion would never be adjusted."

Lord Cornwallis was on the other hand sanguine that the effects of the limitation of the public demand and the Permanent Settlement with the zemindars, combined with the regulations which he made for the grant of *pattas*[1] would place the relations between the zemindars and the raiyats on a proper footing. He was convinced that if the zemindars were made proprietors, subject to the payment of a fixed revenue or land-tax, they would of themselves and for their own interest adjust the relations between them and their raiyats on a satisfactory footing and that enough would be done, if the right of interference, should it be necessary, were retained. The next chapter will show that his hopes were doomed to grievous disappointment. Lord Cornwallis seems to have thought that the permanence of the assessment was bound up with the security of the title to the estate. His process of reasoning seems to be more specious than sound. Re-assessment, based on increase in the value of land and rise in prices, does not affect or unsettle the fixed rights of property, any more than a revision of the income-tax renders the position of the capitalist as a man of property insecure. The result of the enquiries was reported to the authorities at home in 1790. The Court of Directors after deliberating for two

Lord Cornwallis thought that the Permanent Settlements would tend to improve the relations between the land-lord and tenants.

Fallacy of his argument that permanence of assessment was bound up with security of title.

[1] The Patta Regulations proved quite ineffective and had to be rescinded. Neither the zemindars nor raiyats found it to their interest to conform to the rules laid down therein. The causes of the failure are set forth in Chapter III.

years, accepted Lord Cornwallis's view and directed that the decennial settlement should be made permanent.[1] On receipt of the necessary instructions from the Hon'ble Court, Lord Cornwallis, by a proclamation, dated the 22nd March 1793, and embodied in the statute book as Regulation I of 1793, confirmed the zemindars and declared that no alteration

The Court of Directors accepted Lord Cornwallis's view and declared the decennial settlement permanent.

[1] The Court of Directors in their letter, dated the 19th September 1792, observe: "On the fullest consideration, we are inclined to think that whatever doubt may exist with respect to their original character, whether as proprietors of land or collectors of revenue or with respect to that 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 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 these objects. 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 the 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 of conferring such rights upon the zemindars." (Harington's Analysis, Vol. III, 359.) In Hunter's opinion the popular idea that Lord Cornwallis was the originator of the Permanent Settlement is erroneous. He maintains that Cornwallis merely carried out a predetermined plan of the Court of Directors with a cautious delay which they would have borne ill at the hands of a less powerful servant. He adds "equally erroneous is the idea that he was sent out to impose in Bengal a system of landed property based on English notions of ownership. Pitt's Act of 1784 which was the starting point of the Permanent Settlement, directed, indeed, that "permanent rules" for the land rents and tributes should be made. But it directed those rules to be framed according to the circumstances of the respective cases of the said Rajas, zemindars, polygars, talukdars, and other native landholders and according to the laws and constitution of India. The lengthy despatch of the Court of Directors of the 12th April 1786 honestly endeavoured to give effect to what it termed the true spirit and the humane intentions of the Act. It lays down no rules on preconceived British notions." Introduction to Bengal Records, p. 25.

will ever be made in the assessment fixed at the decennial settlement. Hunter gives a most charitable interpretation of the reasons for the decision of the Court. We take the liberty of extracting his remarks in extenso. "Notwithstanding their full appreciation of the objections, the Court of Directors declared the settlement permanent. They did so, not from any aristocratical prejudices, as Mill informs us, but on the broad economical grounds set forth by Lord Cornwallis. They regarded Bengal, Behar and Orissa as a vast estate, of which one-third of the cultivable land lay waste. They could not reclaim the land themselves. They did not believe that any inducement short of a permanent tenure and a fixed assessment would tempt private individuals to reclaim it. After long deliberation they decided that it was good policy to surrender their claims to any future increase of revenue, whether from such reclamation or from other sources connected with the land, in order to encourage the great work of extending and improving the cultivated area of Bengal. They thought that they would find themselves repaid by the general increase of revenue to be derived from the growth of population and the material development of the country. They were convinced, to use their own striking words, that the magic touch of property would set a certain productive principle in operation, which would abundantly recompense them in future for the sacrifices that they had then made. If ever there was a great question of administration decided upon what seemed at the time to be sound economic arguments, it was the Permanent Settlement of Bengal."[1]

Summary of the salient features of the policy which led up to the Permanent Settlement.

Field thus sums up the salient features of the policy which led to the Permanent Settlement of Bengal. "From the account which has thus been given of the proceedings which led up to the Permanent Settlement, and

[1] Introduction to Bengal Records, p. 82.

from the opinions of those who were concerned in bringing about the measure, it will be clear to any unprejudiced person that the Directors and those who under their authority conducted the Government of Bengal, were well aware of the indefinite relations which subsisted between zemindars and raiyats, were well apprized of the uncertain nature of the rights of the cultivators of the soil; that practically nothing effectual had been done between 1765 and 1790 to define and adjust those rights and the payments to be made by the raiyats to the zemindars; that Mr. Warren Hastings and Mr. Shore were of opinion that these rights and payments should be defined and adjusted before the Government limited its own demand upon the zemindars and settled for ever the amount of revenue payable by them; that it was admitted on all hands that up to 1790 there was not sufficient information and that there were not sufficient materials for this definition and adjustment; that Lord Cornwallis was sanguine that the combined effect of the limitation and permanent settlement of the State demand and of the *patta* regulations would have the ultimate effect of adjusting the relations between the zemindars and the raiyats and obviating all objections to a permanent settlement based upon the undefined demands of the former upon the latter; that the Court of Directors adopted Lord Cornwallis's views and instead of directing the rights of the cultivators of the soil to be ascertained, adjusted and defined once for all, contented themselves with reserving a general right to interfere afterwards, if these expectations and those of Cornwallis should be disappointed and such interference should be found necessary for the protection and welfare of the raiyats. Any unbiassed individual, who will read the whole of the papers, must be satisfied that both Lord Cornwallis and the Directors acted to the best of their judgment and entertained a very honest belief that the elimination of the element of uncertainty by the permanent limitation of the

Government demand, the mutual interests of the parties and enforcement of the rules as to *pattas* would together operate to assure and improve the condition of the raiyats but the fact remains that the rights of the then cultivators of the soil were left as uncertain, as unsettled, as undefined, as they were found by the English at the time of the grant of the Dewani."[1]

The reasons which led to the Permanent Settlement and the benefits which were expected to result from it are thus set forth in the sixth article of the proclamation of the 22nd March 1793. "It is well known to the zemindars, independent talukdars, and other actual proprietors of land, as well as to the inhabitants of Bengal, Behar and Orissa in general, that from the earliest times until the present period, the public assessments 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 from the proprietors of land; and that for the purpose of obtaining this increase, not only frequent investigations have been made to ascertain the actual produce of these estates but that it has been the practice to deprive them of the management of their lands and either to let them in farm or to appoint officers on the part of Government to collect the assessment immediately from the raiyats. The Honourable the Court of Directors, considering these usages and measures to be detrimental to the prosperity of the country, have, with a view to promote the future ease and happiness of the people, authorised the foregoing declaration. The Governor-General in Council trusts that the proprietors of land, sensible of the benefits conferred upon them by the public assessment being fixed for ever, will exert themselves in the cultivation of their lands under the

The benefits anticipated from the Permanent Settlement.

[1] Land holding, p. 503.

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, their heirs or successors by the present or any future Government for an augmentation of the public assessment in consequence of the improvements of their respective estates." In addition to the reasons there given may be mentioned a strong impression that the country wanted rest from constant change. The Company's first administration had been fluctuating and uncertain to a degree. The establishment of principles was therefore considered to be the great remedy for the evil consequences of constant fluctuation, and in judging of the merits of the Permanent Settlement, its tendency towards the removal of this mischievous impression ought fairly to be taken into consideration. The Court of Directors in their despatch of the 19th September 1792 remarked: "No conviction is stronger in our minds than that, of all the generated evils of unsettled principles of administration, none has been more baneful than frequent variations in the assessment. It has reduced everything to temporary expedient and destroyed all enlarged views of improvements. Impolitic as such a principle must be at all times, it is particularly so with respect to a dependent country, paying a large annual tribute and deprived of many of its ancient supports. Such a country requires specially the aid of a productive principle of management. Long leases with a view to the gradual establishment of a permanent system would still continue in a certain degree the evils of the former practice; periodical corrections in the assessment would be, in effect, of the nature of a general increase and would destroy the hope of a permanent system, with the confidence of exertion it is calculated to inspire." The Government had also in view the creation of a contented middle class. Among this class were men of intelligence, public spirit and social influence, and it was expected that when such men acquired property

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and found themselves in a prosperous condition, they were sure to be well-affected towards Government. There possibly was present in the mind of Lord Cornwallis a further latent hope that the zemindars when they grew rich would patronise foreign luxuries and live up to a higher standard of comfort, thus enriching the custom-house and the treasury by the duty and indirect tax which they would pay. It is needless to say that none of these expectations have borne any fruit.

One of the objects of the Permanent Settlement was the creation of a contented middle class.

An undoubted benefit conferred by the Permanent Settlement was the abolition of the *Najai* which is described in Wilson's Glossary as "a tax formerly assessed in Bengal upon the cultivators present, to make up for any deficiency arising from the death or disappearance of their neighbours." Under the Mahomedan Government, the resident cultivators were jointly and severally liable for the whole revenue of the village. The joint liability was enforced by the extra cess called *Najai*. The tax was most inequitable in its operation as it fell most heavily on the wretched survivors of those villages which had suffered the greatest depopulation and were therefore the most entitled to the lenity of Government. Writing in 1772 the Governor in Council denounced the *Najai* as an insupportable burden on the inhabitants.

The chief defect of the measure lay in the absence of any active provision for safeguarding subordinate interests.[1] Instead of having the rights of the cultivators defined and

Chief defect of the Permanent Settlement.

[1] Baden Powell observed "Grievous as the failure of the Permanent Settlement has been, its failure is not due to the fact that the zemindars were confirmed or that in the unavoidable necessity of defining and securing their position in English legal documents, they were called and made landlords. The evil consisted in this that their right was not limited with regard to all the older raiyats, leaving new comers to be in principle (with such detailed conditions as might be advisable) contract tenants." Land Systems, p. 403.

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adjusted once for all, the authorities contented themselves with a vague reservation of the right to interfere in the interests and for the protection of the raiyats. Sir Edward Colebrooke, writing in 1870 on the eve of his departure from a country which he had helped to administer for forty-two years, thus dwelt on this defect of Regulation I of 1793. "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 zemindar's permanent 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 zemindar's hands."[1]

The right to legislate for the protection of the raiyats, though reserved by the Permanent Settlement Regulation, was not exercised for more than 60 years. Lord Cornwallis's expectations regarding the conduct of the zemindars were not fulfilled.

Though the necessity for protective legislation was present in the mind of Lord Cornwallis[2] this reservation was allowed to remain a dead letter for more than 60 years and it was not until 1859 that any earnest attempt was made to place the raiyats in a position of security. The history of these sixty-six years is, in the main, a melancholy record of embittered relations between landlord and tenant which led to serious disturbances and ruinous litigation. In Article VI of the Proclamation there

[1] Revenue Sections, p. 167.

[2] In his minute of the 18th September 1789, Lord Cornwallis wrote "I understand the word 'permanency' to extend to the *Jumma* only and not to the details of the settlement, for many regulations will certainly be hereafter necessary for the further security of the raiyats."

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are expressions of the pious hope that the zemindars would conduct themselves with good faith and moderation towards their tenants, in return for the benefits conferred upon them by the Permanent Settlement. Experience soon proved how utterly delusive these hopes were. Far from showing any moderation the zemindar grew more and more extortionate in his dealings with the raiyats.[1] In eighteen years it was found that the difference between the collections from the cultivators and the amount paid to Government had trebled.[2] This gives an idea of the extent to which the zemindar turned to account the opportunities of profit placed within his reach. It was a very poor return for the generosity which the Government showed in refusing to set any limits to the zemindar's power of enhancing rent, while restricting its own demand upon the proprietors of land. In their Resolution No. I, dated the 16th January 1902, the Government of India remarked "they cannot conscientiously endorse the proposition that in the interest of the cultivator, the system of agrarian tenure (Permanent Settlement) should be held up as a public model which is not supported by the experience of any civilised country, which is not justified by the single great experiment that has been made in India, and which was found in the latter case to place the tenant so undeservedly at the mercy of the landlord that

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[1] What a sad commentary on Law's glowing periods about "the gratitude of ancient Zemindar and Jagirdar families, restored to opulence." Mr. Thomas Law, Collector of Behar, was considered an authority on revenue matters. Writing in 1902, the Government of India observed "So far from being generously treated by the zemindars, the Bengal cultivator was rack-rented and oppressed to such an extent that the Government of India felt compelled to intervene on his behalf and by the series of legislative measures which commenced with the Rent Act of 1859 to place him in the position of greater security which he now enjoys.

[2] In the opinion of many distinguished revenue authorities the bulk of this increase consisted of rack-rents and illegal cases squeezed out of the raiyat-

the State has been compelled to employ for his protection a more stringent measure of legislation than has been found necessary in temporarily settled areas."

The Permanent Settlement was based on an imperfectly developed rental and involved an unwarrantable sacrifice of public revenue.

The policy of the Permanent Settlement is open to condemnation on another ground, it was founded on an imperfectly developed rental, which necessarily involved the sacrifice of future revenue, created not by the expenditure of landlord's capital but simply by the exercise of proprietary power in increasing the relative share of the produce which constitutes rent. From a revenue point of view it is unsound to make the assessment permanent so long as there is room for the extension of cultivation and for the further development of the resources of the country. The sacrifice of revenue involved in a premature settlement in perpetuity is gratuitous and indefensible inasmuch as the increase of income to the proprietor does 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. The result of the numerous experiments in revenue assessment made since 1793 has been to establish on a firm basis the principle that a permanent settlement should be deferred so long as the land continues to improve in value by any causes which are not the direct result of the holder's own experiment and expenditure. On Lord Cornwallis's own showing, one-third of the country was jungle when the Permanent Settlement was concluded,[1] and according to Mr. Shore, cultivation was progressive and was far from reaching its highest limits. At the close of the last century, there was abundance of land in Bengal, while population was sparse, the result being that there was no competition to push up rent beyond the customary rates

[1] Fifth Report, Vol. I, p. 591.

and in these circumstances Lord Cornwallis was led to think that rent in Bengal had at that time reached the possible maximum. Little did he foresee that a rapid and enormous increase of population would soon introduce "Competition rents" and that a liberal use of the power of enhancement given by law to purchasers of estates sold for arrears of revenue would lead to an extraordinary inflation of the rent-roll. In the interval between 1791 and 1904, the gross rental of the permanently settled estates rose from 318 to 1,472 lakhs of rupees representing an increase of 1,154 lakhs.[1] Allowing 10 per cent. for the cost of collection, the increase of net rental comes up to 1,039 lakhs. Under a system of temporary settlement, Government would have been entitled to at least 50 per cent. of this increase according to the Saharanpur rule (better known as the half asset rule) which is now the accepted canon of assessment in landlord estates. It will thus be seen that in the year 1904 the annual loss to Government entailed by the Permanent Settlement was no less than 519 lakhs of rupees. Sir Bampfylde Fuller estimates that at the present day the Permanent Settlement of Bengal has deprived the Indian Exchequer of 4 million pounds a year.[2] This is more than double the annual revenue derived from the Income-tax, and is substantially in excess of the annual receipts from the sale of judicial stamps.[3] The extraordinary expansion of the rent-roll after the perpetual limitation of the Government demand, illustrates the huge sacrifice entailed by a premature settlement of revenue in perpetuity.[4] When the question of

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1 Imperial Gazetteer, Bengal, Vol. I, p. 123.

2 Empire of India, p. 336.

3 In 1910-11 the revenue derived by the Government of India from Income-tax was £1,593,301, that from the sale of judicial stamps was £3,312,557.

4 According to the valuation returns furnished in 1904 by the zemindars and tenure-holders under the Cess Act, the total rental of the Provinces (Bengal, Behar and Orissa) amounts to 17-84 crores of rupees. Of this

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a permanent settlement was under discussion the magnitude of the economic revolution through which the country was passing was less obvious than it had since become. It is doubtful whether any parallel could be found in any country to the changes which took place during the years immediately following the Settlement of 1793, to the diminution of the precious metals and the enormous increase in the price of agricultural produce. In justice to the Court of Directors it ought to be said that they perceived the surrender of revenue which the Permanent Settlement would involve but they believed that the fiscal sacrifice would be repaid by the prosperity and contentment of the people, and by the increased stability of British rule.

The basis of the assessment.

The amount of the land-revenue demand was fixed on the basis of actual payments made in the past and had no reference to the productive powers of the land, to its proximity to marts or to facilities of communication. Thornton gives the following description of the process of assessment in an article in the Calcutta Review. "The Collector sat in his office in the sadar station, attended by his right-hand man, the Kanango, by whom he was almost entirely guided. As each estate came up in succession, the brief record of former settlements was read and the *dehsunny* book or fiscal register for ten years, immediately preceding the cession or conquest was inspected. The Kanango was then asked who was the zemindar of the village. Then followed the determination of the amount of revenue. On this point also reliance was chiefly placed on the *daul*, or estimate of the Kanango, checked by the accounts of past collections and by any other offers of mere farming specula-

sum, the land-revenue absorbs less than one quarter and the remainder is shared by the zemindars, tenure-holders, revenue-free proprietors and rent-free holders. After deducting the gross rental of revenue-free estates, rent-free holdings and temporarily-settled estates, the assets of the permanently settled revenue paying estates may be estimated at 1,472 lakhs.

tors which might happen to be put forward." Shore thus describes the net result: "A medium of the actual produce to Government in former years, drawn from the scanty information which the Collectors had the power of procuring, was the basis on which the assessment of each estate, whether large or small, was assessed.[1] There was no survey and settlement in the modern Indian sense of the term. There was no attempt to measure each individual field or to estimate its average produce. Indeed the unit of the settlement was the estate of the zemindar, not the holding of the cultivator; and the basis of assessment was the amount of land-revenue the estate had paid as a whole, not the amount which each individual holding could afford to pay. The revenue thus assessed was by no means light and bore with great severity on the zemindars at a time when the country had hardly recovered from the effects of a wide-spread famine which laid it desolate in 1770. It will be seen in the next chapter that the heavy assessment led to the ruin of many ancient zemindars whose estates were sold for arrears of revenue. But as cultivation extended, peace bore its fruits, as prices rose, and the rupee fell in value,[2] the assessment became lighter and lighter till at the present day it is less than a fourth of the gross rental. Another direct source of accession to the zemindar's income was to be found in the expansion of trade which, unfettered on the abolition

[1] Minute of 1789.

[2] This was anticipated by Lord Cornwallis who in his minute of 3rd February 1790 (Appendix V to Fifth Report) wrote "Equally favourable to the contributors is the probable alteration in the value of silver. For there is little doubt but that it will continue to fall, as it has done for centuries past, in proportion to the quantity drawn from the mines and thrown into the general circulation increases. If this be admitted, the assessment will become gradually lighter, because, as the value of silver diminishes, the landholder will be able upon an average, to procure the quantity which he may engage to pay annually to Government, with a proportionately smaller part of the produce of his lands than he can at present."

of the *sayer* from internal duties, secured a ready market for surplus produce. Regarded as a capitalised value of improvements the revenue fixed in perpetuity in 1793 was none too dear a price for the zemindars to pay, having regard to the immense potentialities for the development of the country which existed at the time.

Constitutional aspects of the question.

The right of the Government to make any permanent regulations and thus to bind its successors for all time has been questioned on constitutional grounds. A permanent settlement tends to restrict the financial resources of future Governments by limiting the taxation of land and leads to an inequitable adjustment of the public burthens. Baden Powell says "the effect of a permanent settlement is practically this, that the Government of the day selects a certain class of estates and says you shall never be called on to bear more than a certain share of the public burdens, no matter what your neighbours pay."[1] It has been estimated that the incidence of taxation to which the Bengal landlords are subject is about a third of that which falls on the landless classes. Mr. H. S. Cunningham, ex-judge, Calcutta High Court, writing in the *Asiatic Quarterly Review* (*April* 1886), remarks "the question has sometimes been asked whether a compact so inherently inequitable as the Permanent Settlement can be maintained under the altered conditions of succeeding times.[2] A certain expenditure being in existing circumstances indispensable, it must be paid by some class or other but no

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[1] Land System of British India, p. 348.

[2] As early as 1817, Col. Wilke wrote "an English Chancellor of the Exchequer who should presume to pledge the national faith to an unalterable tax, might captivate the multitude but would be smiled at by the financiers of Europe; yet principles do not alter in traversing the ocean (History of Mysore, p. 123).

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historical justification can get rid of the essential injustice of an arrangement by which those who benefit most by the administration, should contribute least to its cost."[1]

How far the zemindars have fulfilled Lord Cornwallis's hopes.

One of the pious hopes expressed by the authors of the Permanent Settlement was that "the proprietors of land, sensible of the benefits conferred upon them by the public assessment being fixed for ever will exert themselves in the cultivation of their land, under the certainty that they will enjoy exclusively the fruits of their own good management and industry." It is deeply to be deplored that the conduct of the Bengal landlords has furnished a melancholy antithesis to the expectations formed of them. As a body they have shown but little disposition to lay out money on the improvement of their estates, either from motives of prudence or profit or from public spirit.[2] It is hardly any exaggeration to say that they have converted themselves into mere annuitants and have, as a body, failed to show a practical appreciation of the responsibilities of their position

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1 Not content with the Permanent Settlement, the zemindars of Bengal went the length of opposing the Income-tax as an infringement of the promise held out in 1793 that no demand would ever be made upon them by any future Government for an augmentation of the public assessment in consequence of the improvement of their respective estates. Article VII of the Permanent Settlement Regulation which reserves the right to impose additional internal duties furnishes a specific answer to this argument. The scope of that measure was confined to the land-tax. Lord Cornwallis's minute of the 3rd February 1790 contemplates the probable necessity of future general taxation which would apply to the Bengal zemindar in common with other members of the community.

2 Fuller observes: "The grant of proprietary rights has not generally had the anticipated effect of stimulating expenditure upon the improvement of the land, proprietary profits are as a rule expended unproductively." *Empire of India*, p. 340. In England the rise in the value of agricultural land is generally speaking a fair return of the capital that has been invested in improvements, while in Bengal the increase constitutes an unearned increment in the true sense of the term.

or of the duties which they owe to their tenantry.[1] A century's experience has shown that there is no necessary connection between permanency of assessment and improvement of agriculture. Sir John Woodburn, sometime Lieutenant-Governor of Bengal, said that he did not observe among the rank and file of Bengal zemindars a greater disposition to execute works of improvement on their properties than among the zemindars of the upper provinces.[2] The permanently-settled districts are in no way more prosperous than those in which a fairly long term of settlement is allowed. Mr. J. R. Reid, Secretary to the Government, North-Western Provinces (now styled United Provinces), wrote in 1873 "According to theory one should find the permanently-settled estates in the most flourishing condition, with all manner of improvements introduced, and landlords very well-to-do and most liberal to their tenants. But in fact in riding through these villages and through the parganas generally, you would not detect anything in the appearance of the people and land, in the number of wells and other means of irrigation, the kind and look of the crops, the size of the houses, the air and condition of the people and the cattle, to make you suspect that the permanently-settled land-owners enjoy a different tenure from their neighbours of similar caste and condition in temporarily-settled estates. There is as much capital laid out and industry bestowed on the land in the one set of

[1] Baden Powell thus speaks of this class "they did nothing for the land and even when there was no glaring personal defect, the climate and the habits of the country unfortunately suggested that the proprietor should save himself the trouble by farming out his estate to anyone who would give him the largest profit over and above his revenue payment. And as the proprietor's farmer in time grew rich, what with freedom from war and security and the daily increasing value of land, so he too farmed his interest to others, till farm within farm became the order of the day, each resembling a screw upon a screw, the last coming down on the tenant with the pressure of them all (Land Systems of British India, p. 407).

[2] Land Revenue Policy of the India Government, p. 69.

estates, as in the others." Testimony of this kind could be multiplied but the fact does not really admit of any dispute.

The Permanent Settlement has checked the growth of commercial enterprise.

Nor has the Permanent Settlement helped the industrial or commercial development of the country or the advancement of rural credit. On the contrary one important consequence of this institution has been to lock up all surplus capital in land and to encourage a tendency towards the accumulation of hoarded wealth which leaves but little available for productive investments. It has to no small extent checked the growth of a spirit of enterprise. Habitually indolent and unschooled in business habits, the majority of the Bengal land-holders can conceive of no better use of money than to lay it up in hoarded treasure or to fritter it away on unproductive expenditure. All this has had the effect of retarding the progress of trade and commerce to no small extent. The vast wealth and commercial eminence attained by the merchant princes of the Bombay Presidency which is not under permanent settlement are in striking contrast to the comparatively slender resources of the Bengal land-owners.

Has the Permanent Settlement induced an exceptional flow of charity in Bengal?

A certain school of thinkers seem to entertain the idea that the Permanent Settlement has been the means of developing in Bengal an exceptional flow of public spirit and of charitable investment. There is undoubtedly a number of worthy and liberal-minded landlords in Bengal, as there is in other parts of India. This is the result of individual culture and enlightenment and not of any particular system of assessment. So far from any credit being due to the Permanent Settlement for the creation of such public spirited landlords as exist in

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Bengal, it is a matter of common knowledge that the evils of absenteeism, of management of estates by unsympathetic agents, of unhappy relations between landlord and tenant, and of the multiplication of tenure-holders or middlemen between the zemindar and the cultivator are marked features of the Bengal system.[1]

One advantage of Permanent Settlement.

A permanent settlement has, however, one undoubted advantage, provided that the assessment is based upon a carefully ascertained and fully developed rental. It avoids all the cost of future periodical settlements which involve considerable agricultural disorganisation and harassment to the tenantry. But under the system of settlements as perfected in India at the present day, both the cost and the duration have been reduced to a marked degree and the process of re-settlement is, by judicious arrangement,[2] so carried out as to be very slightly, if at all, vexatious to the people. Even were it otherwise, the benefit would be surely outweighed by the admitted sacrifice of revenue entailed by a premature permanent assessment made, as in Bengal, without a survey of the assets and measurement of land.[3]

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[1] Land Revenue Policy of the India Government, p. 8.

[2] The improvement in the village records and their punctual correction and maintenance up to date, have to a large extent obviated the necessity for detailed surveys and for those local enquiries by subordinate officers which were in former times a fruitful source of harassment and extortion to the agricultural community. The aim of the present policy is to exclude underlings from all connection either with the work of assessment or with the preliminary investigations leading up to it and to devolve upon the settlement officer and his gazetted assistants all the negotiations with the people. (Land Revenue Policy of the India Government, p. 23.) It is a pity, however, that no system of the maintenance of land-records has yet been provided for Bengal. In the absence of such a system, much of the value of record of rights prepared at such enormous cost is lost.

[3] In Bengal neither Todar Mall's settlement nor the subsequent Permanent Settlement of 1793 was preceded by a survey and measurement of land.

ture of the land system of Bengal. The revenue being fixed in perpetuity, Government was thenceforward released from the labour and risk involved in detailed mafassal settlement and the zemindars were not slow to follow the example set before them. Men who do not like to part with the status of zemindar by an absolute sale of their property would readily enough raise money by allowing the proprietary right to be carved up into estates of minor value, the whole substance going into the hands of other, while the name alone remains to them. Inferior holders of tenures would follow the same practice till tenure within tenure became the order of the day. Thus a very considerable class of mere annuitants has been created in Bengal, who have no interest in the land and its improvement.[1] These annuities represent an increase of revenue which might have gone into the coffers of the State. The occupancy-raiyats whose interest is transferable by custom have followed in the wake of the tenure-holders and proprietors and are getting more and more into the habit of sub-letting. Thus a fresh class of petty middlemen, ignorant and useless have arisen to reduce the profits of cultivation

The Permanent Settlement gave an impetus to sub-infeudation of land.

money from the lawyers on the security of their estates. The interest which, in the absence of any organised system of credit in the country is generally high, keeps mounting up till the amount of debt far exceeds the security offered and the estate passes to the creditor under the operation of the law of mortgage. Thus are the lawyers and usurers slowly but surely ousting the ancient zemindars of the Lower Provinces.

[1] Cotton in his "Memorandum of Land Tenures" puts forth a plea for subinfeudation on the ground that it tends to secure a wide diffusion of profits and a "gradual accession to the wealth and influence of small propietors." He entirely overlooks the tendency of the system to raise the rents of under-tenants. Whatever may be the merits of subinfeudation from the socialistic point of view, it goes without saying that it exercises a baneful influence on subordinate interests in land, except in cases in which the tenures are created in favour of actual cultivators or occupiers of the soil. In the very nature of things subinfeudation involve the multiplication of middlemen who have no interest in the improvement of land. Cotton's argument proceeds on the fallacious assumption that the intermediaries are almost all of them cultivators.

and disturb the normal conditions of landholding. There are substantial arguments in favour of the policy which protects the actual cultivator, there are none which would justify his conversion into a petty middleman.

The proportion of the revenue fixed at the Permanent Settlement, to the gross rental.

The assessment levied at the decennial settlement for Bengal, Behar, and Orissa (which at the time consisted only of the district of Midnapur and part of Hughli; or more accurately speaking, of the tract of country between the rivers Rupnarain and Subarnarekha)[1] and the districts of Sylhet and Goalpara in Assam was 286 lakhs of rupees. It was believed at that time that it amounted to 90 per cent. of the gross rental and Sir John Shore estimated that the British Government received 45 per cent., the zemindars and tenure-holders 15 per cent. and the cultivators 40 per cent. of the gross produce of the soil. To modern notions, the percentage of rental taken by Government at the permanent settlement may seem too high but it should be remembered that the zemindars had their *nankar* or *nijjote* lands free of revenue and that they were given all the prospective income from waste lands. They were also allowed to appropriate the whole of the "Sayer" imposts and the proceeds from all invalid grants under 100 bighas which they chose to resume. Many well-informed officers of the day believed that there had been fraudulent concealment of assets on an extensive scale. Grant in his "Analysis of the Finances of Bengal" estimated the concealment at more than a crore of rupees but Shore disputed the accuracy of the figures and it would not be safe to lay too great a stress on them. The balance of evidence points decisively to the severity of the assessment. After a very few years however, with the reclamation of waste lands, and the extension of cultivation, the illegal imposition of abwabs

[1] Orissa Proper was not acquired till 1803.

The essential requisites of a sound settlement are :— (1) Demarcation and survey, *i.e.*, a complete survey of the land, involving a preliminary demarcation of the necessary boundary lines. Without these, there can be no exact account of the culturable land nor any correct record of rights of all parties, proprietor, tenure-holder, raiyats, etc. (2) Survey of agricultural conditions and preparation of agricultural statistics, showing the present state and past history of the village. (3) Valuation of land based on classification of the soil. The permanent settlement of Bengal was carried out without any of the preliminary requisites detailed above. Article VI of the proclamation of 22nd March 1793 deprecates "frequent investigations for the purpose of ascertaining the actual produce of estates," presumably because such proceedings disturbed the economy of rural life and the Directors prohibited detailed enquiries regarding outturn and rates of rent, as they were anxious to avoid any enquiry of a harassing character. Baden Powell says[1] "What need was there, the rulers of those days thought, to harass the proprietor we have established and now wish to encourage, by surveying or measuring his lands and making an inquisition into his affairs. Besides the feeling there was another, which at first made a survey unacceptable. Strange as it may appear to European ideas measurement was looked on with great dread, both by zemindar and raiyat. Whenever the raiyat had to pay a heavy rent or the zemindar to satisfy a high revenue demand, both were glad to have a little (or often a good deal) more land than they were in theory supposed to pay on. It was always found an effective process under the Mogul rule, to threaten a raiyat with the measurement of his lands, for his rent was fixed at so much

Essential requisites of a good settlement.

[1] Land Systems, p. 408.

for so many bighas. If this rent was oppressive as it often was, his only chance of meeting that obligation was that he really held some bighas in excess of what he paid for and this would be found out on measurement. But that was not the only danger; the land-holder well knew that even if he had no excess whatever, still the adverse measurer would inevitably make out the contrary. By raising the "Jarib" or measuring rod, in the middle, and by many other such devices, he would make the bighas small and so produce a result, showing the unfortunate raiyat to be holding more than he was paying for. In the same way the zemindar, even though the settlement law was explicit, thought it was on the whole safer to have the details of his estate as little defined as possible." In the absence of a survey and of accurate knowledge regarding the assets, the assessment was very unequal. The basis of assessment in Behar was more accurate than in Bengal, as the facilities for gathering information were much greater owing to the existence of village organisations in a more effective state.

The Permanent Settlement gave an enormous impetus to subinfeudation[1] which had already begun to be a marked fea-

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[1] It has been enumerated that in the district of Bakargunj nineteen species of tenures bearing distinct names are in existence, *viz.* :—(1) Zemindari; (2) Taluk; (3) Pattani Taluk; (4) Shamilat Taluk; (5) Osat Taluk; (6) Nimosat Taluk; (7) Jimba; (8) Howla; (9) Nim Howla; (10) Osat Howla; (11) Osatnim Howla; (12) Dar Osatnim Howla; (13) Nim Osat Howla; (14) Kaim Karsha; (15) Miras Karsha; (16) Miras Ijara; (17) Sadar Miras Ijara; (18) Dar Miras Ijara; (19) Kaimi Sadar Miras Ijara. One result of this highly complicated system of land-tenures is that it tends to bring forth a rich crop of litigation which goes to enrich the lawyers in proportion that it impoverishes the people. It requires no small skill and acuteness to unravel the tangled skein of tenures superimposed upon one another and lawyers are not slow to take advantage of the situation and raise the scale of fees accordingly. The bar of the Calcutta High Court is reputed to be the richest in all India. The accumulation of enormous wealth by the lawyers has not been without its effects on the composition of the landed aristocracy. Needy zemindars often obtain

and the undue enhancement of rents, the situation of the zemindar underwent a radical change for the better, their income having trebled itself within a decade and a half. In a minute dated 20th September 1893, Sir Antony Macdonnell (now Lord) wrote that in three generations the income of the zemindars of North Behar increased eighty-fold, practically without any expenditure of capital. The revenue of the permanently-settled estates rose to 323 lakhs in 1903-04. The increase was chiefly due to the resumption and assessment, during the first half of the nineteenth century, of a large number of estates which had been held revenue free under invalid titles. During the same period (*i.e.*, 1790-91 to 1903-04) the gross rental of these estates rose from 318 to 1,472 lakhs; in other words the Government share of the rental fell from 90 to 24 per cent.[1]

The comparatively light incidence of land-revenue in Bengal.

The land-revenue demand for the year 1911-12 was more than 4 crores. Four-fifths of the land-revenue were permanently settled in 1793 and since that date the zemindars and their tenants have shared between them the entire benefit of the enormous increase in the value of produce which has taken place. The result is that Bengal pays a lower revenue than any other province with the exception of the Central Provinces, and the incidence of the land-revenue per acre is only 0-13-2 as compared with Re. 1-7-8 in India as a whole.[2]

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[1] The produce per acre may be valued at Rs. 20, or 97,96 lakhs for the province as a whole, of which the total cropped area was estimated at 76,454 square miles in 1903-04. The rental of 16,70 lakhs (of permanently and temporarily settled estates) represents 17 per cent. and the revenue about 4 per cent. of the value of the produce (Imperial Gazetteer, Bengal volume).

[2] In a pamphlet entitled the "Land Question" reprinted from the *Times of India*, a comparison was instituted between permanently-settled Bengal and the Bombay Presidency where the cultivators were substan-

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The Permanent Settlement of 1793 has but little to recommend it either for study or for imitation. In its inception, it was a benevolent blunder based on too great a trust in the zemindar's good sense and in its results it has proved an obstacle to the progress of the country.

The policy of the Permanent Settlement condemned and finally discarded in 1882.

"Never" wrote Lord Hastings in his minute of the 31st December 1819 "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." In the next chapter it will be shown that contrary to the intention of its framers, it had a disastrous effect at once on the ancient landed houses and on the tenantry. After more than a century's trial, the policy of the Permanent Settlement was found wanting and finally discarded in 1882 by the Secretary of State for India.

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tially made peasant proprietors. It was shown that while the incidence of land-revenue in Bengal was annas ten and pies four per head of population, in Bombay it was Rs. 2-10 per head. The import duty paid through the Calcutta Custom House was 1-3 per head, that paid through the Bombay Custom House was 3-9 per head. The inhabitants of Bengal paid annas three per head as income-tax, those of Bombay five annas and a half. This points to the greater prosperity of the people of Bombay and disproves the theory advanced by Dutt in his "Open Letters to Lord Curzon" that the Permanent Settlement has promoted generally the well-being of all classes and thereby indirectly helped the revenues of the country.

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CHAPTER III.

The History of Landholding subsequent to the Permanent Settlement of 1793.

The stringent provisions of Regulation I of 1793 relating to the sale of estates for arrears of revenue led to the extinction of many ancient zemindari houses. Before the Permanent Settlement, the procedure for the realisation of revenue consisted of the attachment of the defaulter's properties and confinement, more or less rigorous, of his person, usually ending with the restoration of his estate.[1] The process has been thus described in detail. "When a zemindar fell into arrears with his land-tax he was arrested and his goods and estate or part thereof were attached by the local agents of the Government. Then began a graduated process of squeezing. If the zemindar were an important personage or

The old and the new procedure for recovery of arrears of revenue compared.

[1] In Dutt's "Open Letters to Lord Curzon" there is an insinuation that the system of imprisoning zemindars was first introduced by the East India Company. He says, "When Warren Hastings imprisoned defaulting zemindars, he scarcely acted with sufficient regard to the ancient traditions of the province or to the position which the hereditary landlords had held for centuries among their people." This statement seems to be devoid of historical foundation. The following extract from the Fifth Report described in detail the means by which arrears of revenue were recovered before the advent of the British Government. "Under the native Governments, the recovery of arrears from defaulters was sometimes attended by seizure and confiscation of personal property or by personal coercion. The zemindars might be imprisoned, chastised with stripes and made to suffer torture, with the view of forcing from him the discovery of concealed property. He might be compelled to choose either to become Mussulman or to suffer death." Shore says—"Pits filled with ordure and all impurities were used as prisons for the zemindars."

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a good briber, the attachment of his lands and the confinement of his person were at first almost nominal. Sometimes the revenue bailiffs did not even oust the zemindar's land officers from the actual collection of the revenue, while the restraint placed on the liberty of the zemindar himself merely amounted to a respectful surveillance of his movements. If these mild measures failed to make the defaulter pay up or if he were slack in his bribes to the revenue underlings, the process of compulsion rapidly developed. The attachment of his lands and goods went on to dispossession of his estate. The surveillance of his person passed through various stages, from restraint in his own house or palace, to being brought under guard to the Collector's headquarters, confinement within the precincts of the Collector's court and imprisonment in the district jail. The final turn of the screw was to drag the defaulter before the supreme revenue authorities in Calcutta where the process of squeezing began afresh and the degree of restraint varied, according to the bribes paid to the native subordinates from enlargement on bail to rotting in the debtor's prison."[1] While the defaulter was thus kept out of his properties, and his person placed under restraint, his estate was either let out in farm or managed by the Collector. In either case, the management was attended with serious difficulties, as the tenants, backed up by the secret influence of the dispossessed zemindar, withheld payment of rent or absconded in a body. The Collector had too much in his hands to be able to devote his personal attention to the affairs of the estate and had to leave the details of management to underlings who were in many cases hired for the job. The orders of the Court of Directors and the injunctions of Parliament discouraged the detention of zemindars in duress and their dispossession from their estates. The payment of allowances

[1] Hunter's Introduction to the Bengal Records, pp. 90, 91.

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to the zemindars during confinement was a burden on the Treasury. All these circumstances favoured the re-entry of the zemindar. A part of the arrear was in many instances paid by the person who stood surety for the zemindar when he obtained his *sanad*. The remainder was carried on as a floating balance or written off as irrecoverable arrear and the ousted zemindar was reinstated in his former status. The procedure though harsh and cruel in all outward seeming, was really a blessing in disguise. Its rigors were directed chiefly against the person of the defaulter but in the long run he got back his estate intact, sometimes at a reduced revenue. In short it acted as a system of rural bankruptcy relief, more or less severe in its operation against the person but rarely, if ever, destructive of the ancestral estate and tenement.[1]

In the place of this apparently rigorous but really wholesome procedure, elastic in its operation, and merciful in its ultimate results, the Permanent Settlement substituted a stern and invariable rule for the sale of the defaulter's estates. It was laid down that on failure of payment from whatever cause "a sale of the whole of the lands of the defaulter or such portion as may be sufficient to make good the arrear, will positively and invariably take place."[2] To most of the Bengal zemindars, unschooled in punctuality and business habits, this was nothing short of the crack of doom. They were too old to shake off at a short and sudden notice the lax and irregular habits which had grown upon them through several generations past. It was vain to expect the ancient

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[1] In a Minute recorded in the proceedings of the Board of Revenue in July 1799, it is asserted that "from the Company's acquisition of the ceded lands, comprehending, until the formation of the Permanent Settlement a period of 30 years; and from the accession to the Dewani until the abovementioned time, there had hardly an instance been found of the property in landed estates having changed hands by cause of debts, either public or private, certainly of the large ones, none (Fifth Report).

[2] Regulation I of 1793, section 7.

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zemindars of Bengal, encumbered, as they were, with all the costly paraphernalia of their petty courts and military retainers,[1] and accustomed to leave the management of their estates in the hands of dishonest and irresponsible servants, to suddenly transform themselves into punctual tax-collectors. The views of the zemindars themselves may be gathered from the following passage in a letter from the Collector of Midnapore, dated 12th February 1802. "All the zemindars with whom I have ever had any communication in this and in other districts, have but one sentiment respecting the rule at present in force for the collection of the public revenue. They all say that such a harsh and oppressive system was never before resorted to in this country; that the custom of imprisoning landholders for arrears of revenue was in comparison mild and indulgent to them, that though it was no doubt the intention of Government to confer an important benefit on them, by abolishing this custom, it has been found by melancholy experience, that the system of sales and attachments which has been substituted for it, has in the course of a very few years reduced most of the great zemindars in Bengal to distress and beggary and produced a greater change in the landed property of Bengal than has perhaps ever happened in the same space of time in any age or country by the mere effect of internal regulations."

The disastrous effect of the new procedure on ancient landed families.

The ancient houses of Bengal broke down under the strain of the new rule (popularly known as the "sunset" law) and defaults followed on an extensive scale. During the two years, 1796-97 and 1797-98, estates bearing a revenue of sicca[2] Rupees 5,521,252, more than a fifth of the whole land-tax of the province, were advertised for sale for arrears.[3]

[1] Hunter's Introduction to the Bengal Records, p. 100.

[2] A sicca rupee is equal to one rupee and one anna of British Indian coin.

[3] *See* the Zemindari Settlement of Bengal, Vol. I, Appendix XII, p. 285. Mr. Holingbroke, a Deputy Collector, is the reputed author of this work which was published anonymously.

In fact, few among the landed aristocracy could escape from the effects of the relentless law which made a clean sweep of the ancient zemindari houses. To borrow an effective metaphor from Hunter, "the wave of the Permanent Settlement had in truth submerged the ancient houses of Bengal." "Among the defaulters," says the Fifth Report, "were some of the oldest and most respectable families in the country. Such were the Rajas of Nadia, Rajshahi, Bishunpur, Kasi Jora 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."[1] "In fact" writes a revenue expert, reviewing the whole official evidence on the subject "it is scarcely too much to say that, within ten years that immediately followed the Permanent Settlement, a complete revolution took place in the constitution and ownership of the estates which formed the subject of that settlement."[2]

The power of alienation granted to the zemindars by the Permanent Settlement was another cause of their ruin.

Other influences were at work in breaking up the old landed properties of Bengal. Paradoxical as it may seem at first sight, the power of alienation granted by the Permanent Settlement Regulations to the zemindars of Bengal was a prolific cause of their ruin. In fact the boon turned out to be a curse. Lord Conwallis found the zemindars hopelessly involved in the meshes of their creditors, yet powerless to extricate themselves by the sale of their estates and he resolved to enfranchise them by giving them the right of absolute disposal of their lands, whether in whole or in part. "To keep them in a state of tutelage," he wrote, "and to

1 Fifth Report, Vol. I, p. 71, Madras reprint.

2 Official memorandum of the Revenue Administration of the Lower Provinces of Bengal, by J. MacNeill, p. 9.

prohibit them from borrowing money or disposing of their lands without the knowledge of Government, as we do at present, with a view to prevent them from suffering the consequences of their profligacy and incapacity will perpetuate these defects. If laws are enacted which secure to them the fruits of industry and economy and at the same time leave them to experience the consequences of idleness and extravagancy they must either render themselves capable of transacting their own business or their necessities will oblige them to dispose of their lands to others, who will cultivate and improve them."[1] For a large proportion of the ancient families of Bengal, the second alternative was the only possible one. They had neither the energy nor the thrift necessary to retrieve their fallen fortunes—nor were they sufficiently disciplined in self-denial to make an abstemious or wise use of the new power conferred on them. In the terse language of Hunter, freedom from tutelage practically meant freedom to go to ruin. The new weapon placed in their hands dealt a death blow to their own existence. The easy-going zemindars made so liberal a use of their power of sale that very few of the ancient houses survived the commotion. The negotiable character imparted to landed estates raised the value of land to a considerable extent[2] and furnished a further incentive to alienation. To add to this general wreck, the Code of 1793 armed creditors with new and effective powers for the recovery of old debts. Under the old system, creditors found it almost impossible to wring payment out of an influential zemindar. A process existed and the British Courts might be resorted to; but the process was costly, the courts distant, and their decrees difficult

The ruinous effect on the zemindars of the new law for the recovery of debts.

[1] Fifth Report, p. 612, Madras reprint.

[2] In 1811, the zemindar's interest used to sell for 28 years' purchase. (Revenue Selections, p. 285.)

to execute. The network of impartial and independent tribunals which the Regulations of 1793 spread all over the country placed within the easy reach of creditors and mortgagees unprecedented facilities for exacting their bonds. Hunter says "They (creditors) swooped down with old standing claims, accumulated by ruinous rates of interest, rates justifiable when they had little chance of ever recovering the principal but which acted oppressively now that land had become a first class security" and sums up the situation at the close of the eighteenth century in these words "while many of the historical houses fell beneath the guillotine of the Revenue Sale laws a still larger number were extinguished by their private creditors and the civil courts."[1] The Regulation laws served to raise a new class of shrewd and business-like zemindars on the ruins of the ancient aristocracy of Bengal.

We now turn to examine the relations between landlord and tenant as affected by the Permanent Settlement and subsequent Regulations. Regulation I of 1793 fixed for ever the revenue payable to Government but left the zemindars free to realise any rent they chose from their tenants.[2] The power reserved by Government to legislate in favour of the tenants was not exercised till sixty-six years

The effect of the Permanent Settlement upon the relations between landlord and tenant.

[1] Introduction to Bengal Records, p. 114. Hunter goes on to remark: "When objections are taken to the large rent-roll of the modern zamindars of Bengal or to their strictly business relations towards their tenants, we should in fairness remember two things. Those zamindars are the representatives of a class which we deliberately called into existence to work out the system which we ourselves had imposed on the province. If they had not dealt with their estates on strictly business principles, they could not have worked out that system at all."

[2] It has been held in certain quarters (the opinions will be found collected in a work entitled the Zemindari Settlement of Bengal) that all classes of raiyats are entitled under the regulations to hold land at fixed rates of rent and it has been asserted that the avowed object of the regulations was to restrict the rent of raiyats to the "pargana" rates of 1793. There is a great deal of uncertainty in the State papers on this subject.

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later and the measures passed in the meantime were chiefly directed towards promoting the security and ensuring the punctual payment of the Government revenue.

We have seen that before the Permanent Settlement, the procedure for the realisation of revenue consisted in the attachment of the defaulters' properties and confinement, more or less rigorous, of his person. Regulation III of 1794 abolished the imprisonment of defaulting proprietors except as a last resort.[1] The removal of the fear of confinement and the delay which in those days of imperfect communication, necessarily took place in obtaining orders of sale from the Board of Revenue and the Governor-General, encouraged the zemindars to withhold payment till the eleventh hour, much to the loss and inconvenience of Government. In many instances the zemindars promoted the sale of portions of their estates, for the purpose of repurchasing the same in fictitious names at an underrated assessment. The general tendency towards default and unpunctual payment of revenue called for a revision of the existing law and other

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It is possible to pick out phrases from which it could be argued that no raiyat is liable to pay a higher rate than that fixed in the *patta* which according to law could never exceed the *pargana* rates but it is equally easy to show that what was really meant was that the rates fixed by lawful authority and not according to arbitrary exaction should be paid. Moreover, to the failure of the *patta* regulations took the bottom out of the argument that the raiyats' rents are not liable to enhancement. Baden-Powell, at p. 626 of his Land Systems, gives a summary of the arguments against the view that the rents of all raiyats were invariable.

[1] The Select Committee of the House of Commons in their Fifth Report were inclined to attribute this state of things, neither to a change of system, than to the deliberate action of the zemindars. They pointed out very forcibly that the new system had abolished the exercise of the powers formerly allowed to the zemindars and had referred all disputes to the newly established courts of justice; that these courts were unable to cope with the work thrown on them; that the determination of a single suit could not be expected in the course of the plaintiff's life and that the cultivators, taking advantage of the inability of the courts to afford redress to the zemindars, withheld their rents much to the detriment of the public revenue.

circumstances, to be presently noticed, further emphasised the necessity for reform.

The two safeguards provided by Cornwallis for the protection of the raiyats.

The safeguards by which Lord Cornwallis hoped to protect the interest of the raiyats were mainly two in number. The first was the statutory provision about the delivery of *pattas*[1] or leases specifying the area of the holding, the conditions of the tenancy, and the rent payable which was never to exceed the established pargana rate.[2] The zemindars were directed to prepare *pattas*, subject to the approval of the Collector and to deliver them to the raiyats. The second was the provision for the maintenance of the accounts of the raiyats by the Kanango and the village Patwari, which in the very nature of things would tend to secure the permanency of the rates. It was intended by these safeguards to assure to the raiyats the possession of the holdings on certain specific conditions and at specific rates of rent and to provide a record, however rudimentary, of their rights. In theory, Lord Cornwallis's plan for securing the record of raiyats'

(1) Delivery of *pattas*.
(2) Maintenance of accounts by the Kanango.

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[1] The right of the raiyat to receive *pattas* was declared by section 59, Regulation VIII of 1793. By sections 54 & 55 of the same Regulation, it was directed that all existing *abwabs* should be consolidated with the *asal* rent and the imposition of fresh *abwabs* was prohibited.

[2] The "established Pargana" rates were more imaginary than real. Hunter writes in his Introduction to the Bengal Records: "The crux was what were the "established" rates. Sir John Shore had laid down the method of fixing them, village by village throughout an estate. But characteristically enough, in his "plan for the ease and security of the raiyats" the number of years in which the process was to be accomplished was left blank in 1789, and it does not appear to have been ever filled in. Even if the landholders had been desirous of carrying out the orders of the Government for the introduction of a general system of declaratory leases, they had not the fundamental data necessary for the purpose." In 1812, the authorities admitted that the Pargana rates were very uncertain (*vide* section 5, Regulation V of 1812 and Colebrook's Minute of 1st May 1812.)

rights was excellent. The integrity of the conditions of the holding and the exclusion of all new covenants were guaranteed by the provision requiring the Collector's approval of the *pattas*. The permanency of the rates of rent and the maintenance of fair dealing between raiyat and zemindar were pledged by the appointment of the Kanango and Patwari to keep the village accounts. Nothing could be better on paper but the whole plan was a complete failure in practice, simply because no executive agency to enforce the arrangement was provided. The strength of the district executive agency in those days was far too inadequate to cope with the work thrown on it and it was physically impossible for the Collectors to embark on the minute investigation of the raiyats' rents which Lord Cornwallis contemplated and which Sir John Shore methodically designed. Before their number was increased up to the required mark, the rural record of rights, on which the success of such an enquiry depended, had disappeared. The office of the Kanango or recorder of landed rights, established by Regulation II of 1816 was abolished in 1827 after an existence of little more than 10 years.[1] While the Kanangos paid by the State were thus abolished, the Patwaris or village accountants underwent an even more disastrous change. Until 1793, they were the servants of the village community, paid partly by small grants of land from the Government and partly by allowances from the body of

The failure of both safeguards.

The office of Kanango abolished.

[1] There are now no statutory Kanangos except in Orissa. Under the Mogal system as described in the *Ain-i-Akbari*, the Kanango was at once the officer of record under Government and "the protector of the husbandmen" (Gladwin's translation, ed. 1800, Vol. I, pp. 306 & 287). But after the Permanent Settlement which deprived the ordinary raiyats of their rights and status, the Kanango's occupation was gone and though the office was revived for a short time, it tended to degenerate into a zamindari department under the new order of things.

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the resident cultivators. Under the Permanent Settlement, these guardians of the raiyats' rights were transformed into the servants of the landlords. Regulation VIII of 1793 required the zemindars to appoint a patwari in each village within his estate to keep the accounts of their raiyats. The landholders did not find it difficult in the long run to convert the patwari who was dependent upon them for pay and appointment, into their servant, working under their orders and often in their Katchari or office. The effect was to change the public and important record of tenant rights into a private and hostile record, prepared and maintained under the landlords' control. No wonder that in these circumstances the records which they framed were devoid of value and were often perverted to suit the purposes of the zemindars. The power of control with which the Collector was vested was no more than nominal and failed to bring the Patwaris within the sphere of his influence. In the course of time the Patwari ceased to exist as a public servant and the Regulation of 1871 became a dead letter except in some parts of Behar. The rule for the exchange of *Pattas* and *Kabulyats* also proved inoperative, as it was opposed to the interest of both the landlord and the raiyats.[1] Most of the zemindars began to evade their obligations in regard to the delivery of *pattas* which had the tendency to stereotype rents and thus prevent enhancement. Those zemindars who obeyed the letter of the law by tendering *pattas*, inserted in them such exorbitant rates that the raiyats

Patta regulations proved in-operative.

[1] The futility of the *patta* regulations made itself manifest in a very short time. In 1815, Lord Moira, Governor-General, in a despatch of great insight and historical importance (reprinted in the selections from the records of the East India House), observed "Complaints of the village tenure-holders 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."

refused to accept them. Even when the rates were fair, the Khudkhast and other raiyats who claimed a prescriptive right of occupancy, would not, in many cases, take delivery of the *pattas*, as the term being limited to ten years suggested possible eviction on the expiry of that period.[1] It was apprehended that the restriction of the *patta* to a definite term would diminish the force of that prescription which had established a right of occupancy in favour of the raiyats. In their eyes, the *patta* was a derogation from the rights which were based on custom—more ancient than all laws.[2] There were other reasons also for the raiyats' refusal to accept *pattas* or execute counter-parts (*Kabulyats*). In the first place there was the fear that the consolidation of all demands in one lump sum in the *patta*, would form the basis of a new *asal* or original rent, to which fresh abwabs or cesses might be added in the course of time. No doubt Regulation VIII of 1793 placed restrictions on the imposition of new abwabs upon the raiyats and laid down that every exaction of this nature should be punished by a penalty equal to three times the amount levied—but so great was the zemindars' power for mischief that in actual practice these statutory prohibitions could do very little to arrest the growth of fresh abwabs which continued to flourish as unchecked as ever. In the second place the cultivators as a rule held more land than they were rated for in the village registers (which were then still in existence) and they shrank from an enquiry into the exact amount. There

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[1] Regulation XIV of 1793 limited the term of *pattas* to 10 years. This was prompted by the fear that the zemindars may feel tempted to get rid of the trouble of management by granting long leases and thus deprive themselves of the means of meeting the Government demand.

[2] Thomas Lisson, an experienced officer in the Company's service, wrote: "The cultivators have always sought to avoid the taking of such *pattas*, under the impression that they would thereby be compromising their rights to unlimited occupancy." Selections from the records of the East India House, p. 388.

was a fourth reason stronger than all the rest. The acceptance of the "*patta*" meant the perpetuation of the rather fictitious "Pargana" rates which were considerably in excess of the economic rent which the landlords could secure by contract under the then prevailing conditions. The great famine of 1770 had wrought havoc among the people, one-third of the cultivable area was lying untilled for want of hands.[1] The Khudkast or resident raiyats paying rent at customary rates were not sufficiently numerous to extend their cultivation beyond their own fields, and favourable terms had to be offered to migratory raiyats in order to induce them to settle on lands which had been left vacant as a result of depopulation. Occasionally resident raiyats would be found willing to abandon their hereditary homesteads and take up deserted fields at lower rates of rent. Influences were thus at work which tended to bring down the pitch of rent in every locality. The resident raiyats were naturally most interested in the result of the struggle that was going on and by a general acceptance of leases and an execution of counter-part agreements, they would have courted defeat and stereotyped for ever the customary rates which they were trying by all possible means to reduce.

Notwithstanding the greatest efforts on the part of the Legislature, the general introduction of written leases could never be effected in Bengal, both parties having an invincible dislike to tie themselves down to written terms which would effectually prevent future attempts by either party to circumvent the other. In 1812 the Collector of Tirhut reported

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[1] Hunter writes:—Since the famine of 1770, the customary rates of land in Lower Bengal were in excess of the economic rent which could be obtained for it. Those of the resident cultivators who had most courage or least fixed property to leave behind, refused to pay the customary rates quitted their hereditary holdings and took up land at the market-rent as non-resident tenants in some other village." Bengal Manuscript Records. p. 62.

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that there was scarcely an instance in Behar of a *patta* being given by the zemindar or accepted by the raiyat. Legislation following close upon the Permanent Settlement added to the rigours of the situation in which the raiyat found himself placed. Regulation IV of 1794 gave the zemindars power to recover rent at the rates offered in the lease, whether the raiyat agreed or not.[1] No wonder that the raiyat regarded such a system as an engine of oppression. Goaded into despair, the raiyats determined to use the only weapon which was ready to their hand and to starve out the zemindars by refusing to pay rent. Thus deprived of the means of discharging the public burdens, many of the zemindars were powerless to save their estates from sale for arrears of revenue. Other circumstances contributed to the same result. The new system had abolished, under severe penalties, the exercise of the powers formerly allowed to the landholders over their tenantry and substituted rules for the distraint of tenants' crops and other property. These rules intended to facilitate the recovery of rents by the zemindars, and borrowed from the law and practice in Europe, were ill understood and found to be difficult of practical application. The raiyats released from the fear of personal restraint, soon turned their liberty into license and defied the zemindars' authority. The economic relations of labour

Regulation IV of 1794 made the raiyat's position worse.

The raiyats at bay.

[1] "Thus" says Field, "the zamindars were enabled to claim any rates they pleased, to distrain for rent at those rates and to put on the raiyats the onus of proving that the rates so claimed were not the established rates." But Nemesis soon overtook the zemindars. The suits became so numerous and so swamped the courts, that the zemindars found it difficult to get decrees for rents due to them. In the district of Burdwan alone there were more than thirty thousand cases before the Judge. The procedure of the courts required that every individual should be sued separately—To institute and carry on to a successful issue as many individual suits as there were raiyats called for an amount of outlay which was beyond the means of most zemindars.

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to land were in favour of the raiyats. There was more land in Bengal than there were tenants to till it; and any severity on the part of the zemindar led to the flight of the resident cultivators to adjoining villages where they could obtain holdings at lower rates. The Regulations deprived the zemindars of their rights to recover the rents of absconding tenants from those that remained. The *impasse* thus created led to numerous defaults in the payment of revenue and consequent sales of estates on an extensive scale.

Another cause of zemindars' failure to pay revenue.

There was another cause of the zemindars' inability to pay the revenue due from them. We have seen that the revenue assessed at the Permanent Settlement was out of proportion (90 per cent.) to the assets of the estates. The proportion fixed as the Government share of the proceeds from land was in most cases too exorbitant and required the most attentive and active management to enable the landholder to discharge his instalments with punctuality. But Bengal zemindars were as a rule incapable of such management, being in the habit of leaving their affairs to their servants and often found themselves powerless to save their estates from sale.

One-third to one-half of the estates sold for arrears of revenue.

As already noticed at the outset of this chapter, the large number of sales which took place effected sweeping changes in the composition of the landed aristrocracy. In the course of fifteen years, dating from 1793, most of the great zemindars who had survived the commotion of more than a century were ejected from the estates of which they had been recently declared sole proprietors. It was a great social revolution affecting more than a third of the landed estates in a country of the size of England. It has been computed that within twenty years of the Permanent Settlement, one-third to one-half of the whole landed property in Bengal changed hands

owing to the inability of the owners to pay the revenue. The East India Company which had to pay its dividends and to meet the expenses of the great wars[1] with Tipu Sultan was at the time hard pressed for money and the number of these sales caused some alarm for the security of the revenue. In February 1802, the Collector of Midnapur reported "Complaints were very general among the zemindars that they had not the same powers over their tenants which Government exercised over them. It was notorious that many of them had large arrears of rent due to them which they were utterly unable to recover, while Government was selling their lands for arrears of assessment. Farmers and intermediate tenants were able to withhold their rents with impunity and to set the authority of their landlord at defiance. Landholders had no direct control over them; they could not proceed against them except through the courts of justice and the ends of substantial justice were defeated by delays and costs of suit."[2] The cry spread from district to district till the zemindars declared with one voice that they could not pay the revenue unless their hands were strengthened against the recusant raiyats and unless the utmost punctuality in the payment of rent was guaranteed to them. The Government, pressed by want of money, agreed to fortify the position of those on whom it depended for the punctual payment of its revenue. In these circumstances the Haftam or Regulation VII of 1799 was enacted "for enabling proprietors and farmers of land to realise their rents with greater

The absence of any effective process for the recovery of rent.

[1] These were the third and fourth Mysore wars (1790—99). Tipu was the Sultan of Mysore. Towards the close of the year 1790 the English declared war against Tipu for having annexed Travancore, an allied State.

[2] Fifth Report, Vol. I, pp. 76, 77.

punctuality.''[1] In the preamble it was recited that the landlords could not readily get in their rents and in order to remedy this evil, the Regulation gave the landlords practically unrestricted power of distraint and in many cases, of arrest of the defaulters' person. They were empowered to distrain the defaulters' crops and other personal properties, without sending any notice to any court or public officer.[2] The Regulation contained other stringent provisions detrimental to the interests of the tenants. Field observes "There is scarcely a country in the civilised 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, leaving them to recover their rights by having recourse to those new and untried courts of justice, the failure in which might be punished with fine and imprisonment.''[3] The student of

The Haftam (Regulation VII of 1799) armed landlords with powers of distraint and arrest.

[1] The late Mr. C. T. Buckland, who rose to a high position in the Bengal Civil Service, wrote thus about the necessity of the Haftam. "It may not be generally known that the Regulation of 1799 was enacted in order to save the perpetual settlement, the existence of which was then imperilled by the excessive independence which the raiyats enjoyed. For although it is now the custom to say that the rights of the raiyats were not properly protected by the perpetual settlement, it turned out at the time that they could take such good care of their rights that the zamindars could not collect rents from them until Government came to the rescue of the zamindars—and made the raiyats liable to arrest for default of payment of rent." (Hunter's Introduction to Bengal Records.)

[2] With a view to give landlords greater power still, Magistrates were required to punish by fine or imprisonment, raiyats who could not establish the truth of complaints made against landlords or their distraining agents, and the Civil Courts were directed to indemnify zemindari officers when they were improperly summoned.

[3] Landholding, p. 581. In the latter part of the eighteenth century the demand for tenants was so great that the zemindar was more likely to keep his tenants than evict them. It was not at all apprehended that there would be frequent instances of the practical use of the power of ejectment.

Indian history remembers the administration of Lord Wellesley for the victories of Seringapatam, Assaye and Laswari but these brilliant successes had their antitheses in the evils produced by baneful legislation.

Haftam proved most injurious to the tenantry.

There is a consensus of opinion that the Haftam was most injurious in its effects on the tenantry.[1] The operation of the revenue sale law had introduced a new race of zemindars, who were bound to their tenants by no traditions of hereditary sympathy but whose sole object was to make a profit out of their newly purchased property. The power of duress conferred by the Haftam upon the zemindar was constantly abused with a view to the exaction of rack-rents. Reduced to poverty by distraint, the raiyats were disabled from the pursuit of justice. The Board of Commissioners thus expressed their opinion in 1811. "In securing the landlords from these difficulties and embarrassments, 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 distrainers have operated as a denunciation against *all* complaints 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 labour, on which his family depend for support, and with a prospect of total ruin in the end." The result of this Regulation was that in twelve years the ancient rights of the raiyats throughout Bengal were on the verge of obliteration. During the first Lord Minto's administration, the evil effects of the Regulation

[1] Revenue Selections, pp. 209—259.

made themselves manifest and there was a strong revulsion of official feeling which produced Regulation V of 1812 (the Panjam).[1] The preamble cited that there were grounds to believe that considerable abuse and oppression had been committed by zemindars and farmers of land in the exercise of the power vested in them with respect to the distress and sale of the property of their tenants. The later Regulation (V of 1812) abolished the power of arrest and amended the law of distraint with a view to mitigate the severity with which it bore on the raiyats.[2] A written demand upon the tenant was made a condition precedent to the distraint of the defaulters' property. Ploughs, implements of husbandry and cattle used for agriculture were absolutely exempted from distress and sale. All 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. But both under the Haftam and the Panjam, the proceedings in court commenced by what has been described as a strong presumption, "equivalent to a knock-down blow," against the raiyat who had to bear the burden of proof. Neither Regulation defined or assured the rights of the tenants and therefore failed to strike at the root of the evil. But the Panjam was a distinct improvement upon its predecessor and would have given substantial relief were it not for the fact that it was neutralised by other Regulations. Writing

The Panjam Regulation V of 1812 somewhat improved the situation.

But neither Regulation defined or assured the tenants' rights and failed to strike at the root of the evil.

[1] In 1811 the Government of India invited the opinion of local officers about the working of the Haftam. Among the opinions elicited, Colebrooke's was perhaps the most valuable. He clearly pointed out that the remedy of appeal to the courts, was in the case of poor people quite inefficient and that the rules designed for the protection of the raiyats had been perverted into engines for their destruction. With remarkable foresight he urged that the true remedy lay in a definition and record of rights.

[2] This Regulation removed the ten years' restriction on leases.

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In 1819, the Court of Directors admitted the failure of the existing Regulations to protect the raiyats. It is curious that in the very year in which the avowal was made, the Legislature sanctioned a system of subinfeudation known as Patni—which by authorising the multiplication of intermediate tenures and the avoidance by an auction-purchaser of all previous engagements with the raiyats, increased the landlords' power to oppress the tenantry and to raise the standard of rent. The effect of the sale of a Patni Taluk is similar to that of a revenue-paying estate, inasmuch as the taluk is handed over to the purchaser in the condition in which it was upon its original creation. The raiyat is thus placed entirely at the mercy of the new landlord and his position makes it impossible for him to resist pressure. In fact the cultivators in Patni Taluks were handed over *en masse* to the intermediaries,[1] whose one object was to wring a profit out of them. "This system"—wrote Dampier, a high officer in the Company's service—"which relieves the zemindars from all connection with their estates or raiyats and places these in the hands 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." This Regulation was intended for the special benefit of the landlords on whom the assessment of 90 per cent. of the assets made at the time of the Permament Settlement pressed very hard. It saved from ruin the Raja of Burdwan who having been assessed with great severity found the utmost difficulty in paying the Govern-

[1] "By degrees the sons and grandsons of the middlemen acquired something of the sense of duty to their tenants which the hereditary possession of landed property gives, specially in India. But that sense of duty only slowly evolved. During a whole generation, the effect of the Permanent Settlement was to make over vast estates to middlemen, who had not the social position of proprietors and who made no pretence to the feelings of proprietors to their tenants." Hunter's Introduction to Bengal Records.

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ment revenue. For easy and punctual realisation of rent, leases in perpetuity and at fixed rent were granted by the Raja to a large number of middlemen who were thus placed in the same position as proprietors of estates.[1]

Regulation XI of 1822 entailed further detriment to the raiyats.

In 1822 was passed Regulation XI of that year which in its practical working entailed further detriment to the raiyats. It gave power to the purchaser of estates sold for arrears of revenue, to evict all tenants, with the exception of *Khudkhast Kadimi raiyats* or resident and hereditary cultivators, who were not to be ejected, though their rents might be enhanced after service of notice. The term 'Khudkhast Kadimi raiyat' was not defined in the Regulation but it was construed to mean Khudkhast raiyats who had been in possession of their lands for more than twelve years before the Decennial Settlement.[2] The use of this term to specify the class of tenants not liable to eviction, gave rise to the doctrine that Khudkhast raiyats, who had their origin subsequent to the Decennial Settlement could be ejected at the pleasure of the purchaser and also that the possession of all raiyats whose title was of more recent date was permissive, *i.e.*, retained with the

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[1] Field thus sums up the merits and demerits of the Patni System. "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 subletting 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 the same terms to other persons who on taking such lease went by the name of *darpatni* talukdars. These again similarly underlet to *sepatnidars* and the subletting was in very many instances continued several degrees lower. It is easy to conceive how landlords of this class ground down the toiling millions of the country." (Landholding, p. 618.)

[2] B. L. R., Sup. Vol., F. B., 215.

consent of the landlord. 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 could raise them; because, although the provisions of the Regulation applied directly to those estates only which had been sold for arrears for revenue, the principle once established was extended by the power of the zemindars to other estates also. Quite apart from this power, the enhancement of rents in the estate sold, tended to create a higher prevailing rate, which could by law be imposed upon tenants holding lands in the vicinity. Moreover these tenants knew well that, if they resisted, the zemindar would accomplish his purpose by allowing the estate to fall into arrear and purchasing it in the name of a relation or dependent at the auction-sale which would be the consequence of the default. Regulation XI of 1822 was superseded by Act XII of 1841 which gave to purchasers of estates sold for arrears of revenue, ampler powers of enhancing the rents of tenants and afforded the former an opportunity of exacting rack-rents from the raiyats.[1]

Act XII of 1841 which superseded Regulation XI of 1822 gave auction-purchasers ampler power of enhancing rents.

[1] Field writes: "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 the 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, money-lenders and successful legal practitioners bought estates as a speculative investment and expected to make the most of their bargain." (Landholding, p. 667.) Sir H. Riketts wrote in 1850: "We can talk of it and write of it with indifference, but to the tenants of an estate, a sale is the spring of a wild beast into the fold, as the bursting of a shell in the square."

Justice O'Kinealy is, however, of a contrary opinion. He says—"If then we take into consideration the very few forced sales which actually took place under the sale laws and the insignificance of the estates sold and if we except all raiyats protected by the sale law, all raiyats whose

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Salient features of revenue history from 1765 to 1858.

Field thus recapitulates the salient features of the revenue history of Bengal from 1765 to 1858. "I have shown that the mutual rights of the zemindars and the raiyats were in confusion and uncertainty when the East India Company acquired the Diwani 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 or adjustment;—that they under the influence of English ideas, believed, honestly though mistakenly, that zemindars and raiyats would adjust 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 utilised by the zemindars for the oppression of the raiyats and the destruction of their rights;[1] 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 were put before the raiyats;—that this idea was delusive for many reasons and specially for the reason

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position has been assured through express or implied recognition by receipt of rent or otherwise and all raiyats against whom auction-purchasers have not elected by some outward sign to proceed, I confidently assert that not one in fifty thousand of the raiyats of Bengal has had his position affected by the revenue sale laws."

[1] By abolishing the office of kanango and doing away with the records.

that the same Government which invited them to prove their rights, had unwillingly 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 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 interests of purchasers at revenue sales, had the effect of further destroying the rights of the raiyats; that at the 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 interest of the 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 up rents to the highest rates that the tillers of the soil could pay and live on;—and that as a result of this treatment of the peasantry,[1] the Province of Behar had been brought to a miserable condition of destitution and wretchedness'' (Landholding, p. 822.)

The effects of competition for land.

We have had occasion to remark on the increase of population which resulted from the peace and order which the British secured in this country. One effect of this was to set up competition among the raiyats for land, which afforded

[1] Regulation VIII of 1819 legalised subinfeudation and the consequence was that when middlemen were being abolished in Ireland, they were being created and recognised by law in Bengal.

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to the zemindars an opportunity for raising the pitch of rent. It is computed that by this and other means, the landlords of Bengal were, between the years 1810 and 1860, able to secure an addition to their rent-roll which represents at least four times the assets as they stood in 1793.[1] This illustrates the magnitude of the struggle between the zemindars and raiyats for the unearned increment of land. The contest was very unequal. Into the fifty years' war over this increment the landlords entered with a well defined title and the tenants with a "wholly nugatory" one. In Sir William Hunter's opinion the result of the struggle would have been much more disastrous to the raiyats were it not for some counteracting influences which were at work. In the first place the Bengal authorities and the Court of Directors discovered at an early period the inadequacy of the Permanent Settlement to protect the rights of the tenants. This recognition was definitely acted on by the Court of Directors in their Despatch of the 15th January 1819 to the Government of Bengal, directing its attention "to the state of insecurity and oppression in which the great mass of the cultivators are placed." From that time onward and in fact for several years before 1819 the Bengal Government laboured indirectly to mitigate the evils which the too hasty legislation of 1793 had brought about. It fought on the side of the cultivators but it fought with its hands tied by the Permanent Settlement. In the second place the Courts of Justice, especially the superior courts, gradually arrayed themselves on the same side. They made allowance

The result would have proved quite disastrous to the raiyats but for some counteracting influences.

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[1] Hunter writes, "almost at the very time that the "bludgeon law" of 1812 was passed against the tenant, the increase in the yield of estates since 1793 was officially estimated at 36 per cent."

See also Colebrooke's Minute in the Selection of Records at the East India House.

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for the unwritten customs and status of the cultivators, often in the teeth of a mass of sworn evidence which they calmly and perhaps on good grounds ignored. In the third place the cultivators developed a capacity for organisation and a power for combined resistance which often proved ruinous to a too stringent landlord. Even if a landlord had the law in his favour, it was costly to invoke its aid and difficult to enforce its decrees, among a hostile tenantry whose holdings did not average ten acres a-piece.[1]

In 1859 the first step was taken for the protection of the raiyats.

The year 1859 marks a turning point in the history of land-holding in these provinces. Sixty-six years after the Permanent Settlement it was reserved for Lord Canning to take the first step towards the fulfilment of pledges held out to the raiyats by the Regulation of 1793. Nothing was more constantly present in the mind of Lord Cornwallis or more clearly set forth by the Court of Directors than their desire to secure to the tenants the same certainty as to the amount of their rents and the same undisturbed enjoyment of the fruits of their industry as was assured to the zemindars by the Permanent Settlement.[2] But the consummation of this desire was

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[1] Introduction to Bengal Records, pp. 136, 137.

[2] The welfare of the raiyats was a matter of solicitude to the East India Company from the very beginning of its administration. In 1765 the regulations issued to the native collectors enjoined that, "what can be collected without injury to the raiyats, you are to collect and forward to me," and that enquiries were to be made as to "what further benefits can accrue to the Company without laying the raiyats under hardships, it being the Company's intention that they should enjoy ease and comfort (Proceedings of 1st October 1767). On the Company's first attempt at rural administration through the agency of British officers in 1769, it directed the cultivator to be assured "in the most forcible and convincing manner that our object is not increase of rents or the accumulation of demands, but, solely by fixing such as are legal, abolishing such as are fraudulent and unauthorised, not only to redress his present grievances, but to secure him from all further invasions of his property" (Proceedings of President and Select Committee, 16th August 1769). In 1777 enquiries

delayed for more than half a century by unavoidable circumstances. No system for the effective protection of the raiyats could be devised without an elaborate and careful enquiry into their rights and liabilities and into rural economy generally. But the task was beyond the powers of the then existing executive organisation. The Permanent Settlement swamped the Collectors with a flood of new business. Land litigation, land sales, and conflicting rights and claims of every conceivable kind, strained to the utmost the powers of the widely scattered British officials. The numerical strength of the district executive staff was far too inadequate to cope with the task thus suddenly thrown upon them. The Court of Directors wrote in 1819 "we conclude that the supposed difficulty or impracticability of the operation was the cause of this non-interference."[1] The result was that, in the opinion of the highest authorities, the provisions in the Permanent Settlement for the protection of the raiyats had proved "wholly nugatory"[2] to use the words of Colebrooke and that the position of the cultivators, as Lord Moira declared, had become "desperate."[2] In the course of time, however, the strength of the district staff having been considerably augmented, Government was in a position to carry out its pledge and in 1859 embarked on two legislative measures fraught with far-reaching consequences to the landed classes.

Never since the Permanent Settlement were so many important changes made in the law relating to compulsory revenue sales and conditions of land-holding. In Act X of that year the Legislature provided the first Tenancy Act,

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were instituted by Government with a view to secure to the raiyats the perpetual and undisturbed possession of their lands. (Selections from the East India House Records, Folio 1, p. 436.)

[1] Revenue Letter of 15th January, 1819, para. 39.

[2] Both these expressions are quoted with approval in the Court of Directors' despatch of the 15th January, 1819.

granting occupancy-rights to raiyats of a certain status and limiting the enhancement of their rents. The next Act was passed five days after, with a view to improve the law which governed sales for arrears of land-revenue. Act XI which contains substantially the present law of revenue sales, restored to the raiyats some of the privileges of which they were deprived by Act XII of 1841 and subsequent legislation. The rights and liabilities of purchaser at revenue sales, as defined by Act XI of 1859 and the amending Act (VII B. C.) of 1868 are summed up below.

Act XI of 1859 defined the rights and liabilities of purchaser at revenue sales.

The purchaser of an entire estate in the permanently-settled districts of Bengal, Behar and Orissa, sold for arrears due on account of the same, acquires the estate free from all incumbrances, which may have been imposed upon it after the settlement, and is entitled to avoid and annul all under-tenures and forthwith to eject all under-tenants with the following exceptions :—

(1) Istimrari or Mukarrari[1] tenures held at a fixed rent from the time of the Permanent Settlement.

(2) Tenures existing at the time of the Settlement but not held at a fixed rent, provided that the rents of such tenures shall be liable to enhancement under any law for the time being in force.

Tenancies protected from annulment on sale of the estate for arrears of revenue.

(3) Talukdari and other similar tenures created since the time of the 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.[2]

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[1] *Istimrari*—Granted in perpetuity.
Mukarrari—Granted at fixed rent.

[2] The provisions for the registration of tenures have been very sparingly resorted to and have remained more or less a dead letter. Probably

(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 those 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 fixed rent, equal to the rent of good arable land, for a term, exceeding twelve years: Provided always that nothing in the Act should 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 rents under the laws in force, or to enhance the rent of any such raiyat otherwise than in the manner prescribed by such law or otherwise than the former proprietor irrespectively of all engagements made since the time of Settlement may have been entitled to do.[1]

The first Rent Act (X of 1859) passed.

Act X of 1859 constitutes the first earnest attempt made by the Legislature to protect the interests of the raiyats. We have seen that the Permanent Settlement wiped away the distinction between tenants who represented the old land-holders and those whose position was really due to contract. Act X went further and removed the last lingering traces of the ancient distinction between

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no single cause will sufficiently account for this backwardness, and of the several causes to which it may be attributed the most important is the decrease of the mischief against which these provisions were directed. There is a consensus of opinion that sales for arrears of revenue do not now cause much hardship to under-tenants.

[1] These provisions were intended for the security of the public revenue. If a proprietor reduced his own income by granting leases at reduced rents, he crippled the means which enabled him to meet the Government demand, and it was therefore enacted that upon a sale for arrears of revenue, the estate was to be handed over to the new proprietor as far as possible in the condition in which it was at the Permanent Settlement.

Khudkhast and Paikast raiyats, a distinction based on circumstances which underwent a radical revolution under the influence of a century of peace and commercial prosperity, and attempted to create privileged tenant rights of a new order, with a view to distinguish between raiyats who had acquired a certain status and others who were more or less tenants-at-will[1]. It introduceed a new classification of the agricultural population, dividing it into (1) raiyats holding at fixed rent since the Permanent Settlement; (2) raiyats holding land for twelve years or more, whether at fixed rent or not; (3) raiyats holding land for less than twelve years.[2] In distinguishing the first two classes from the last the principle of prescription was followed as the best practical guide. It conferred on a small class of tenants (Mukarraridars, Istimraridars, Khudkhast-kadimi raiyats, &c.) the right to hold at fixed rates of rent. Tenants of this class who could prove that their rent or rate of rent had not been changed since the Permanent Settlement were protected from enhancement, and in order to lighten an

The Act created privileged tenancies of a new order.

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[1] The word "raiyat" was not defined in so many terms but the omission was supplied by judicial interpretation. The Calcutta High Court defined the term in several reported cases.

[2] In effect, this classification crystallised and reproduced in another form a distinction which had in a vague and indeterminate manner, governed the treatment of cultivators under the native regimé. It may be said generally that under native rule, the cultivator was never ousted from his holding so long as he paid his dues; and although there was nothing in law or theory to prevent the indefinite enhancement of the amount payable by the raiyat, the cultivators were so few and valuable that in practice the enhancement seldom exceeded the full economic rent. In addition, however, to the cultivators so treated, there was always a class of men who were on a more temporary footing—men who came from outside villages or wandered from place to place and it was felt that as regards these men eviction need not be restricted to the same extent. The Act of 1859 accordingly divided the tenants, on the above lines, into occupancy and non-occupancy raiyats and gave to the former a greater degree of protection.

undoubtedly heavy burden of proof extending over so many years, the Legislature introduced a rule of presumption under which payment of rent at the same rate of twenty years was declared equivalent to payment at unvarying rates since 1793.[1] The most important provision of the Rent Act of 1859 was the bestowal of a right of occupancy on raiyats who held the same land for twelve continuous years. An occupancy-raiyat was declared entitled to remain in the occupation of his holding as long as he paid his rent. The rule became the charter of the cultivating classes in Bengal and protected them against arbitrary eviction and rack-renting, which must, in the very nature of things, go together. As long as the zemindar has the power to evict the raiyats, he can find means to raise the rents to the highest possible pitch; for, it is open to him to turn out any raiyat who refuses to meet his demand for enhanced rent. The Bengalis are a peculiary home keeping race, who would willingly submit to any exaction rather than leave their native village. Act X of 1859 provided that in case of disputes the rent previously paid by the raiyat should be deemed to be fair and equitable unless the contrary was shown. The Act further laid down definite rules of the enhancement and reduction of rent. Two other salutary reforms introduced by the Act were (1) the abolition of the zemindar's power of compelling the

[1] Under Regulation VIII of 1793, dependent tenures (other than those held under Government or let in farm) were not liable to be assessed with any increase, if held at a fixed rent for more than twelve years and except upon proof that it was authorised by the custom of the district or the special conditions under which the tenure was created. The enhancement of the rent of khudkast raiyats was limited to cases in which the rent paid within the previous three years had fallen below the *nirkh* or rate of the pargana. The rent of such raiyats could also be raised on a general measurement of the pargana for the purpose of equalising and correcting the assessment. All other lands held under tenures other than those specified above, could be let in whatever manner the zemindar might think fit.

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attendance of raiyats; (2) the amendment of the law of distraint.

Some defects of Act X of 1859.

We shall close our review of Act X of 1859 by referring to some serious defects of this legislative measure. The Act made no mention, took no account, of any of the important local tenures, each with its own distinctive features, which are to be found in the country, such as the *Jotes* of Rangpur, the *Guzastha* tenures of Behar, the *Ganthi* tenures of Jessore, the *Ayma* and *Abadkari* holdings of Midnapur, the *Jangalbari* tenures of the 24-Parganas, the *Howlas* of Backergunj, the *Etmans* and *Tappas* of Chittagong.[1] Under the Act the holders of all these interests, most of whom had paid large premiums on the creation of their tenancies, and many of whom had obtained what in popular estimation was a heritable interest at a fixed rent, were made liable to enhancement and placed on the same level with occupancy-raiyats of comparatively recent origin who had paid nothing upon entry and had been let into the land twelve years ago.

Act X of 1859 was no doubt a well-meant attempt to improve the position of the raiyats but it was deficient in grasp[2] and failed to provide a complete and satisfactory definition and adjustment of the mutual relations of landlord and tenant. The chief defect of the Act was that it placed the right of occupancy which it recognised in the tenant and the right of enhancement which it recognised in the landlord on a precarious footing. It professed to give the raiyats a right which he could not prove and the landlord, one

The chief defect of Act X of 1859.

[1] The same remark is equally applicable to the Bengal Tenancy Act of 1885.

[2] As an instance it may be mentioned that the Act contained no clause for the saving of customary rights not inconsistent with its provisions. The omission was supplied by the Bengal Tenancy Act of 1885.

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which he could not enforce. On the one hand this Act made it difficult for the raiyat to establish a right of occupancy; on the other hand it placed formidable obstacles in the way of the zemindars who sued for enhancement of rent. The courts of law with rigid impartiality required the raiyat to establish his occupancy-right by showing that he had cultivated the same plot of ground for twelve successive years and demanded from the landlord the impossible proof that the value of the produce had increased in proportion to the enhancement sought. The enhancement sections of the Act having become unworkable, the landlords were debarred from obtaining any share of the increased profits resulting from the rise of prices and the general progress of the country. Any attempt on their part to obtain higher rent was promptly resisted in the Bengal districts.

Comparison between the agrarian conditions of Bengal and those of Ireland.

The agrarian conditions of Ireland at this time furnished a parallel to those of Bengal. Field thus compares the contemporary history of the two countries. "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 labours of the peasantry. In Bengal there is no capitalist farming, as there was little in Ireland till 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 Agents. The Bengali raiyats are in the hands of the Amlas. The land hunger of Ireland caused by a rapidly increasing population

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has its exact parallel in Behar, and famine has visited both countries with equally terrible results, Ireland has had its hard-hearted speculators in land since the Encumbered Estate's 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."[1]

The agrarian conditions of Behar differed materially from those of Bengal. The raiyats of the former province were sunk low in poverty and ignorance and were naturally at the mercy of their landlords. In 1868 Lord Lawrence referring to the depressed state of the Behar peasantry wrote: "It would be necessary for the Government sooner or later to interfere and pass a law which should thoroughly protect the raiyat and make him what he is now only in name, a free man, a cultivator with the right to cultivate the lands he holds, provided he pays fair rent for it."[2] In Bengal the raiyats turned the table upon their landlord and by violent demonstration of their combined protest, pressed the question of reform to the front. They repeated the history of 1796 and combined together

Depressed state of the Behar peasantry.

In Bengal the raiyats had recourse to violence and turned the table upon their landlords.

[1] Field's Landholding, p. 818. [2] Revenue Selections, p. 45.

in refusing payment of rent.—In Eastern Bengal widespread discontent culminated in 1873 in riots in the Pabna districts where the cultivators banded themselves together to resist short measurements, illegal cesses and the forcible execution of agreements to pay enhanced rents. The serious disturbances which broke out in many other parts of the country furnished a striking illustration of the failure of Act X to control agrarian relations and emphasised the necessity for an improved Tenancy Act.

In 1879 a commission was appointed to examine and report upon the whole agrarian situation and to draw up a consolidating enactment. After six years of mature deliberation, the Bengal Tenancy Act was passed which, with occasional modifications suggested by experience of its practical working, constitutes the existing law on the subject. No legislative enactment was ever subjected to fuller examination or to more searching criticism. As the Bengal Tenancy Act of 1885 is perhaps the most important measure which passed into law since the Permanent Settlement, we propose to examine its leading features at some length.

The Bengal Tenancy Act (VIII of 1885) passed.

The interpretation clauses constitute an important part of the Tenancy Act. There is no doubt that the precision with which terms are defined in the statute book goes a great way to assist the development of legal rights and juridical conceptions. The former rent law did not define "tenant" or "raiyat," "tenure" or "holding" and the result was that the High Court had in several cases to define the status of a raiyat and distinguish it from that of a tenure-holder, as the incidents of an ordinary raiyat's holding differed in material respects from those of a tenure.[1] In the Act of 1859 the word 'tenure' was used indiscriminately to denote the interest

Definition-clause.

[1] 1 W. R., 71; 9 W. R., 579.

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of a tenure-holder and of a raiyat. But the Bengal Tenancy Act put an end to this confusion by classifying tenants and giving separate names to separate interests. It classified tenants under three broad heads—tenure-holders (including under-tenure-holders), raiyats and under-raiyats, and introduced sub-divisions defining the status of each. Some of the definitions are reproduced below. "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.[1] "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.[2] 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 raiyat, the court shall have regard to (*a*) local custom, (*b*) the purpose for which the tenancy was originally acquired.[5] Where the area held by a tenant exceeds one hundred standard bighas, he shall be presumed to be a tenure-holder

Tenure-holder.

Raiyat.

[1] Bengal Tenancy Act, Section 5, Cl. 1.
[2] " " " " Cl. 2.
[3] " " " " Cl. 2, Explanation.
[4] " " " " Cl. 3.
[5] " " " " Cl. 4.

until the contrary is shown.[1] The interest of a tenure-holder (including an under-tenure-holder) is designated a "tenure"; that of a raiyat is termed a "holding."[2]

Rent.

Act X of 1859 contained no definition of rent and the omission had to be supplied by judicial interpretation in cases coming before the High Court. The Bengal Tenancy Act defined the term with some precision and the definition has been accepted even in districts in which the Act is not in force. Rent, according to this Act, 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 him.[3] Strictly construed, the definition does not cover any payments other than those made by tenants in the actual occupation of the soil but as a matter of fact it has been held to include the amounts payable by middle-men and tenure-holders who have parted with physical, though not legal, possession of the land. The creation of an intermediate tenure is essentially in the nature of an alienation of land and the so-called rent payable by the tenure-holder is really an annuity with a charge on the land demised. Under the Muhammadan law as administered in this country the amount payable in respect of tenures, did not constitute a charge on land—it was merely a personal obligation on the part of the tenure-holder. Even after the Rent Act of 1859 had come into force, and for a long time afterwards, the judges were not agreed as to whether it was a charge on the land or not.[4]

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[1] Section 5, Cl. 4. This rebuttable presumption has been laid down because ordinarily a raiyat or cultivator holds no more than a few acres of land.

[2] Section 3.

[3] *Abwabs* are not rent, as they are not lawfully payable (section 74). Cesses, though recoveracle as rent under the Cess Act, do not fall within the definition of rent, as they are not payable for the use and occupation of land but under a liability incidental to the tenancy.

[4] 10 W. R., 434, 446; 3 B. L. R., A. C., 49; 15 W. R., 341; 17 W. R., 417.

The doubt, however, was set at rest by sec. 65 of the Bengal Tenancy Act. In the view of the framers of the Regulation laws in Bengal, the transfer of land at fixed rent in perpetuity was a conveyance of proprietary right. They did not use the word 'rent' with reference to the annuity payable to the transferor but gave it the designation of revenue. Later on a distinction was made between revenue and rent[1] and the term 'land-revenue' is now understood to mean as a rule, the amount which is paid by a proprietor to the State, while rent is the amount payable by a tenant to the person under whom he holds land whether as a raiyat or as a tenure-holder.

Act X of 1859 laid down that a raiyat must hold the same land continuously for twelve years in order to acquire a right of occupancy in it. But the landlords availed themselves of every provision of law and had recourse to every stratagem to defeat continuous possession. It was a very common practice to evict the tenant before his term of twelve years was up and then to reinstate him with a fresh start or to shift him from one plot to another. With a view to remedy this abuse, the Bengal Tenancy Act provided that the raiyat need not hold the same land for twelve years in order to acquire a right of occupancy in it. If a raiyat has held any land for twelve years in a village, he is raised to the status of a "settled raiyat" and acquires occupancy-rights in all the land which he may hold in the village at the present or at any future time. In order to facilitate proof, the Act creates a presumption in favour of the raiyat and throws upon the landlord the onus of disproving the raiyat's claim to a right of occupancy. There are two classes of privileged raiyats—

The acquisition of occupancy-right simplified.

(1) Raiyats holding at fixed rent who are protected from enhancement and ejectment except for some express

[1] B. L. R., Sup. Vol., 75, 774.

breach of the conditions of the tenancy. As regards power of alienation, the raiyats of this class have practically the same privileges as tenure-holders whose interest is saleable.

(2) Occupancy-raiyats[1] whose liability to enhancement and ejectment is restricted by definite rules. Either restriction would be useless without the other. It would be no use to secure to the raiyat immunity from ejectment if at the same time rent could be demanded at such rates as to leave him no margin of profit; nor would it be to any purpose to restrict enhancement, if at any moment the tenant could be called upon to give up the land.

We now turn to the provisions which regulate the enhancement of occupancy-raiyats' rents. In order to a full comprhension of the rationale of the rules which regulate enhancement, it would be well in the first instance to trace the evolution and ascertain the true theory of rent applicable to this country.

The history of rent.

Rent in Bengal has followed a peculiar course of development and in its present condition is the resultant of several contending forces such as custom, competition and legislation. At the earliest period for which there are any historical data, the prevailing custom was for the cultivator to deal direct with the representative of the State and to deliver to him a definite proportion of the produce as the King's share. The cultivator had no voice in fixing the proportion which was determined by the arbitrary will of the sovereign. Contract is an essential element in all western conceptions of rent and judged by this criterion, the share of the produce taken by the King did not constitute rent, as there was no privity of contract between the

[1] The term includes—(*a*) all persons who acquired occupancy-rights under Act X of 1859 or by other law or custom, prior to the passing of Act VIII of 1885, (*b*) persons called settled raiyats, *i.e.*, persons who as raiyats have held land continuously for twelve years.

parties to the transaction. Viewed in another light, the "King's share" did not fall in with the modern notions of rent. At the present day no payment would be designated as rent unless it was made by a tenant to a landlord who enjoyed more or less the original or derivative status of a proprietor. As the Crown did not during the Hindu period lay any claim to property in land, the grain payments answered to the description of a tax, rather than to that of rent. The germ of rent existed, however, in village communities of the later landlord type which became extant in Bengal. In these villages, the cultivators paid the "King's share" of the produce and an additional share to the proprietary body. The additional share was rent ——————rent paid in kind, as all rent was, before the general use of money.

Rent during the Hindu period.

The germ of rent in Hindu village communities.

Rent regulated by custom.

At first the amount of rent payable was regulated entirely by custom, which in distributing the incidence took account of the tenant's caste, the quality of the soil and its proximity to marts. By custom and prescription, the *Khudkast* or resident raiyats acquired valuable rights in land which just fell short of a perfect proprietary interest. They held the land on more favourable terms and paid lower rates than the *Paikast* or non-resident raiyats. This state of things continued for a long time. At no period antecedent to British rule did the population reach a point which rendered it necessary to cultivate the worst land and resort to the improved means of agriculture in order to raise sufficient food for the people. A vast area of culturable land lay waste for want of men to till it and the raiyats who were pressed beyond endurance in one place removed to some other, where the interest of the new landlord was the most effectual barrier against oppression. In this primitive stage, the raiyats had to be fostered and rack-rent

was unknown. The customary rent did not press on the tenants with any degree of severity and its incidence was none too heavy, though it allowed not only for the share claimed by the State but for an intermediate income to the zemindars.

Growth of rent checked during the Muhammadan period.

The public policy of the Muhammadan Government did not recognise the rights of the middlemen who stood between the cultivator and the Crown. Even where an intermediary was allowed to exist he was, oftener than not, a mere collector of revenue who could not lay any claim to the status of a landlord except by usurpation, and such dues as he might intercept would more fittingly be classed as fees or perquisites than as rent in the proper sense of the term. It will thus be seen that rent found no place in the revenue system which immediately preceded the advent of British power in Bengal. Several attempts were made by the Muhammadan governors of Bengal to set aside the zemindars but with the decline of Mogul power, the system of farming out the revenue came into vogue and led to the creation of a new type of intermediaries who took advantage of a tottering Government to intercept more than their due share of the collections. They did not confine themselves to the recovery of the rent proper but imposed additional illegal cesses. Their receipts were considerably in excess of the economic rent lawfully payable by the tenants and of the amount which by their engagement, they were authorised to appropriate. Thus the farmers flourished at the expense at once of the State and of the peasantry. Gradually the rent was so overlaid with illegal cesses that it now formed but a small fraction of the amount levied[1] and lost its original character. Hunter is of

The effect of revenue farming upon rent.

[1] The rates levied were made up of two constituent parts—a fixed rate per acre and a variety of *abwabs* or cesses added to that rate. The average rate was defined; the cesses were indefinite (Hunter's Introduction to Bengal Records, p. 56).

opinion that before the Company had acquired the Diwani grant of Bengal, "the original demand had been so raised by cesses or *abwabs* as to render the rights of the cultivators nugatory." He adds in a footnote "So far as generalisation is possible, it was truly stated that the native system of *abwabs* had left only a bare living to the tillers of the soil."

Progress of rent during the British period.

Such was the state of things at the time when the East India Company assumed the revenue administration of Bengal. The reasons which compelled the Company's Government to continue for a few years the policy of its predecessor have already been set out in the previous chapter. Before the raiyat's burden reached the breaking point, the laws of competition came to his relief and custom had to readjust itself to economic facts. The devastations of the Mahrattas and the great famine of 1769-70 which swept away a third of the inhabitants of Bengal had reduced the population to a point much below that required for the cultivation of all the village land.

The influence of competition and the operation of economic laws.

Francis, the renowned rival of Hastings, wrote in 1776 "where so much land lies waste and so few hands are left for cultivation, the peasants must be courted to undertake it."[1] The zemindar was thus forced to "court" the peasant by offering unoccupied or deserted land at rent lower than the established rate levied from the resident cultivators. The zemindars were aware that the resident cultivators had only to migrate a few miles to get land at low rates of rent and this apprehension on the part of the zemindars set practical limits to their exactions however well sanctioned by custom. Many of the resident cultivators who had the strength of mind to quit their ancestral holdings refused to pay the customary rates and took up land on easy terms in the neighbouring villages.

[1] Introduction to Bengal Records, p. 60.

The vagrant raiyats.

These were the "vagrant raiyats" who have been thus described by Warren Hastings:—"The vagrant raiyats, as Mr. Francis observes, have it in their power to make their own terms with the zamindars. They take land at an under-rent and hold it for one season. The zamindar then increases their rent or exacts more from them than their agreement, and the raiyats either desert, or if they continue, they hold land at a lower rent than the established rates of the country. Thus the ancient and industrious tenants are obliged to submit to undue exactions[1] while the vagrant raiyats enjoy land at half price which operates as an encouragement to desertion and to the depopulation of the country."[2] The presence of these "vagrant" tenants in almost every village tended to reduce the customary rates to the standard of supply and demand. An instructive example of the influence of economic laws over customary rights is furnished by the fact that these vagrant raiyats had within a few years acquired a recognised position in the Bengal village system. But the raiyats were not destined to retain for long the coign of vantage which they had secured. Within less than fifty years the population which was decimated by famine recouped the loss it had sustained and advanced by rapid strides during the era of peace and prosperity inaugurated by the British Government. The rapid increase of population, stimulated as it was by the ab-

Custom modified by competition.

With the lapse of years competition for land took the place of competition for tenants.

[1] The resident raiyats were liable to make good the rent due from the deserters.

[2] Minute of 12th November 1776. The vagrant raiyats were followed up by their old landlords and "whenever possible forced to return to their ancestral villages. They could not always be compelled to do so. For the zamindar on whose land they settled found them an additional source of income and protected them from pursuit and recapture." Hunter's Introduction to Bengal Records, p. 63.

sence of restraints on marriage and a comparatively low infant mortality in a country where cold and its fatal consequences are unknown, revolutionised the relation of labour to land. In 1770, the landlords were competing for tenants; in 1819 the tables were turned. To add to the miseries of the raiyats, the Permanent Settlement Regulations left the zemindar practically free to enhance the rents of his tenants. The legislation of 1793 was followed by the "Haftam" (Regulation VII of 1799) which armed the zemindars with considerable powers and this enabled them to dictate their own terms to the tenantry. The Sale laws of 1822 had a disastrous effect on a tenantry already groaning under the weight of accumulated cesses. Fortunately, however, for the raiyat, an upward march of the prices of agricultural produce set in after the lapse of some years of progress and prosperity. Before the middle of the last century, the value of the food-grains and of economic rent rose above the customary rates and the question for the time being was, who, the landlord or the tenant, should profit most by the change. The long litigation which followed was in reality a struggle for the unearned increment. At this juncture, the Government felt compelled to intervene and regulated by an Act[1] which was to be administered by courts of justice, the principles according to which the increment of the soil was to be apportioned between the landlord and his tenant.

The indirect effect of the Permanent Settlement on rents.

The struggle for the unearned increment.

From the above sketch it will appear that the history of rent may be broadly divided into three periods—

Three stages of the evolution of rent.

(1) The Hindu period, during which custom was the sole determining factor of rent. This we may call the reign of custom.

[1] Act X of 1859.

(2) The Muhammadan period, during which rent was so overlaid with arbitrary exactions and illegal cesses that it entirely lost its original character. This we may style the "*Interregnum*" during which the influence of custom was suspended, while that of competition did not as yet assert itself.

(3) The early British period (1765—1858) during which economic laws came into play and to a great extent counteracted the force and effect of custom.[1] We may call this the reign of competition.

(4) The later British period commencing from 1859, during which Legislature stepped in from time to time and passed laws for the regulation of rent. This we may call the reign of law.

We have seen that the germ of rent existed in the Hindu village communities but it was nipped in the bud during the Muhammadan period. The policy of the British Government was from the very beginning directed to the creation of a class of rent-receivers. In dealing with Bengal they sacrificed everything in order to revive and foster the growth of this class. If they did not create the principle of rent, they at any rate restored it to the same, if not to a more forward, stage of development than that in which the Muhammadan invasion found it. But there is one sense in which it is true that rent is a British creation. There is no doubt

[1] In Bengal custom never lost the whole of its influence. The framers of the Permanent Settlement recognised the validity of the rent-rates established by custom. Even now the influence of competition is not quite paramount. A rise of prices, for instance, even in unfettered tenancies does not necessarily entail a concurrent rise in rents; the rental in such cases rises, as a rule, considerably after prices and by no means in exact conformity with them.

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that the fund out of which rent is paid is the result of the peace which the British have kept and of the moderation of their fiscal demands. By limiting the demand of the State and later on restricting improper enhancement of rent, the British Government further stimulated the growth of this fund. It may also be noted that competition rent had no existence before British rule and in so far as it has yet come into being, it is due to the influence of the British Government. The British legislation relating to rent started from the basis of custom and while accepting the legitimate influence of competition, seeks to confine it within reasonable limits. Custom is still to a considerable extent the foundation of rents in Bengal[1] and the presumption of unfettered competition which pervade the standard economic conceptions of rent, cannot be applied, without reservations, to the conditions prevailing in this country.

In one sense rent is a British creation.

The character of British legislation relating to rent.

We now turn to the various theories of rent which have been propounded from time to time by Western political economists, so that we may examine their applicability to the peculiar conditions of this country. According to Ricardo "rent is what land yields in excess of the ordinary profits of stock," while a more mordern school of thinkers define rent as "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." These theories postulate (*a*) the application of capital to land and (*b*) the remuneration of the cultivator at the bare wages of unskilled labour.[2] They can not possibly have any operation

Western theories of rent.

[1] For instance the Permanent Settlement recognised the validity of the then existing customary rent rates and the Bengal Tenancy Act expressly saves custom where it is not inconsistent with its provisions.

[2] The capitalist and the landowner have constructed this theory in Western countries. The labouring cultivator had no hand in its

in Bengal, as none of the two supposed conditions exist here. In Bengal the raiyats of the privileged classes having acquired by custom a limited property in land and a prescriptive status superior to that of the ordinary landless field labourer, is entitled to higher wages. They have a lien on the soil beyond the wages of labour and the profits of stock. It is also a matter of common knowledge that in Bengal (or any other part of India for that matter) little or no capital[1] is employed in agriculture—nothing in fact beyond the ordinary implements, the seed grain, and sometimes a small stock of grain laid by against years of famine. The Western theory of rent involves the supposition that the worst land in cultivation pays no rent.[2] In Bengal there is no cultivated land which does not yield a rent, for a portion of the produce of every *bigha* is demanded by the State or by those to whom it has transferred its rights and the very foundation of the theory is therefore wanting. Field thus comments on these theories. "From the peculiar course of progress in England and from that state of affairs under which the absolute ownership of the land was, from the close of the seventeenth century in the hands, not of the cultivators but of a limited class of proprietors who were all powerful in the legislature to regulate its measures with a view to their own interests above all others, there has been evolved a theory of rent which, although it may be scientifically correct with reference to the peculiar circumstances of Eng-

Inapplicable to the conditions of this country.

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construction—his voice was not heard in council and his vote did not direct the course of legislation which took so little account of his class and of his interests.

[1] Up to 1845 zemindaris were sold piecemeal for arrears of revenue and the effect of it was to reduce the size of estates. In this state of things, a large proportion of zemindars had no capital to invest, while many more had not enterprise enough to lay out money on agricultural improvement.

[2] Mill says "The rent which any land will yield is the excess of its produce beyond what would be returned to the same capital, if employed on the worst land in cultivation." (Political Economy, Vol. I.)

land, is not equally correct when applied, and is in many instances not at all applicable, to other countries and other communities whose past history and present conditions are in many respects, if not altogether, different."[1] The Calcutta High Court at first lent a countenance to these theories but soon changed its attitude. In 1862 Sir Barnes Peacock, C. J., laid down the doctrine that rent in Bengal was economic as defined by Malthus, *viz.*, "that portion of the value of the whole produce, which remains to the owner of the land, after all the outgoings belonging to its cultivation, have been paid, including the profits of capital employed." In 1865 a Full Bench repudiated this doctrine as inapplicable to the customs and conditions of the country.

The attitude of the High Court towards Western theories.

As the produce of the soil is divided between the landlord and the cultivator, the prosperity of the latter depends upon the proportion exacted by the former as rent. When this share or rent is regulated by competition, its rise or fall depends upon the relation between the demand for land and the supply of it. As the land is a fixed quantity, while population has a tendency to increase unless checked by individual prudence, the competition for land, when keen, tends to force up rent to the highest possible point, reducing the cultivator's share to a bare living wages.

Competition for land tends to create rack-rent.

Of course, it is possible to imagine the existence of circumstances which would exclude the operation of the rule just enunciated. For example, no misery or destitution will ensue in the case of a rural community accustomed to a high standard of comfort which would not admit of the payment of rent at more than the rates calculated to leave a sufficient margin for the cost incidental to their style of living; whose moderate increase of numbers is a

[1] Landholding, p. 41.

guarantee against rents being forced up by competition. It is undeniable that both these conditions are absent in this country and the landowners are in a position, therefore, to dictate their own terms which the raiyats must either accept or starve. In these circumstances, the results of competition rent would be disastrous for the tenantry if its influence were not tempered by custom. The growth of a custom securing permanency of tenure without liability to enhancement of rent would provide an insurance against the evils of competition. But we have seen that the Permanent Settlement and the legislation which immediately followed it—particularly the Revenue Sale laws, arrested the development of custom and the raiyats, being subjected to the absolute and arbitrary will of the landlords, were reduced to a condition of misery which no humane or enlightened government could contemplate with equanimity. It then became the clear duty of the State to step in to the aid of its poor and helpless subjects. This duty early received a theoretical recognition at the hands of the Bengal Government. In 1815 they wrote "We consider it 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 zamindar."[1] In furtherance of this policy, the Legislature incorporated in Act X of 1859 certain rules for regulating the enhancement of rent, which were developed and brought into conformity with modern agrarian exigencies, in the Bengal Tenancy Act of 1885.

The necessity for the intervention of the State.

The annals of rural Bengal during the second quarter of the nineteenth century illustrate the imperative need for the interposition of the sovereign authority for the purpose of protecting the raiyats against the evil effects of competition

[1] Revenue letter from the Government of Bengal, dated 7th October, 1815.

rents. The country had by this time recovered from the effects of famine. The rise of population which followed as a natural result, set up a competition for land and enhanced its letting value on a rapidly ascending scale. The Permanent Settlement by putting the zemindars in an absolute position further stimulated the growth of competition rents and of illegal exactions from the raiyats in spite of statutory prohibitions to the contrary. We have seen that from one-third to one-half of Bengal was waste in 1793 and could, in the circumstances just stated, be let by the zemindars upon their own terms. We have also seen that half the landed property changed hands between 1793 and 1815 under a law which authorised the purchasers to avoid previous engagements. The cumulative effect of all these factors was to reduce the raiyat to an extremely helpless position which made it impossible for him to resist the undue influence of his landlord's will. The prevailing rate of rent once raised, there was little difficulty in enhancing the rents of the remaining raiyats to the same level. The agricultural depression thus brought about was a standing menace to the cause of peace and order. It soon became apparent that Government could not consistently with the proper discharge of its functions, overlook the mass of misery heaped upon the raiyat and leave the settlement of rent to the uncontrolled influence of competition. In the interests of agricultural prosperity, it was imperative that the Government should come forward and undertake the duty of regulating rents.

Agrarian conditions in 1825 onwards illustrate the need for legislative intervention.

There is evidence to show that the right to fix the limits of rent was one of the prerogatives of the Crown during the Hindu and Muhammadan periods. Under both systems the proportion of rent payable by the raiyats was determined by the sovereign. Both systems recognised in the raiyats a

Historical justification for the sovereign's interposition.

right to the possession of land which was incompatible with an arbitrary power in the zemindar to raise the rents. It has been shown that the Permanent Settlement cannot be construed as limiting the rights already vested in the raiyat. The right of Government to interfere was expressly saved by the legislation of 1793. But apart from any express reservation, the exercise of the power is inherent in Government and is in no way dependant upon positive law. Whether the question be examined in the light of the ancient constitutional law or with reference to the duty and obligation of the Government to promote the happiness and prosperity of the people, it leads to the same conclusion, namely, that the ruling power ought to determine the rent payable by the tenant to his landlord. In this view, the appropriate theory of rent is that it is not the surplus profit of capital applied to agriculture but that it is such a proportion of the produce of the soil, as the Government may from time to time determine to be the share payable by the raiyat to his landlord. As to the proportion which would be fair and equitable, the Rent Commissioners were of opinion that it was such a share of the produce as shall leave enough to the raiyat 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. The Government of the day accepted the views of the Rent Commission but in applying these principles, the difficulty arose of setting up one uniform standard of comfort among the agricultural population throughout the country. Owing to causes which had their roots in past history and peculiar local conditions, the pitch of rent was unequal in the different parts of the country. To level down existing inequalities

Constitutional aspects of the question.

The theory of rent applicable to Bengal.

Definition of fair and equitable rent.

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so that rents may conform to one uniform standard would be a measure of doubtful wisdom. It was therefore decided to start with the presumption that the existing rents were fair and equitable[1] and to provide for enhancement or reduction according to certain fixed principles.[2] The Rent Commissioners observed "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 are not entitled to an equal accession of advantage in the future." It was accordingly provided that in any case in which the rent payable for an occupancy-holding is below the prevailing rate payable for land of a similar description and with similar advantages in the same or neighbouring villages, it may be enhanced subject to such limits as the court thinks equitable.[3] It is in the essential fitness of things that landlords who have in the past remained content with comparatively low rates of rent should be allowed to raise them to the level of those prevailing in the vicinity and placed on an equal footing with his more exacting peers.

Existing rent presumed to be fair and equitable.

The claim of the landlord to an enhancement of rent on the ground of an increase in the productive powers of an occupancy-raiyat's holding was readily recognised by the Legislature and provision made accordingly.[4] These productive powers may have increased by (1) the agency or at the expense of the raiyat or (2) of the landlord or (3) by fluvial action without the agency or expense of either the landlord or the raiyat. For obvious reasons the landlord is not entitled in the first case to any share of the increment. For equally obvious

Enhancement on the ground of increased fertility.

[1] Fifth Report, p. 24.
[2] Section 27, Bengal Tenancy Act.
[3] Section 30, Cl. (*a*).
[4] Clauses (*c*) & (*d*), sec. 30, Bengal Tenancy Act.

reasons the landlord is in the second case entitled to the whole of the increase. In both these cases, the liability to or exemption from enhancement is the result of a desire on the part of Government to stimulate the expenditure of private capital upon the improvement of land and to secure to those who spend money on it the legitimate reward of their enterprise. In the third case, the improvement has been effected, *ex-hypothesi* by the agency of nature without the assistance of either landlord or tenant and it was thought reasonable to divide the increment as a general rule equally between the two.

Enhancement on the ground of rise of prices.

The rapid rise in the value of agricultural produce pressed itself to the notice of the Legislature as a legitimate ground of enhancement.[1] The upward movement of prices was due to two principal causes. In the first place as population increased, prices rose in response to the economic law of demand and supply. A large and still expanding export trade brought the demand of other countries to bear upon the prices, over and above the pressure of demand in the province itself. In the next place the purchasing power of the rupee diminished owing to the depreciation of the value of silver coins. This brought about a rise in the money value of agricultural and other commodities. It is not possible to estimate separately the degree of influence of these two factors and to calculate how much of the increase is due to each, but

[1] Dutt in his "Open Letter to Lord Curzon" maintains that this should be the only ground for the enhancement of rent. So far as my experience in Bengal settlements goes, the rise of prices is practically the only ground on which decrees for enhancement can be obtained. The prevailing rate payable for land of similar description with similar advantages in the vicinity is difficult to prove, as also an increase in the productive powers of the land in respect of which enhancement is sought. In order to prove the latter, witnesses from the spot must be produced and elaborate enquiries instituted. The production of evidence essential to success is a matter of great expense and the cost of victory in a single suit is out of all proportion to the advantage gained.

it was recognised that the landlord was entitled to a substantial share of the increased profits whether it resulted from one cause or the other. In so far as the rise of prices was due to the first cause, the zemindar who shares with the raiyat the interest in land is entitled to a share in the increase of value which was an accession to that interest. The effect of the second cause was to diminish the value of the rent payable in cash, so that it now represented a smaller share of the produce than it did before the depreciation of silver. In these circumstances it was deemed equitable, that the money rent of the landlord should be increased so that it might effect an equation of value between the former and the present rent. These principles were sound enough so far as they went but the practical apportionment of the increase between the *zemindar* and the *raiyat* in right proportions was a matter of some difficulty. It was ultimately decided to deduct from the enhanced rent to the zemindar, an amount approximating to a third of the allowable difference between that rent and the existing one. This amount was supposed to represent roughly the raiyat's share of the increment (*vide* cl. *b.*, sec. 32, Bengal Tenancy Act).

Provisions of the Tenancy Act for the enhancement of occupancy-raiyats' rent.

In accordance with the principles enunciated above, the Legislature embodied in the Tenancy Act of 1885 the following provisions relating to the grounds on which an enhancement of the money-rent[1] of an occupancy-raiyat may be decreed.

(*a*) That the rate of rent paid by the raiyat is below the prevailing rate paid by occupancy-*raiyat* for land of a similar description and with

[1] Produce-rents adjust themselves automatically to the rise or fall of the value of agricultural produce.

similar advantages in the same or neighbouring villages.

(*b*) That there has been a rise in the average local prices of staple food crops during the currency of the present rent.

(*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.[1]

(*d*) That the productive powers of the land held by the raiyat have been increased by fluvial action.[2]

Proviso to the rules for enhancement.

The operation of the laws of enhancement is subject to an important proviso which runs thus "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."[3]

The above provisions not applicable to produce rents.

The foregoing provisions of enhancement have no application to produce rents which prevail on a considerable scale in Behar. Produce rents are of three kinds :—(*a*) Batai, (*b*) Bhaoli, (*c*) Mankhap. Under the first two systems, the produce is divided between the landlord and the tenant in specified proportions and the difference between the two systems lies in the process of division peculiar to each. Under the Batai system, the actual crop is divided, usually

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[1] Section 30, Bengal Tenancy Act.

[2] Silt deposits in the deltaic portion of the province are of common occurrence and a piece of land which is sandy this year may by the action of rivers, become fine arable land in the following year.

[3] Section 35, Bengal Tenancy Act. It should be borne in mind that in addition to the ground specified above, a raiyat is liable to pay additional rent for any additional area in excess of that for which he is paying rent. B. T. Act, sec. 52.

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half and half either in the field or on the threshing-floor, while under the other, the value of the crop is appraised on the ground shortly before the harvest and a specified share of that value is paid by the raiyat either in cash or in kind as may be found most convenient.[1] In both cases the risks of the season are shared between the landlord and the tenant. Under the *Mankhap* system the raiyat pays a fixed quantity of grain, usually from eight to ten maunds per *bigha*, irrespective of the actual outturn. The rate is about double the ordinary cash rental. The *Mankhap* bears on the raiyat with undue severity, as it throws all the risks of the season upon him alone and deprives him of the benefit of the high prices which is the only compensation he receives for a lean season. Cases have occurred in which in years of famine he had to buy grain at ruinous prices to make over to his inexorable landlord. The extreme depression of the agricultural classes in Behar is the combined effect of the rent system and of the peculiarities of land tenure prevalent in that province. In Sir Ashley Eden's words, which are as true now as they were when uttered thirty-five years ago, they are "poor, helpless, discontented men, tenants of the richest province in Bengal, yet the poorest and most wretched class in the country." The condition of the Behar peasantry and the means of improving it have been discussed with masterly ability in Sir (now Lord) Antony MacDonell's minute of the 20th September 1893 which has been reproduced as a supplement to this chapter.

Different kinds of produce-rents.

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[1] The *Batai* method of division is very harassing to all concerned. The *raiyat* is worried by the perpetual supervision of the landlord and unless the latter can realise the grain in person, he is liable to be swindled by his agents. The *Bhaoli* system on the other hand offers less opportunities for vexation or fraud. Everything of course depends on the manner in which the appraisement is carried out, but it is surprising with how little friction it is accomplished in the majority of cases.

Under the system of produce-rents the landlord gets the full benefit of every rise in the price of staple food crops. The Behar system has been compared to the Metayer tenures in which most of its worst features and few of its advantages have been reproduced. 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. Thus he receives considerable assistance towards raising the crop which he and his landlord share between them. The Behar raiyat, on the contrary, gets nothing but the bare land; his possession is insecure and he has no incentive to improve the land, while the 'petty oppression (such as dishonest appraisement) practised in collecting rent in kind leave him too often less than half the crop the whole cost of which has fallen upon him alone. But in spite of all these disadvantages it would perhaps be detrimental to the interest of the raiyats to substitute money rents. The hard stony soil makes it difficult for the raiyats in many parts of Behar to cultivate the land or raise any crop without irrigation on an extensive scale which is beyond their means. The practical difficulty of maintaining a system of irrigation where a water channel serves more than one village, has undoubtedly established among the tenants a preference for the *bhaoli* system which prevails extensively in the South Gangetic districts of Gaya, Sahabad and Patna. Under the Behar system, the landlord on whom the duty of maintaining the irrigation works devolves is under a strong inducement in his own interests to keep them in good order. The Commissioner of Patna, in his letter No. 1130 of 21st August 1858, observed: "It may very probably be thought by those who have had no experience in

The seamy side of the Behar system—comparison with the Metayer tenure.

The merits of the Behar system.

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the part of the country that payment in kind 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 dependant upon rain for its fertility. In good seasons it yields good crops and in bad ones next to nothing. 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 *Bhaoli* 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[1] 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."

I would supplement the above remarks by an extract from a report by Babu Bhubsen Singh of Gaya[2] which is essentially a plea for the *Bhaoli* system. "It is a distinctive feature of the grain rents that the payment consists not in any fixed quantity but in a fixed proportion of the actual outturn of the crops grown. The rent paid or payable accordingly varies from year to year. The land is tilled and the seed sown is supplied by the raiyat or at his cost. The cost of hoeing and transplanting, of weeding and clearing, being also borne by him. But the water is supplied by the landlord at his own cost. The cost of gilandázi (throwing up of earth), division of lands into plots, by *al* and *ail* (ridges),

A defence of the Behar system.

[1] The Behar raiyats have been slow to take advantage of sec. 40 of the Bengal Tenancy Act which provides for the commutation of produce rents into cash. This is a proof of the popularity of produce rents.

[2] Report on the Rent Bill of 1884.

according to their levels, for the storage of the necessary quantity of water, and of erecting embankments on the banks of rivers for the protection of the villages from being over-flooded, are exclusively paid by him. In dry years, when water cannot be supplied from rivers and village reservoirs and artificial water-courses, he pays the raiyat the cost of sinking wells. It is not only that the landlord supplies water for irrigation, but as the rise or fall in his income depends upon the increase or decrease in the produce of the lands, he naturally shows as much anxiety and takes as much care in the proper and timely ploughing thereof, as he would have done had he been a cultivator himself; and his servants are always found to be busy in superintending the tilling of the soil, the sowing of the seed, the transplanting of the rice, and so forth, according as the case may be.

"If the raiyat's bullock happens to die in the ploughing season, and the raiyat is unable to procure one in its stead, the zamindar would come forward and help him with one, even at the risk of running into debt, if he is poor. Seed is also supplied by him in the same way. For similar reasons, the landlord is interested in seeing that the best crops are grown upon the land it is capable of producing. No raiyat has the right to sow any crop inferior to what the land is capable of producing, nor can he be allowed, without the express consent of his landlord, to grow crops for which by the custom of the country, a cash rent is paid, or which are incapable of being appraised or stored in the threshing-floor or barn for division. From the time the crops are sown to the time they are appraised and stored, the landlord watches the crops with keen interest and protects them from being wasted or otherwise injured by men or cattle. For this purpose he has to maintain an establishment of *Barahils* and *Goraits*, the former of whom receive their salary from the zamindar, while the latter are remunerated by the

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zamindar with rent-free land [and some grain-payment which is exacted from the tenants].

"The *bhaoli* crops are by custom and the circumstances under which they are grown regarded by the parties concerned as their joint property. The whole of the straw and chaff which are not without value, goes to the raiyats. It is only out of the grain-produce that the zamindar gets a share which, though everywhere more than half, is different in different parganas, and almost in different villages, and which again varies with the different classes of raiyats, whether Ra'iyán or shurfá,[1] the former delivering a higher and the latter a lower share.

"And we shall be very near the true figure when we state that the zamindar's share, with the customary abwábs or cesses, is $\frac{9}{16}$ of the grain-produce. But, if the value of the straw and the chaff, which are, in these days, as much valuable commodities as grain, be taken into consideration, the highest share which the zamindar gets in lieu of rent, would be much less than even half of the total gross produce. The value of the straw and chaff may fairly be assumed to be one-third of the grain-produce.

"As soon as the crops are ripe for harvesting, the zamindar deputes an Amin (assessor) and a sális (arbitrator) to make an estimate of the grain-produce. In the presence of these officers, the raiyats, the village gomásta, the patwárí, and the zeth (headman of raiyats), who generally knows how to read and write, representing and watching the interests of the raiyats; the village chainman, called kathádár (holder of the rod or bamboo), measures the field with the village bamboo, which in this district is nowhere less than 8 feet 3 inches or more than 9 feet in length. The sális then goes round the field, and from his experience

[1] Ra'iyans are ordinary raiyats. Shurfá are the higher castes (from *Sharif*, noble), very often ex-proprietors.

guesses out the probable quantity of the grain in the fields, holds a consultation with the *Amin* and the village officers, and when the quantity is unanimously agreed upon, it is made known to the raiyat. If he accepts the estimate so arrived at, the quantity is entered by the patwárí in the khasra or field-book. If he objects, other raiyats are called in to act as mediators, and if they fail to convince either party, a *partāil* or test takes place. On behalf of the landlord, a portion of the best part of the crops is reaped, and an equal portion of the worst part is reaped on behalf of the raiyat. The two portions so reaped are threshed and the grain weighed. On the quantity thus ascertained, the whole produce of the field is calculated and entered in the khasra. From the time the estimate is made, the zamindar withdraws his supervision from the crops, which are then left in the exclusive charge and possession of the tenant..... After the appraisement of the field, the raiyat is allowed the full liberty of reaping the crops and taking them home at any time that may suit his convenience. Out of the estimated quantity, a deduction at the rate of two seers per maund is allowed to the raiyat, which is called chhuthi (set off). I have not been able to ascertain the exact reason for which this allowance is made. But, as in the agorbatai, the reapers who also thresh out the grain are paid from the joint crop. I presume this is allowed to the raiyat to meet the cost of reaping, gathering, and threshing. The landlord's share is then calculated on the quantity left after the chhuthi has been deducted."

The different systems of rent in Bengal and Behar have produced different results in the two provinces.

The prevalence of different systems of rent in Bengal and Behar is due to local conditions, peculiar to each province. In Behar the population had come to press closer on the land than in 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 Bengal, particularly in the eastern portion of it, unreclaimed land being abundant and cultivators scarce, the raiyats had the advantage and were in consequence able to procure land on more favourable terms. Thus various tenancies at low rents have come into existence in Eastern Bengal to which we find nothing similar in Behar. The ticcadari or farming system which is much in vogue in a certain part of Behar is another oppressive tenure having a tendency to grind down the raiyats. Under this system, the landlords who should protect the tenantry make them over to the tender mercies of the ticcadars who have no permanent stake in the land and are therefore indifferent to agricultural interests.

Rules for reduction of rents.

The rules relating to reduction of occupancy-raiyat's rent are more simple. The money rent payable by an occupancy-raiyat may be reduced on two grounds only, *viz.* :—

(*a*) 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 ;

(*b*) that the soil of the holding has without the fault of the *raiyats* become permanently deteriorated by a deposit of land or other specific cause, sudden or gradual.[1]

Ejectment of tenants of higher status.

The Act gives effective protection to the *raiyats* of higher status (raiyats holding at fixed rates and occupancy-raiyats) against arbitrary eviction. A *raiyat* holding at fixed rent cannot be ejected except on the ground that he has broken a condition consistent with the Tenancy Act and on breach of

[1] Section 38, Bengal Tenancy Act.

which he is, under the terms of a contract between him and his landlord, liable to be ejected.[1]

An occupancy-raiyat is liable to be ejected, in addition to the above ground, on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy.[2] Ejectment for misuse of land or for breach of any express covenant, which entails liability to eviction, is one of the ordinary incidents of a lease of immovable property. But all enlightened systems of jurisprudence take care to safeguard the rights of lessees by rules intended for the protection of the weak and the imprudent and section 155 of the Bengal Tenancy Act provides immunity from ejectment on suitable reparation being made, where the breach or misuse is capable of remedy and in any case, on payment of reasonable compensation by the tenant. Immunity from ejectment for non-payment of rent is one of the important boons conferred on raiyats of the two highest classes by the Act of 1885. These raiyats cannot now be turned out of their land but the holding is liable to be sold in execution of a decree for rent[3] and the tenants have in this case a right to the surplus sale-proceeds. The Act of 1859 recognised in the raiyats a mere right to hold land and cultivate it but the Act of 1885 by restricting the landlord's power of eviction and providing for the appropriation of sale-proceeds by the tenants further improved their position and conferred a limited proprietary right on them.

Acquisition of occupancy-rights restricted to agricultural and horticultural land.

The provisions of the old law relating to the acquisition of occupancy-rights and enhancement of rent were applicable only to lands let out for agricultural and horticultural purposes. The Bengal Rent Commission proposed to extend the scope of the then existing

[1] Clause (*b*), section 18, Bengal Tenancy Act.
[2] Section 25, Bengal Tenancy Act.
[3] Section 65, Bengal Tenancy Act.

law and framed a definition of land accordingly. The definition was not however incorporated in the Bill as passed and it was left to the courts in each case coming before them to decide whether the Tenancy Act was applicable to the land in question.[1] There can be no doubt that the Act applies to agricultural and horticultural land and to any pasture land which the tenant has a right to bring under cultivation.[2] Apparently it was not intended to exclude from the operation of the Act any of the lands to which the former law applied; for it is expressly provided by section 19 of the present Act that "every raiyat who immediately before the commencement of the 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." So far there have been only two cases under the present Act in which it was sought to make it applicable to non-agricultural land and both the attempts proved unsuccessful. The first case was that of the *Raniganj Coal Association* v. *Jadu Nath Ghose*,[3] which was a suit for arrears of rent due under a dar-maurasi-makarari lease. It was held that as the lease was granted, not for agricultural or horticultural, but for building purposes and for the establishment of a coal depôt, the land comprised in it did not come within the purview of the Tenancy Act. In the second case *Umrao Bibi* v. *Mohammad Rajabi*,[4] the subject of dispute was some plots of land within the limits of the Dacca Municipality, on which thatching grass and kitchen vegetables were grown. It was held that as the land was not let for agricultural or horticultural purposes, the Bengal Tenancy Act did not apply.

The above dictum supported in two reported cases.

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[1] Revenue Selections, p. 482.
[2] Section 5 (2), Explanation.
[3] I. L. R., 19 Cal., 489.
[4] I. L. R., 27 Cal., 205.

Acquisition of occupancy-rights expressly barred in certain cases.

The Act has in express terms barred the acquisition of occupancy-rights in (1) proprietor's private lands, known in Bengal as *khamar*, *nij*, or *nij-jote* and in Behar as *zirat*, *sir*, or *kamat*, if let under a lease for a term of years or from year to year.[1] (2) *Char*, *diara* or *utbandi* lands, until the raiyat has held the *same* land for twelve continuous years.[2] The Act has also restricted the growth of occupancy-rights in homestead lands, unless it forms part and parcel of an agricultural holding.[3] It has been held by the High Court that occupancy-rights cannot be acquired in *Ghatwali* lands.[4]

When a raiyat holds his homestead otherwise than as a part of his holding, the incidents of the tenancy are regulated by custom and the accrual of occupancy-rights is barred except in cases where it is sanctioned by long established usage. The homestead is invested with a peculiar sanctity in the eyes of the native of Bengal, and it would have been more in consonance with popular feeling if the Legislature had extended to all homestead lands a higher protection than that of custom, which is often of slow, precarious and irregular growth.

The right to sublet is an important incident of occupancy-holdings. Under the former law the right was confined to occupancy-raiyats but it has now been extended to all classes of raiyats. In the case of a non-occupancy-raiyat, however, the landlord may protect himself against subletting by a special covenant in the lease.[5] The right is inconsistent with the original purpose of cultivation which lies at the inception of the tenancy and does not therefore deserve

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[1] Section 116, Bengal Tenancy Act.
[2] Section 180, B. T. Act.
[3] Section 182, B. T. Act.
[4] I. L. R., 33 Cal., 630 ; 1 C. L. J., 138.
[5] Bengal Tenancy Act, sec. 44, cl. (6).

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encouragement. It leads to the creation of a class of ignorant cottiers. In Bengal, the subletting has in many places reached several degrees. It has been said that the existence of these intermediate interests will exercise a healthy influence in creating a higher standard of comfort but although present conditions are not such as to raise immediate alarm, there is room for the apprehension that the process of subletting may pave the way for the introduction of the objectionable cottier system specially as the increase of population is not checked by individual prudence in this country.[1] It would be nothing short of a natural calamity if the history of Ireland repeats itself in Bengal. In some parts of Ireland there are no less than six degrees of interest intermediate between the proprietor and the cultivator. These middlemen have proved hardhearted landjobbers whose sole object is to exploit the land and wring as much as possible out of their tenants. In the opinion of Field, no class of landlords is so hard and unfeeling as petty middlemen, none so much disposed to exact rack-rents or so utterly indifferent to the improvement of their estates.

The Bengal Tenancy Act contains no positive provision about the transferability of occupancy-rights and leaves the matter to be regulated by custom. We have seen that during the Hindu period, the cultivator's interest had practically no saleable value and any theoretical power of alienation which the raiyat might have possessed was subject to a right

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[1] Babu Sarada Charan Mitra, Ex-Judge, Calcutta High Court, is however of a different opinion. He observes: "The Legislature has wisely provided for the raiyat occasionally letting out his land or portions of it. A raiyat with a right of occupancy may, for various reasons, be prevented from cultivating his lands, and it would be extremely hard, if the privilege of subletting be denied to him" (Land Law of Bengal, p. 305). Occasional use of the power may not be productive of mischief, but when a right receives legal recognition, it cannot always be kept within the desired bounds and as a matter of fact raiyats in Bengal are getting more and more into the habit of subletting.

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of pre-emption in the other members of the cultivating group. It would appear from the *Ayeeni-Akbari* that during the earlier Muhammadan rule, the cultivator had no alienable interest. But at a later stage in the development of the country when a rapid increase of population began to bear on the soil and the demand for land exceeded the supply, the occupancy-raiyat's interest acquired a saleable value by degrees. About eighty years after the Permanent Settlement the custom of transferring raiyat's holdings had taken such deep root that Government found it practically impossible to ignore it. Enquiries proved that the custom was much more general than had previously been supposed and that the great majority of transfers, being from one member of the cultivating class to another, were of a harmless character. A provision was accordingly inserted in the Bengal Tenancy Bill which gave legal recognition to the custom, subject to a right of pre-emption which was vested in the landlord. This provision however met with considerable opposition in the Select Committee and in the Council, and further enquiries furnished grounds for the apprehension that in Behar and some other parts of the country, the right of free transfer may produce baneful results on a thriftless peasantry. It was ultimately decided to abstain from legislative interference till custom had further strengthened itself. It was not intended however to close the door to the growth of a system of transferability or to debar the Government from undertaking legislation on the subject at a later date.

Opinion is divided about the wisdom of granting to occupancy-raiyats unrestricted powers of alienation. Conditions vary so largely in the different parts of the country that it is difficult to lay down one uniform rule which would hold good for all. The enquiries instituted in the early eighties pointed to the inexpediency of legislative interference in Behar. In 1892, the Bengal Board of Revenue expressed the opinion that the power of transfer "which

had undoubtedly been increased by the Act was an unmitigated evil from the raiyats' point of view" and observed that many raiyats were now under-tenants at a rack-rent on their holdings which had passed into the hands of their creditors.[1] These remarks were perhaps intended to apply to Behar where the raiyats are sunk low in ignorance and poverty. In Bengal proper, the custom of transferring occupancy-rights has advanced by leaps and bounds, till at the present day it has become an essential feature of land-holding.[2] It is high time therefore for Government to step in and give to the custom a secure legal footing. To attempt to stem the tide that has so firmly set in can only end in disaster and confusion. There is a growing feeling that, in order to help the advancement of rural credit and agricultural prosperity, as also to enable the cultivator to tide over unavoidable difficulties or seasonal stress and strain, he should be vested with a negotiable interest in his holding. The power of alienation should however be subject to a right of pre-emption which should be given to the landlord in order that he may safeguard himself against undesirable transferees. The right has always belonged to the landlord in the past and there is no historical or other justification in violating it.[3] The course of development which custom has followed

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[1] Bengal Land Revenue Report for 1891-92.

[2] Occupancy-rights are now freely sold in Bengal with the consent of the landlord who takes advantage of each transfer to extort as much money as he can and to drive the bargain as hard as possible. In the interest of the raiyat, the Legislature should intervene and lay down a moderate scale of fees for the registration of transfers. In the Orissa Tenancy Act passed in 1912, a provision has been inserted which gives to occupancy-raiyats the power to transfer their holdings, subject to the payment to the landlord at a fee amounting to 25 per cent of the consideration money. Something should be done on the same lines in Bengal.

[3] The expediency of conferring on the raiyats the right of free transfer was considered by the authors of the Permanent Settlement but in the end the proposal was negatived. Sir John Shore expressed the opinion that the bestowal of the right would be for the advantage of the raiyat, "as it would give them a property available to supply their wants in time of

in Bengal has never clashed with the landlord's right of veto and it does not set its seal on a transfer which fails to secure the consent of the zemindar.

On the whole the privileges attached to the right of occupancy are considerably inferior to those annexed to the ownership of land. It is heritable according to the rules of inheritance to which the raiyat is subject. But in default of heirs the right is extinguished and the landlord is entitled to re-enter the land and settle it with other raiyats.[1]

The raiyat may use the land in any manner which does not materially impair its value or render it unfit for the purposes of the tenancy. It was held under the old law that the raiyat is not at liberty to excavate a tank or to erect substantial structures on the holding,[2] but the Bengal Tenancy Act authorises the occupancy-raiyats, as well as raiyats holding at fixed rates, to carry out any improvement which, according to the Bengal Tenancy Act is "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

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distress, to make good their debts when indebted, and to answer their convenience when they were desirous of changing their occupation or place of residence." He pointed out however that the zemindar might have cause of complaints if he were deprived of the right of choosing his tenants, since on the occasion of transfers he might lose men of substance and responsibility for men of a different character. He thus wound up the discussion of the subject—"After weighing the above circumstances, my opinion is that were the raiyats alone to be considered, the privilege of transferring their lands should be vested in them. But as the zemindars and talukdars also claim consideration, as their acknowledged rights would be infringed by conferring such privilege on the raiyats and as this infringement does not seem essentially necessary for the ease and security of the latter, the privilege in question should not, I think, be given to the raiyats by the authority of Government but allowed to be at any time voluntarily given or sold by the zemindars themselves."

[1] Section 26.

[2] 24 W. R., 220; 2 C. L. R., 294; I. L. R., 3 Cal., 781.

directly beneficial to it."[1] It has further been laid down that the following works shall be presumed to be improvements :—

Right to construct works of improvement.

(*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 improvements of land for agricultural purposes;

(*e*) the renewal or reconstruction of any of the foregoing works or alterations therein or additions thereto;

(*f*) the erection of a suitable dwelling-house together with all necessary out-offices.

Some further incidents of the occupancy-right are that it is exempted from escheat, and protected on the sale of tenures for arrears of rent. No contract made after the passing of the Act can bar the acquisition of occupancy-rights. These provisions restraining the freedom of contract are intended for the protection of the weak and illiterate raiyats from the strong hand of the landlord.

Further incidents of occupancy-holdings.

The status of the "non-occupancy" raiyats calls for a passing notice. The term means and includes the large class of raiyats who do not fall under the definition of raiyats holding at fixed rent or occupancy-raiyats. A non-occupancy raiyat is liable to pay such rent as may be agreed on between

[1] B. T. Act (1885), section 76.

him and his landlord at the time of his admission.[1] He is liable to ejectment for failure to pay rent, misuse of land or breach of covenant and also on the expiry of the term of a registered lease or of the term for which he is entitled to hold land at a fair and equitable rent determined under section 46.[2] The right of a non-occupancy-raiyat is not protected by the Revenue sale laws, but under the Tenancy Act of 1885 his right to hold for 5 years at a rent fixed by the judicial or revenue authorities under Chapter VI or X, constitutes a protected interest not liable to be avoided on a sale for arrears of rent. The Act has not defined any further incident of the tenancy and questions on which the law is silent must be determined by a reference to custom[3] or to the rules of "equity and good conscience."

Non-occupancy-raiyats.

The most important feature of the Act of 1885 is the power which it conferred on the Government to direct the preparation of a record of rights in any local area.[4] In conferring this power, the chief object of the Legislature was to frame an authoritative record of the status and rents of the tenantry, with a view either to protect them against arbitrary conviction, excessive enhancement, and illegal imposts or to compose and avert agrarian disputes.

Provision for record of rights.

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[1] Section 42.

[2] Section 160, cl. (c).

[3] Section 183 of the Act saves the operation of "any custom, usage or customary right, not inconsistent with or not expressly or by necessary implication modified or abolished by its provisions."

[4] During the debate in the Imperial Council on the final report of the Select Committee on the Bengal Tenancy Bill, the then Lieutenant-Governor of Bengal said—"For myself, I would omit very many other portions of the Bill than this one. It provides for the first serious attempt to secure that which is absolutely required, by means of a careful record of rights, not only for the better administration of the country, but for a better understanding between landlords and tenants of their respective positions."

Under the Muhammadan Government, the rights and obligations of the resident cultivators were maintained under a complete system of record framed by the village Registrar or Patwari and checked by the official Registrar or Kanango. It was the Patwari's duty to keep up an account of the village lands, cultivated and uncultivated; of the holdings of the separate cultivators, and of the established rates at which the various classes of land were held. He was regarded as the representative of the interests of the cultivators, in their dealings with the revenue farmers and zemindars. It was the double duty of the Pargana Kanango or registrar of the fiscal division to calculate the Government demand from the accounts of the patwaris and to see that the collections of the farmers and the zemindars were not in excess of the revenue payable to the State.[1]

Under the Muhammedan regime, record of rights was maintained by the Kanango and Patwari.

[1] The best contemporary account of the office and duties of the Kanangos, just before the Decennial Settlement, is that given by Mr. Davis, Collector of Bhagalpur in a letter to the Board of Revenue, dated 6th September 1787. After giving a list of the sixteen sets of District accounts which the Kanango had to maintain under the Mogul Government, he remarks—"These accounts when carefully taken, gave the complete annual history of a zamindari, comprehending the ground in cultivation, particularising the portion of it which paid rent to Government and of that which was held free; the customs and usages established by former amils, and those introduced by the amils of the time being; the amount of rent in demand from every raiyat, with the balance remaining against any of them at the end of the year; the whole amount of the zamindar's or farmer's collections, specifying the particular sums under every head in which these collections were made, together with the expenses of collection. In short the object of the Kanango's office was to supply such information respecting the country, that no circumstance of advantage in the administration of it should be concealed, nor the zamindar enabled to appropriate any more of the product of it to himself than the share allotted to him by the Government; that no lands might be separated from the *jama* or rent roll without authority; and that the real value of the land yielding revenue might be known at the end of one year, as a rule for farming it or keeping it *khas* or in the hands of Government for the next, either of which modes it was the right of the Government to adopt." (Quoted from Appendix III to the Fifth Report.)

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But, unfortunately, before the Company acquired the *Diwani*, the original demand had been so raised by cesses or *abwabs* as to lay on the raiyat a crushing burden and to convert the record of his rights into a record of his wrongs. The record, such as it was, formed the practical basis of the revenue collections from the Settlement of Akbar in the sixteenth century down to that of Lord Cornwallis in the eighteenth. With the permanent limitation of the Government demand, the Kanango's occupation was gone and his office was abolished.[1] The Patwaris met with a still more disastrous fate. We have seen that until 1793, they were the servants of the village community remunerated partly by small grants of land and partly by allowances paid by the whole body of cultivators. They were "the depositaries of the local usages of the country, from whom it was always easy for the revenue officers of Government to collect correct information regarding the individual rights of the raiyats, in cases of dispute between them and the zemindars or farmers.[2] Under Regulation VIII of 1793 the zemindars were required to entertain the

Office of Kanango abolished and the Patwari became the zemindar's servant.

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[1] In Hunter's opinion the abolition of the Kanangos removed the principal check on the zemindars and at the same time destroyed the machinery on which the Government depended for impartial information in regard to the demands of the landholders and the rights of the cultivators. (Introduction to Bengal Records, p. 119.) But Baden-Powell observes that the Kanango can be of no use under a system which does not provide any control over the details of revenue collections but under which the landlords pay lump sums direct into the Collector's treasury. "Both officers (the Kanango and the Patwari) naturally became mere servants of the zemindar and therefore they had been abolished. This step was taken because it was found that the formal records which they still prepared were useless; in some cases these were altogether neglected; in others they were falsely framed to suit the purposes of the zamindars." (Landholding, Vol. I, p. 636.)

[2] Minute by Mr. Rooke, Member of the Board of Revenue (1815).

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services of a Patwari[1] for each village at their own expense. We have seen how in these circumstances the Patwari fell off from the position he occupied as the champion of the raiyat's rights and gradually degenerated into the zemindar's private servant. In most cases the Patwari could ill afford to resist the influence of the zemindar who succeeded in manipulating the village registers so as to suit his own purposes. Speaking of the Patwaris the Board of Revenue remarked "Poor and without influence or support, they are easily corrupted into an acquiescence in the zemindar's arrangement or deterred from opposing them by fear of their displeasure. The power of a zamindar in the interior of the country to do mischief to one who has offended him is almost without limit. The people well know this to be the case and are cautious of exciting it into action."[2]

Before 1815 the disastrous effects of turning the Patwari into a zemindari servant had been clearly recognised and several attempts were made to resuscitate the old village record-of-rights during the first twenty years of the nineteenth century.[3] But the mischief was done and all attempts to put back the hand on the dial failed. The previous attempt to supplant the cultivator's old title as recorded in the village register by a system of pattas or declaratory leases was attended with signal failure. Eventually eminent

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[1] "The registers of these reformed Patwaris were to furnish not only the basis of the ordinary rent transactions but also evidence to facilitate the decision of suits in the courts of justice between proprietors and farmers of land, and persons paying rent or revenue to them. The more experienced administrators, represented by John Shore had intended these Patwaris to be a new class of registrars, maintained at the cost of the zamindar, a class who would take to some extent, the place of the state-paid agency of Kanangos abolished by the Permanent Settlement." (Introduction to Bengal Records, p. 120—121.) But unfortunately for the Bengal cultivators, John Shore left Bengal in the very crisis of their fate. Before he returned as Governor-General, the mischief had been done.

[2] Letter to the Vice-President in Council, dated 11th May, 1827.

[3] For instance, Regulations XII, XIII of 1817, I of 1818 and I of 1819.

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revenue authorities like Colebrooke came to the conclusion that the only effective plan for securing agrarian contentment and fair dealing was the preparation of a record of rights based on a cadastral or field to field survey.[1] In 1882, the Government of India pointed out that by far the most important part of the legislative measure proposed to be introduced with a view to secure a better relation between landlord and tenant, was "that a general field survey should be undertaken and that a system of village accounts and records should be introduced." Another object which the Government had in view was to secure for their officers a knowledge of the rural economy of their districts, in order that they may be properly equipped for their frequent contests "with calamity or wrong." "Whether," they wrote "we have regard to the prevention of famine or waste of life or money, which may result from official ignorance, whether we look to the need for actual administration which shall search out and expose deepseated evils or the need of some assurance that the facts affecting agricultural interests should be so notorious and indisputable that none shall be able to pervert them to the injury of the weak, we perceive in the circumstances of many portions of Bengal and particularly of Behar, strong reasons for placing the Bengal officials on a level, in point of administrative advantages, with their brother officers in other provinces," where the periodical survey and settlement proceedings yield a rich

The absolute necessity of a record-of-rights recognised.

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[1] In Colebrooke's opinion "the institution of registry and record was highly expedient. It would materially assist the recent as well as the earlier enactments of the regulations designed for the protection of the tenant; it would greatly assist the adjustment of numerous disputes of every sort between landlord and tenant which actually arise, and would sensibly tend either to obviate their occurrence, or at least to accommodate them at an early moment, perhaps without previous recourse of either party to a law suit." (Enclosure VI to MacDonnell's Minute of September, 1893.)

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harvest of agricultural statistics and enable the district officers to come into close contact with the people. These views ultimately found legislative recognition in Chapter X of Tenancy Act of 1885.

Provisions of Chapter X, Bengal Tenancy Act.

Section 101 of this Chapter provides that a survey and a record-of-rights may be made for any local area, *in any case* with the sanction of the Governor-General in Council and in certain specified cases without such sanction. Where an order is made under section 101, the particulars to be recorded shall be specified in it and may include, either without or in addition to other particulars some or all of the following :—

(*a*) the name of each tenant or occupant ;

(*b*) the class to which each tenant belongs, that is to say, whether he is a tenure-holder, *raiyat*, holding at fixed rates, settled-*raiyat*, 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 and quantity and one or more of the boundaries of the land held by each tenant or occupier ;

(*d*) the name of each tenant's landlord ;

(*e*) the rent payable at the time the record-of-rights is being prepared ;

(*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 ;

(*i*) if the land is claimed to be held rent-free—whether or not rent is actually paid, and, if not paid, whether or not the occupant is entitled to hold the land without payment of rent, and, if so entitled, under what authority.

Section 105 provides for the settlement of fair rents[1] in private estates on the application of either the landlord or tenant. In Government estates fair rents must be settled *suo motu* by revenue officers for all classes of tenants, whenever the land revenue demand is being fixed or revised.[2]

Section 112 lays down that the Local Government, with the previous sanction of the Governor-General in Council, may, on being satisfied that it is necessary in the interests of public order or local welfare, invest a Revenue officer, acting under Chapter X, with the power to settle *all* rents and to reduce them, if in the opinion of the officer, the maintenance of existing rent would, on any ground, whether specified in the Act or not, be unfair or inequitable. This extreme power was intended to take the place of Sir Richard Temple's Agrarian Outrage Act. It was thought desirable in exceptional cases to reserve for Government the power to go to the root of disputes and to put the whole relations of landlord and tenant on a stable footing for a reasonable period. To avoid a conflict of jurisdiction which would necessarily entail inconvenience, section 111 precludes the Civil Court from entertaining any suit or application for the alteration

[1] The process of settlement of fair rents includes the enhancement or reduction of existing rents in accordance with the principles embodied in the Act.

[2] Section 104. Other Local Governments have to some extent adopted the same procedure. For example in the United Provinces of Agra and Oudh, the Settlement officer under Act III of 1901, is bound on the application of the landholder or of an ex-proprietary or occupancy-tenant to determine and fix the rents payable by such tenants and may do so of his own motion if he thinks fit. He is not, however, bound as he is in Bengal, to determine and fix the rents of all classes of tenants.

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of the rent or the determination of the status of any tenant while settlement proceedings are in progress in any local area.

It is unfortunate that the Act makes no provision for the maintenance of the record-of-rights. The record-of-rights should be kept up to date if it is to yield the full measure of benefit expected to flow from it. It is a matter of common knowledge that changes in holdings are of frequent occurrence through death, transfer, succession, reclamation of waste lands, division of fields, and enhancement or division of rent. If no means of adjusting the record to these changes is provided, it tends in each succeeding year to become more and more obsolete and unreliable for judicial and administrative purposes. Experience in other provinces where records-of-rights are maintained shows that the annual changes vary from 5 to 10 per cent. of the entries.[1] If no adjustments were periodically made, the utility of the record would in a very few years be hopelessly impaired. The only steps yet taken in Bengal to maintain the record up to date, is the passing of Act III B. C. of 1895 which, however, is of very limited application being confined to two thanas in the district of Mozaffarpur and to a small area in the district of Midnapur.

Necessity for maintaining the record up to date.

Section 178 of the Bengal Tenancy Act prohibits raiyats from contracting themselves out of the rights conferred upon them by the law—and declares certain conditions in leases as unconscionable and void, even without evidence of weakness in the one party or the exercise of undue influence by the other. It lays down that nothing in any contract shall bar the acquisition of occupancy-rights by a raiyat or take away or limit his right to make improvements to surrender his holding or to transfer and bequeath

Raiyats cannot contract themselves out of their rights.

[1] Sir Antony MacDonnell's Minute, dated 20th September 1893.

it in accordance with local usage, to sublet or to apply for reduction or commutation of rent in the manner authorised by law. These provisions were made with a view to protect the interest of the raiyats who from ignorance, poverty, fear of oppression, and want of independent advice were ill-fitted to hold their own against their landlords. But those who take permanent leases belong generally to a class, not very inferior in intelligence, local influence and power to those who grant such leases. And it was accordingly provided that nothing in the Act should be deemed to prevent a proprietor or holder of a permanent tenure in a permanently-settled area from granting a permanent mokarari lease on any term agreed on between him and his tenant.[1] There is another instance in which the Act seeks to restrict the liberty of contract. It provides that the money rent of an occupancy-raiyat cannot be enhanced by contract so as to exceed the existing rent by more than two annas in the rupee, except where the raiyat binds himself to pay an enhanced rent in consideration of an improvement effected by or at the expense of his landlord or where the raiyat has agreed to pay enhanced rent in consideration of his being released from his obligation of cultivating any special crop for the landlord's convenience.[2] These provisions were enacted with a view to protect the weak and illiterate raiyats from the high hand of the landlord.

The Act has undergone some important modifications suggested by experience of its actual working. The most important of these are the amendments made by Act I of 1907. The Amending Act gave greater authority to the record-of-rights prepared under Chapter X of the Bengal Tenancy Act and provided that every entry in it shall be presumed to be correct. It further gave

Later amendments of the Act of 1885.

[1] Bengal Tenancy Act, section 179. [2] Section 29.

discretionary power to the Local Government to authorise selected landlords, in areas for which a record-of-rights has been prepared, to recover arrears of rent under the summary "Certificate" procedure prescribed by the Public Demands Recovery Act (I B.C. of 1895).[1] At the same time the Amending Act put a stop to the practice, commonly resorted to by landlords, of obtaining illegal enhancements of rent through unfair and inequitable compromises with their tenants.[2] It enacted that no court shall give effect to an agreement or compromise, the terms of which, if they were embodied in a contract, could not be enforced under the Act.

Such are the main provisions of Bengal Tenancy Act which was enacted with a view (1) to give the *raiyats* reasonable security in the occupation of their holdings, (2) to give the landlord reasonable facilities for the enhancement, settlement and recovery of rents and to ensure to him a fair share of the increased value of the produce of the soil. Lord Dufferin, Viceroy and Governor-General of India, observed, during the passage of the Tenancy Act Bill through his council—"It is a translation and reproduction in the language of the present day of the spirit and essence of Lord Cornwallis's settlement. It is conceived in the same beneficent and generous spirit that actuated the original framers of the Regulation of 1793." The chief defect of the Act lies in the fact that the classification adopted by it is not exhaustive of all the interests in land that exist in different parts of the country. This defect has given rise to practical difficulties in

Defects of the Tenancy Act.

[1] The main difference between the certificate-procedure and the ordinary procedure is that under the former, the landlord obtains the decree *at once* and not at the end of the hearing.

[2] Under the Tenancy Act, no contract is valid which provides for the enhancement of rent in excess of two annas in the rupee, but landlords over-reached this provision by filing a suit for enhancement in court and then effecting a so-called compromise which secured enhancement beyond the limits allowed by the law.

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dealing with tenant rights particularly in East Bengal. The Act divides tenants[1] into tenure-holders, raiyats, and under-raiyats. The terms are strange to the landlords and tenants throughout a great portion of Bengal, particularly the Rajshahi Division. During the preparation of records-of-rights in certain private estates in the Rangpur district, the attempt to force each tenancy into one of the ready-made compartments have had a most disquieting effect upon the relationship of landlord and tenant. The difficulty of a practical application is perhaps greater in the areas where the *jotdari* system prevails than in other parts of the country. In fact, the Act is more suited to the conditions prevailing in Behar than to those in Bengal and perhaps takes its colour from the excessive representation of Behar interests on the Rent Commission of 1879.

The Act of 1885 constitutes a distinct improvement upon that of 1859.

It is, however, admitted on all hands that the protective provisions of the Bengal Tenancy Act of 1885—the valuable rights incidental to the status of settled *raiyats*, the restrictions placed on the zemindar's power to enhance rents and to distrain the crops of tenants,[2] the exemption

[1] The term 'tenure-holders' includes under-tenure-holders. The Act does not attempt to draw any hard and fast line of distinction between tenure-holders and raiyats. The definition is not exhaustive; it rather describes than defines the incidents of these two classes of tenants. The Select Committee was of opinion that any attempt to frame a rigid definition of either class would tend to create, rather than remove difficulties. The incidents of tenancies in Bengal are of so complex a character that it is a matter of great practical difficulty to classify them after the Tenancy Act. For instance, what is known as "jote" may be a tenure in one place and a mere raiyati holding in another. In order to facilitate the determination of tenants' status, the Act creates the presumption that when the area held by a tenant exceeds 100 standard bighas, he should be regarded as a tenure-holder, but as a matter of fact, there are many holdings of more than that size.

[2] The landlord's power of distraint has been curtailed. A landlord can now distrain only through the civil courts; and notwithstanding the distraint, he is entitled to reap, gather and store the waygoing crop, and do anything necessary for its preservation.

from liability to ejectment except in execution of a decree which the meanest tenant at will enjoys, constitute a distinct improvement upon the former law. But the outstanding advantage which the Act of 1885 possesses over the old rent law is that it authorises Government to carry out a survey and record-of-rights in permanently-settled areas. The design was conceived so far back as 1824, when the failure of all attempts to secure an improvement of agrarian relations led the Court of Directors to direct a survey and record-of-rights of the permanently-settled districts of Bengal, as the only means of defining and maintaining the rights of the raiyats. But the orders were not carried out for want of suitable agency. The matter was again taken up in 1882, with the result that the provision was made in Act VIII of 1885 for survey and record-of-right—a measure which had been decided on 60 years previously, but had never actually been taken in hand otherwise than in connection with the settlement of land revenue. The preparation of the record-of-rights has been the main feature of agrarian administration, since the passing of the Bengal Tenancy Act. Such operations have been completed in the four North Gangetic districts of Saran, Champaran, Mozaffarpur, Darbhanga; in Bakarganj, Monghyr, Bhagalpur, Purnea and are in progress in Patna, Gaya, Sahabad, Faridpur, Mymensingh, Dacca, Midnapur. Similar operations have been conducted on a large scale in estates under the management of the Court of Wards and in a number of private estates upon the application of the proprietors. The formation of records-of-rights on an extensive scale in Bengal and Bihar have answered the most sanguine expectations of the Legislature. It has materially reduced the number of violent crimes and of civil disputes. There is no doubt, that on the whole it has been a power for good and has served to remove the former state of uncertainty which tended to foster land disputes. It has secured the *raiyats*

The success of the record-of-rights.

far more effectively than before, against attempts on their position by unscrupulous landlords.

Dangers of an excessive enfranchisement of the raiyats.

But in the opinion of Field and some other authorities, there is a danger in conferring an unqualified and unlimited franchise on the raiyat—who, not being schooled in thrift and self-control, are apt to abuse their liberty and turn it into license. In the Deccan the privileges conferred on the raiyat had a demoralising effect on his character and habits. The power of alienation proved fatal to his prosperity by encouraging extravagance and leading him into a chronic state of indebtedness. Speaking of Bombay, where the *raiyatwari* system prevails, the Secretary of State observed in a despatch of 1879 "there is undeniable evidence in the report before us that the very improvements introduced under our rule, such as fixity of tenures and the lowering of assessments, have been the causes of the great destitution which the Commissioners found to exist. The saleable value of land increased the credit of the raiyats and encouraged beyond measure the national habit of borrowing and more expensive modes of living." In Bihar and parts of Bengal the raiyat's power of selling his interest, though hedged in by limitations, has proved a curse, instead of a blessing to him, as in many instances his land has passed into the hands of creditors, under whom he has been compelled to take a sub-lease at a rack-rent.[1] It will thus appear that legislation, which merely adjusts the relations between the zemindars and raiyats cannot be a final solution of the difficulties which exist in these provinces.

The beneficent effects of the Bengal Tenancy Act.

The Bengal Tenancy Act has been in operation for about twenty-eight years. Its beneficent effects are such as tend to escape notice, the provisions being mainly of a preventive character. Agrarian disputes are now of less common occurrence, the rapid and excessive enhancement of rent has been arrested, the raiyats are in many ways better protected, while the recovery of rents by the zemindars has been facilitated. The more general use of the prescribed form of rent receipts is silently building up a record of rights in Bengal. The use of these receipts is not yet by any means universal or even common and till this defect is remedied, it cannot be said that the law has had the effect claimed for it. It has also to be borne in mind that the imposi-

[1] *Vide* Bengal Land Revenue Report for 1891-92.

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tion of illegal cesses by the landlords continues to this day to flourish, practically without any let or hindrance.[1] In 1900 the Collector of Pubna reported—"there is no limit, speaking of the zamindar class as a whole, to the exactions of the landlords but the ability of the tenant to pay."[2] The Hon'ble Mr. P. C. Lyon, now a Member of the Bengal Executive Council, writing in 1904-05 as Commissioner of Patna, observed—"while the good that has been done by the Act is apparent to all, especially when enforced by means of general survey and settlement proceedings, the tenants are

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[1] At the present day, the exaction of illegal cesses constitutes the gravamen of the raiyats' complaint against private landlords. The rent which is about 20 per cent. of the produce is moderate enough but coupled with the *abwabs* it often proves too heavy a burden. Dutt overlooks this notorious fact when he holds forth on the moderation of the zemindar's demands (*vide* Open Letters to Lord Curzon). Enquiries made in 1872 led to the discovery of no less than twenty-seven different kinds of illegal cesses (*vide* Report on the Administration of Bengal, 1872-73, pp. 23 & 29). The fact really is that the imposition of fresh *abwabs* is a mode of enhancing rents sanctioned by long custom and within reasonable limits is acquiesced in by the raiyats. The people often submit to the levy of moderate cesses, rather than pay enhanced rents, as they regard an enhancement decree as the starting point of a new *asal* to which future cesses are sure to be added. In reviewing the survey and settlement operations in Bengal (1912-13), the Government of Bengal makes the following pertinent remarks on the present relations between landlord and tenant. "It is often assumed that the Bengal cultivator is a person who is well able to look after his interests and requires no special protection from his landlord, but this report contains many melancholy instances of oppression and wrongdoing hardly surpassed in the most backward parts of Behar. One noticeable feature is that the most flagrant instances of illegal enhancement of rent have been found in the estates of large proprietors, some of whom hold high positions in Government Service. The explanation is no doubt to be found in the fact that these gentlemen are necessarily absentee proprietors, and the Governor in Council hopes that, now that the enquiries of the settlement department have revealed the true condition of these estates they will take steps to control the action of their local agents and to fulfil the responsibilities which, as they must be aware, devolved upon them in connection with the permanent settlement of their estates for the proper treatment of their tenants of every degree."

[2] Bengal Land Revenue Report for 1899-1900, p. 65.

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generally so poor and so completely in the power of the landlords that they are still found constantly to acquiesce in the flagrant violation of their rights by their landlords, for fear of worse happening to them and it has become abundantly clear in the opinion of many whose duties bring them into close contact with the actual cultivators of the soil, that further measures are required to protect those cultivators against the combined efforts of the proprietors and tenure-holders to abrogate the provisions of the Act."[1] In most districts the tenants know but little of the rights conferred on them by the Tenancy Act. Even where they have the knowledge, they are unwilling to incur the displeasure of their landlords by an appeal to the law and think, not without some reason, that their interests are on the whole better served by submission to the zamindars' blackmail than by invoking the assistance of the authorities. The proceedings for the preparation of the record-of-rights on an extensive scale have, however, produced a very salutary effect in bringing home to the raiyats a knowledge of the Tenancy law of the province and it has usually been found that, when copies of the *khatian*, containing the details of every holding, have been distributed, the provisions of law are more strictly observed and the rights of the tenants are better appreciated and respected. It would of course be absurd to claim that the Tenancy Act of 1885 is a panacea for all agrarian evils. In the two sister provinces of Bengal and Behar the growth of irregular custom as also of unsystematic legislation has given such an indefinite shape and precarious status to landed rights that there will be abuses which the arm of the law, however long, will fail to reach but it is hoped that the Bengal Tenancy Act will, in the long run achieve all that it is possible for the State

Necessity for further protection of the raiyats.

[1] Bengal Land Revenue Report for 1904-05.

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Record-of-rights destined to be the *Magna Charta* of the landed classes.

to do for the protection and well-being of its subjects and ultimately turn out to be the *Magna Charta* of the landed classes.

The promise of protection held out by the Permanent Settlement has in a large measure been redeemed after ninety-two years. Tenant rights have been re-adjusted so as to suit the economic conditions of modern Bengal. The hereditary or occupancy tenures of the past have been conserved and provision made for their future development. A practical basis has been created for the division of the unearned increment between landlord and tenant by means of judicially fixed rents—and above all, a scheme has been formed for a rural record of rights, than which there is no better safeguard of the rights of all classes interested in land. In short it may be safely claimed for the Bengal Tenancy Act that though still hampered by sinister forces it has gone a great way to protect the raiyat from oppression and exaction, to secure to him the fruits of his industry, to fix his rent within moderate and reasonable limits and above all to assure his rights under a system of public registry. Baden-Powell is of opinion that while it is difficult to defend the course of legislation from 1800 to 1845, from 1859 onwards no more could be done than has in fact been done.[1] Every step had to be taken in the teeth of strongly vested interests. While on the one hand the raiyat's advocate looks regretfully back to unquestionable rights founded on custom—more ancient than all law, and appeals to solemn promises the fulfilment of which was too long deferred, the landlord's advocate on the other hand, relies on the practical growth of years which immediately followed the Permanent Settlement and on the

A retrospect.

[1] Land Systems, p. 615.

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results of a process which under the auspices of earlier British legislation favoured the absorption of the weaker by the stronger rights; and it is only gradually and by cautious steps that a modern Government, an umpire between the two, can shape the tenant law so as to do practical justice to both sides, removing defects and introducing reforms from time to time.[1] Viewed in this light, the progress of legislation from 1859 to the present day has been satisfactory and worthy of an impartial and enlightened Government. And such we confidently anticipate will be the verdict of an impartial posterity after the passions excited by an angry controversy have calmed down.

The difficulties of Government and its ultimate triumph.

[1] Baden-Powell's Land Systems of British India.

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CHAPTER IV.

Temporary Settlements.

The operations of the Permanent Settlement did not extend over the whole of Bengal as it stood in 1793. There were parts of districts which at the time lay waste or were otherwise unsuitable for permanent settlement, *e.g.*, a large portion of the district of Chittagong and the Sunderbuns. These tracts are temporarily settled, as are also many alluvial islands, resumed revenue-free grants, *taufir* lands, *i.e.*, lands held by zemindars in excess of the area permanently settled with them, estates escheated or purchased by Government at revenue sales.[1] The settlement of land revenue and rent in these areas was governed till the passing of Act X of 1859, exclusively by the procedure laid down in Regulation VII of 1822 supplemented by rules which had the force of law. This Regulation was originally passed for "the ceded and conquered provinces" in furtherance of Holt Mackenzie's plan for the ultimate permanent settlement of these provinces,[2] but its operation was subsequently extended to Bengal and Behar in 1825. The main object of the Regulation was to revise, through the agency of the Collectors or Settlement Officers, the revenue payable to Government after a full enquiry into and careful settlement of the rights and

Regulation VII of 1822 is in force in temporarily-settled areas.

[1] The Permanent Settlement is not in force in the district of Darjeeling which was acquired partly in 1835 and partly in 1864.

[2] These provinces included Benares, Moradabad, Bareilly, Etawah, Farrackabad, Cawnpore, Allahabad, Gorakpore, Panipat, Alighar, Saharanpur, Agra and were subsequently with some additions formed into the Lieutenant-Governorship of the North-Western Provinces.

interests of all classes connected with the land. The framers of the Regulation were of opinion that a moderate assessment was equally conducive to the true interests of Government and to the well-being of its subjects and the preamble declared it to be the wish and intention of Government that in revising existing settlements, the efforts of the revenue-officers should be chiefly directed, "not to any general or extensive enhancement of the *jama* but to the object of equalising the public burthen." The Regulation laid down that the Government demand should in ordinary circumstances, be fixed with reference to the produce and capabilities of the land as ascertained *at the time* of the revision of the settlement,[1] thus excluding prospective assets from calculation. Assessment methods are liable to variation according as the land is under zemindari or raiyatwari settlement. In the former case the land revenue is a fraction of the actual rental assets of the estate treated as a whole and in the latter it is an empirical and graduated rate per acre of each kind of soil.[2] The assets mainly consist of the total rents actually received, together with

The aims and objects of Regulation VII of 1822.

Different methods of assessment.

[1] The imposition of increased revenue based on prospective enhancement of the value of land was however authorised under special circumstances but in such cases the increase was to be so regulated as to leave the zemindar a net profit of not less than twenty per cent. on the amount of the revenue payable by him. (Article VII, Clause II, Regulation VII of 1822.)

[2] The former process consists in finding out the rents which the tenants actually pay and thence working out average rent rates at which each acre of the different classes of soil in the estate may be valued. The land revenue demand is then fixed at a fraction of the total rental assets. In raiyatwari settlement the first step is to fix empirical rates based on those actually paid in the past *plus* such increase as could be fairly claimed on account of the rise in prices of agricultural produce and progress in prosperity as indicated by statistics. The next step is to apply these in full or in part, according to a sliding scale, the land being accurately valued according to the relative excellence of one kind of soil, as compared with another.

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the estimated rental value of lands held by the proprietors themselves or by tenants free of rent, and additional sources of income such as valuable waste or pasture lands, sale-proceeds of fruits and wild produce, and other manorial profits.[1] In the temporary proprietary settlements of Bengal, the proportion of assets taken as land-revenue is usually seventy per cent.[2] This is a much higher rate than that admissible under the half-asset rule[3] which prevails in the upper provinces. But in Bengal the settlement holders are usually middlemen of a class for whom thirty per cent. of the assets (together with the entire profits from subsequent legal enhancement of rents and extension of cultivation during the currency of the settlement) provides an ample remuneration.

Regulation VII of 1822 does not lay down any hard and fast rule regarding the term of temporary settlements. In the case of resumed revenue-free estates in permanently-settled districts the Governor-General in Council has, in accordance with the authoritative construction of the law

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[1] There are certain additions to the land revenue demand, known as cesses which, though not classed as revenue, are usually regarded as part and parcel of it. These cesses may be divided into two main classes—(i) the local rates which are levied for certain local objects, such as roads, public works and the like which fall within the purview of the local boards, (ii) the sums payable for the remuneration of villagers such as Panchayat, watchman.

[2] The Bengal Settlement Manual lays down that the land revenue demand is to be assessed by dividing the assets between the proprietor and Government in such proportions as the latter may from time to time determine. In resumed estates settled with the proprietors a consolidated allowance of thirty per cent. has been prescribed by Government (Rule 6, p. 110) under Regulation VII of 1822. The assessment made by the Collector and confirmed by the Board of Revenue is final as to the amount, except in regard to agricultural raiyats (I. L. R., 17 Cal., 590).

[3] Though the standard of 50 per cent. has nowhere been laid down as a fixed and immutable prescription, there is a growing tendency throughout temporarily-settled zemindari districts to approximate to it and in special circumstances a very much lower share is taken.

on the subject, declared that the proprietor is entitled to a settlement in perpetuity.[1] In other cases the term has been left to be fixed at the discretion of the authority, competent to confirm the settlement.[2] The duration of each settlement is determined by the superior revenue authorities with reference to the whole of a variety of circumstances. It is enjoined, however, that the term may be synchronous with but should never exceed the period (15 years in the majority of cases) during which further enhancement of rents and consequent development of assets is barred by the Tenancy law in force in the particular area.[3] These rules apply to Bengal and Behar where the growth of rent has followed a peculiar course, giving rise to a complexity of interests and where the economic conditions are undergoing a process of rapid revolution. The rationale of the general policy of Government with regard to the duration of settlements may be summed up as follows:—Where the land is fully cultivated, rents, fair and agricultural production liable to violent oscillations, it is sufficient if the demands of Government are re-adjusted once in thirty years, *i.e.*, once in the lifetime of each generation. Where the opposite conditions prevail; where there are much waste land, low rents and a fluctuating cultivation; or where there is a rapid development of resources owing to the construction of roads, railways, or canals, to an increase of population or to a rise in prices, the postponement of re-settlement for so long a period is both injurious to the people, who are unequal to the strain of sudden and heavy enhancements and unjust to the general tax-payer, who is temporarily deprived of the

The term of settlement.

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[1] Bengal Board of Revenue's Circular Order No. 6 of January 1866.

[2] Settlement Manual, Rule 4, p. 115.

[3] Settlement Manual, Rule 4, read with Rule 6, p. 115.

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additional revenue to which he has a legitimate claim.[1] The modern revenue policy of Government deprecates any sharp and sudden rise of demand and provides for progressive enhancements as the natural mode of easing off the harshness of a large and sudden increase of revenue. The mitigation of a large enhancement by spreading it over a term of years is a recognised feature of the settlement policy in the Bengal Presidency. In the Orissa settlements progressive assessments were resorted to on a most liberal scale at a loss to the State of nearly 8 lakhs of rupees. In fact all throughout India except Punjab[2] progressive moderation is the keynote of the policy of Government in temporarily-settled areas.

Progressive assessment.

Regulation VII of 1822 provides that in selecting the parties to be admitted to settlement, preference is to be given to zemindars or other persons possessing a permanent property in the land but the Governor-General in Council is empowered to exclude any such persons if such a course is "likely to endanger the public tranquillity or otherwise be seriously detrimental"[3] and to let the estate in farm or place it under the direct management of Government. The

Selection of settlement-holders.

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[1] India Government Resolution No. 1, dated January 16th, 1902, paragraph 18. The usual term of settlement in the greater part of India is thirty years, a period first introduced in Bombay in 1838 and then extended to Madras and the Agra Province, where it has been the standard period for the last half-century. The same principle was followed in the Orissa Settlements in 1867 and in confirming most of the settlements made in the Central Provinces between 1860 and 1870. But it never came into use in the Punjab, where the shorter term of 20 years has been the recognised rule.

[2] In the Punjab, the use of progressive enhancements has been discouraged on the ground that, though an appropriate means of easing an enhancement to a large landholder, they are not suitable to the circumstances of the petty proprietors, who hold a very large proportion of land in that province.

[3] Regulation VII of 1822, section 5.

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proprietors of estates let in farm or held khas are entitled to receive an allowance which cannot be less than five per cent. or except under the special sanction of the Government of India, more than ten per cent. of the net amount realised by Government.[1]

Regulation VII of 1882 provided for the preparation of a record-of-rights for the first time in the revenue history of Bengal. The provision is to be found in section IX, the material part of which runs thus:—"It shall be the duty of Collectors and other revenue-officers, on the occasion of making or revising settlements of the land revenue, to unite with the adjustment of the assessments 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. For this purpose, their proceedings shall embrace the formation of as accurate a record as possible of all local sages 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 ransferable 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 specially where several persons may hold interests in the same subject-matter of different kinds or degrees. * * * The information collected on the above points shall be so arranged and recorded as to admit of an immediate reference hereafter by the Courts of Judicature, it being understood and declared that all decisions on the demands of the zemindars shall hereafter be regulated by the rates of rent and modes of payment avowed and ascertained at the settlement and recorded in the Collector's proceedings, until distinctly altered.

Record-of-rights provided for the first time.

[1] Section 5.

by mutual agreements or after full investigation in a regular suit; and all cesses or collections not avowed and sanctioned nor taken into account in fixing the Government jama, shall be held illegal and unauthorised, unless now or hereafter specially sanctioned by Government."

The procedure for the preparation of a record-of-rights, as prescribed by Regulation VII of 1822 was followed in the resumption of lands held revenue-free on invalid titles. The resumption proceedings were carried out mainly between 1830 and 1850 and in many districts covered considerable areas. The records showed the following particulars :—

Record-of-rights in resumed revenue free grants.

(*i*) Specification of the boundaries of the area under settlement, with full details about lands not liable to assessment.

(*ii*) Details regarding the extent of cultivation, the quality of the soil, the outturn of crops and gross produce.

(*iii*) Rate of rent for each class of land and its gross produce, with specification of *abwabs* realised along with rents.

(*iv*) Information regarding the lands held at produce rents (*batai* or *bhaoli*), their extent and nature of tenure.

(*v*) Determination of the status of the tenants, of their privileges and liabilities.

(*vi*) Information regarding village officials.

The work done in connection with these resumption proceedings supplied Government for the first time with a really detailed account of the rights and obligations of the different classes of landlords and tenants.[1] But these opera-

[1] These records bore fruit in Act XII of 1841 which protected certain privileged classes of raiyats from ejectment on the sale of an estate for arrears of revenue. This was an important recognition of the necessity for the protection of tenant rights.

tions covered detached areas and fell far too short of the scale contemplated by Regulation VII of 1822. When Lord William Bentinck came out to India as Governor-General in 1828, little had been done towards accomplishing the object with which this Regulation had been passed six years before. It was wholly beyond the powers of the district Collectorate staff to undertake and carry out to a successful issue the minute and elaborate enquiries contemplated by this legislative enactment. The task was so formidable as to deter even the most energetic from undertaking it. Lord William Bentinck applied himself to the subject and after mastering its details in personal consultation with the revenue officers, endeavoured to devise a remedy.

Practical difficulties in preparing records of rights.

The remedy devised was twofold—to lessen the difficulty and detail of the enquiries, and to strengthen the agency available for making them. This twofold remedy was incorporated in Regulation IX of 1833, section 2 of which repealed so much of Regulation VII of 1822 as prescribed that the land revenue demand should be calculated after ascertaining the quantity and value of actual produce or on a comparison between the cost of production and the value of produce. The repeal of this single provision removed an enormous amount of work not compensated by the satisfactory nature of the results obtainable therefrom. The third section provided further substantial relief by repealing so much of Regulation VII of 1822 as prescribed that the judicial investigation into and decisions on questions of disputed private claims should be conducted simultaneously with the determination of the Government demand. The majority of judicial cases were transferred from the settlement officer's court and these officers were thus enabled to give their full time and attention to the assessment of the land-revenue. The increase of agency was effected by creating the

Remedy devised and incorporated in Regulation IX of 1833.

office of Deputy Collector which was declared open to natives of India of any class or religious persuasion. The Deputy Collectors may be employed in settlement, in the superintendence of Government khas mahals, and generally in the transaction of any other part of the duties of a Collector.

In the absence of a strict definition of the powers of settlement officers, Regulation VII of 1822 was construed as authorising them to fix the rents of raiyats at fair and equitable rates. In 1866, however, the High Court began to read the provisions of Act X of 1859 into the settlement law of Bengal and it was ruled in a series of decisions that in no case could a revenue officer enhance the rent of an occupancy-raiyat without notifying the grounds of enhancement under section 17 of Act X of 1859; and even then, if the tenant refused to sign the rent roll, the claim to enhancement had to be established by regular suit, before the settlement officer's rental could be enforced. As the land-revenue was based upon the rental assets, the settlement of rent by the civil courts necessarily involved the transfer to these tribunals of the power to determine the land-revenue demand—a power which the Government had so long jealously reserved to itself. In 1877 certain practical difficulties that arose in the way of carrying out large settlements in Midnapore drew further attention to the subject and led to the passing of the Bengal Act VIII of 1879. That Act provided *inter alia* that no rent could be recorded which was not in accordance with general rates sanctioned by the revenue authorities and that occupancy-raiyat's rents could not be enhanced except on the grounds specified in the Act. The working of this Act was found to be attended with practical difficulties. When the draft Bengal Tenancy Act was introduced into the Legislative Council, the Government did not think it proper to retain for itself any advantages in regard to the enhancement of rents in

Settlement of fair rent.

Act VII of 1879.

the temporarily-settled khas mahals, which it was not willing to concede to proprietors of permanently-settled private estates. They therefore agreed to the repeal of the Bengal Act VIII of 1879 and in its place to substitute the procedure prescribed in Chapter X of the Tenancy Act for the settlement of rent and revenue in all cases in which a survey was being made and record-of-rights was being prepared. Regulation VII of 1822 is however still in force, but the record-of-rights prepared in pursuance of its provisions, unlike that framed under the Tenancy Act, does not authorise the enhancement of rents, nor does it carry with it any presumption of correctness. The record framed under the Regulation law is merely a register of existing rents. On account of these drawbacks the Regulation is now seldom resorted to, except for the settlement of lands which are being assessed to rent for the first time, as for instance alluvial accretions and island churs on which tenants have not yet settled.

Supersession of Act VIII of 1879 by Chapter X of the Bengal Tenancy Act.

Difference between the record-of-rights prepared under the Regulation VII and that made under the Tenancy Act.

We shall wind up this chapter with a short sketch of the evolution of the present policy of Government in regard to settlement of revenue. At the end of the eighteenth and the beginning of the nineteenth century, public policy declared itself against temporary settlements which subjected the districts periodically to prolonged agricultural disorganisation. It was thought that, with the introduction of a permanent settlement, the expense and harassment of periodical assessments would be avoided, the incentive to the abandonment of cultivation in order to reduce the ostensible assets of land would be removed; the accumulation and investment of capital would be

The history of the settlement policy of Government.

encouraged and that the indirect benefits would more than compensate for the immediate loss of revenue. The system introduced in Bengal under the auspices of Lord Cornwallis was regarded as a measure of consummate wisdom, till experience disclosed the evils which followed in its train. In 1795 the permanent system was extended to the Benares districts and in 1802 to certain portions of the Madras Presidency. In 1802, a set of regulations was passed for the Ceded Provinces[1] which held out the promise of a permanent settlement of such lands as should, at the end of ten years, be in a sufficiently improved state of cultivation to warrant the measure. For this interval of ten years, two triennial and one quartennial settlements were provided. 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, 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. A special commission was appointed with Holt Mackenzie[2] as Secretary to superintend the quartennial settlement. The Commissioners after being engaged for about a year in collecting information deprecated a permanent settlement as highly unsuitable to the condition in which the country was at the time. Their report dwelt upon the large quantity of arable land still uncultivated, the insufficient knowledge of the resources of the

Permanent Settlement extended to Benares and promised to the ceded and conquered provinces.

Holt Mackenzie reported that the Province was not yet fit for permanent settlement.

1 For definition see *ante* p. 3.

2 Holt Mackenzie was to the North-Western Provinces what John Shore was to Bengal, but the parallel did not proceed beyond a certain point. In Bengal, Shore's sage advice was rejected and the land-revenue

country and of the possibilities of future expansion, the deficiency of population, the want of capital necessary for carrying out works of improvement, the backward state of trade and commerce and the absence of a spirit of enterprise among the natives of the province. The Government of India were opposed to the recommendations of the Commission,[1] but the views of the latter prevailed with the Court of Directors who condemned the proposal for the perpetual settlement of the Ceded Provinces as premature and likely to result in a large ultimate sacrifice of revenue.[2]

Upon receipt of these instructions from the Home authorities, the promise of a permanent settlement was rescinded in so far as it affected the province as a whole[3] but the promise was declared still to hold good for such lands as might be in a sufficiently improved state of cultivation to warrant the measure.[4]

Promise of permanent settlement modified.

The question then arose, what is the precise stage of improvement which cultivation must reach in order to justify a settlement in perpetuity? On the matter being referred to the Court of Directors, they refused to lay down any hard and fast rule and remarked "it was for the constituted authorities at Home, aided by the information submitted 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

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demand was stereotyped without allowing opportunity for further development, while in the sister province, the system which, in its initiation, is associated with the name of Holt Mackenzie was continually improved till it attained its modern form under the care of James Thomason.

[1] The Commissioners, when they became aware of the views of the India Government, proved the strength of their conviction and the sincerity of their opinion by resigning and thus refusing to lend themselves as instruments for carrying out a measure which their judgment founded on local observation did not approve.

[2] General letter of the 27th November 1811.

[3] Section 2, Regulation IX of 1812.

[4] Section 3, Regulation IX of 1812.

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the Government, but the welfare and prosperity of those living under its protection."[1] The Court of Directors intimated that no settlement should be made permanent until it had received their sanction and years elapsed before any active steps were taken to collect the mass of information which would enable the Government of India to submit their propositions in a complete shape to the authorities in England.

In 1819 Holt Mackenzie wrote a long and able minute in which he discussed the whole subject in all its bearings and his suggestions formed the basis of Regulation VII of 1822. This Regulation furnished a practical code of rules, and settlement work was now launched with renewed zeal and made real progress under the auspices of 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 for future decision, it was determined to make a settlement for 30 years. The settlements of the different districts in the North-Western Provinces began to fall in about the time when the Sepoy Mutiny of 1857 broke out. After the suppression of the mutiny and the transfer of Government from the East India Company to the Crown, the subject was reconsidered and Her Majesty's Government came to the conclusion that the permanent settlement of such districts as were ripe for it was a measure dictated by sound policy, 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.[2] The conclusion was based as

Thirty years' Settlement preparatory to permanent assessment.

In 1862 Government declared in favour of a permanent settlement for such districts as were ripe for it.

[1] Dispatch of 17th March 1815.

[2] Revenue Dispatch No. 14 of 9th July 1862 from Sir Evelyn Wood, Secretary of State for India.

much on political as on economic grounds.[1] Leaving aside the political aspects of the question as outside the scope of the present work, the chief merit claimed for a permanent settlement from an economical point of view was that it saved all the cost and prolonged harassment incidental to a periodical revision of revenue. We shall presently see that much time was lost in fruitless experiments and in vain pursuit of Utopian ideals before experience brought home to the minds of the authorities that the best solution of the difficulty lay in cheapening the cost of re-assessment operations and in entrusting all the important details of settlement work to a superior staff whose integrity was generally above suspicion.

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[1] The following extracts will give an idea of the reasons which lay at the bottom of Sir Evelyn Wood's decision. "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 attachments 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 speculation, extortion and abuse of power.

In pursuance of the instructions conveyed in Sir Evelyn's Dispatch, it was resolved, after imposing a full, fair and equitable rent to extend the Permanent Settlement gradually to all parts of India in which the resources were sufficiently developed to warrant the measure. Districts in which the estates were so fairly cultivated and their resources so fully developed as to justify 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 held back from districts in which agriculture was backward, population scanty and rent not fully developed. There was however a third class whose condition was intermediate between the two, consisting of districts in which a certain proportion of

Permanent Settlement to be made for districts in which cultivation had attained sufficient progress.

And to be withheld from districts in which cultivation was backward.

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 water-courses to fall into decay. 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 civilised 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 civilisation, 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 and prosperity, have enabled them to consume in greater abundance.

"The apprehension of a possible fall in the relative value of money 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."

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the estates had reached the requisite stage of developments while the remainder still lagged behind and could not therefore be permanently settled on their existing assets without entailing a prospective loss to the State.[1] It was proposed to pave the way for a permanent settlement of such districts by fixing, at the time of making a thirty years' settlement (1) the amount of revenue payable during such settlement, (2) a further sum calculated upon the prospective development of resources, which might be permanently assessed, if the proprietor was agreeable. Her Majesty's Government remarked on this proposal that while it failed altogether to bind the landholder, it imposed a distant and improvident obligation on the State and refused to accord sanction to any settlement in perpetuity which was based, not on the existing assets of the estates but on a prospective estimate of their future capabilities.[2]

Difficulty of applying the rule to districts in which the progress of cultivation was not uniform.

Proposal to assess such districts on prospective assets vetoed by Government.

In 1867 the Home Government introduced two conditions precedent to a permanent settlement. In a Dispatch dated the 23rd March they laid down that no permanent settlement should be made for any estate in which the actual cultivation amounts to less than 80 per cent. of the culturable area or to which canal irrigation was likely to be extended within the next twenty years and to lead to an increase of prospective assets to the extent of 20 per cent. The dispatch marks the first stage of a gradual revulsion of feeling and constitutes a distinct departure from the unqualified approval of the Permanent Settlement which characterised the earlier correspondence of Her Majesty's Government. We

Two conditions precedent to a Permanent Settlement.

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[1] Dispatch No. 11 of 24th March 1865.
[2] *Ibid.*

shall reproduce a portion of the Dispatch which, read between the lines, indicates a marked change of public policy. "In consenting to a Permanent Settlement of the land-revenue at the present time, Her Majesty's Government was advisedly making 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 subjects 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 specially 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 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 Behar) 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 railway 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 specially 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 other benefits which I have pointed out, the whole of the

Gradual revulsion of the policy of Government.

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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."

The insufficiency of the limitations imposed by the dispatch of 1867 was proved by certain circumstances brought to light during the settlement operations in Pargana Baghput and in the Bulandshahr district. The Settlement Officer who was charged with the assessment of Pargana Baghput came to the conclusion that the Government might fairly lay claim to a revenue of Rs. 2,45,000, having regard to the great improvement in agriculture which had taken place. The then existing assessment was Rs. 1,48,000 only. The Settlement Officer was of opinion that a sharp and sudden bound from Rs. 1,48,000 to Rs. 2,45,000 would be impolitic, as it would not allow the proprietors sufficient time to adjust their circumstances to their diminished profits and would thus entail great hardship if not ruin, on them.

The insufficiency of the two conditions precedent to a permanent settlement.

The two conditions precedent to a permanent settlement as 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.[1] Similarly, during the re-assessment of the Bulandshahr district, it was found 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 14 per cent. on that assessment. The fact was that the share of the cultivator was too large and the share of the landlord (*i.e.*, rent) too low. An upward movement of rent

[1] Minute of the Lieutenant-Governor of the North-Western Provinces published at p. 4, Extra Supplement to the Gazette of India of 3rd October, 1871.

had however set in. The landlords emancipated from the conservative influence of rent in kind, were endeavouring to raise the pitch of rent as high as the tenantry could bear, but until the process had attained full development, an assessment fair to Government could not be imposed upon the landlords and a permanent settlement at any lower assessment would be an inexpedient relinquishment of a source of legitimate income to the State. In these circumstances a third condition precedent to a perpetual settlement was suggested, *viz.*, that the standard of prevailing rent was adequate. But the creation of a fully developed rental with a view to provide a proper basis for the permanent settlement of revenue involved an agrarian policy of doubtful expediency. As the Government revenue represented fifty per cent. of the rental asset, it would be necessary, in order to make up *every* rupee of which that revenue fell short, to force the cultivator to pay *two* rupees to the landlord. The adoption of such a course would lead to the imposition of rack-rents, the abolition of rights of occupancy and the removal of the restrictions placed by law and custom on the landlord's power of enhancing rents, all of which were opposed to the avowed policy of Government.

Third condition added.

But this too was found wanting.

Experience thus proved the insufficiency of the limitations[1] laid down in the Dispatch of 1867. It was found next to impossible to determine the essential preliminary

[1] In prescribing these limitations, it appeared to have been the intention of Government to affirm two principles. The first was that the State ought not to demand a share of that increase in the profits of land which is the result of the application of the capital and exertions of the occupant. The second was that it was not right that the State should sacrifice that share of the increased profits 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 and there was no reason why it should not apply also to cases of con-

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question—what is the criterion by which to judge whether an estate was sufficiently developed to be fit for permanent settlement. The difficulties involved in the scheme for the extension of the Permanent Settlement were found to be so formidable as to put it beyond the range of practical politics. The possibilities of increased cultivation were found to be much larger than were at first anticipated, the failings of the Bengal system became more and more apparent, and the unproductive use of rent by the majority of landlords showed itself as a signal of danger. The rise in the prices of agricultural produce and the fall in the value of silver gradually assumed greater dimensions. In short the result of all experiments was to drive home the lesson that a permanent settlement should be deferred so long as land continued to improve in value by any causes unconnected with private enterprise and expenditure, and the scheme of a Permanent Settlement for all India, after being shelved for many years was finally negatived by Lord Kimberley in 1883.

The policy of the Permanent Settlement finally discredited in 1883.

Though the general scheme of a Permanent Settlement was abandoned, the enquiries which it set on foot bore fruit in other ways. At one time it was proposed to fix a fair and equitable assessment, in the first instance, on existing assets and to keep it intact ever afterwards, unless it was found necessary to alter the demand in order to meet (1) an extension of cultivation, (2) an increase of produce due to improvements made by the State, or (3) a rise of prices. The object of the plan was to avoid the detailed and troublesome enquiries which preceded

A plan for Settlement intermediate between permanent and temporary assessment.

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struction 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. (Field's Introduction to Bengal Regulations, Chapter III, pp. 125 and 126.)

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assessment proceedings in temporary settlements, and while avoiding the evils of a permanent settlement, to adopt what has been described as "a Permanent System of Settlement."[1] But the practical objections to the adoption in its entirety of a uniform scheme of this nature were found to be considerable. The scheme made no provision for the taxation of such improvements as were only indirectly due to the action of the State and which resulted from the increase of population, the development of the country, the introduction of new staples of cultivation and so forth. The guidance of price statistics was often found to be partial and misleading; different villages would be differently affected by general variations in price; and in the provinces, where the revenue was based on the cash rental; it was found unsafe to assume that the rentals varied directly with the prices of produce. The scheme in question is not therefore accepted at the present day as the sole basis of assessment in temporary settlements but considerable advances have recently been made in other ways towards

The execution of the scheme attended with formidable difficulties.

[1] It should, however, be borne in mind that there is nothing really permanent in an assessment fixed in money, the value of which goes on steadily diminishing or changing. Sir John Strachey (late Lieutenant-Governor of the North-Western Provinces) advocated 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 of staple food crops. The commutation of tithes in England and of tithes and rents in Scotland are instances of the application of a principle by which a charge is 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 agricultural produce. It was urged that a permanent settlement on this basis would not involve any serious sacrifice of future interest and the result would represent the consummation of an ideal which Government had long striven after—namely, a system under which improvements made at the expense of the occupant of the land should lead to no increase in the demand of the State, while it would not lose the whole of the benefit derived by the land from improved administration, from the construction of great public works and from the general progress of the country.

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attaining the object which the scheme had in view—namely, the reduction and simplification of the tedious and harassing enquiries hitherto entailed by a revision of assessment. In Northern India the great improvements effected in the land records during the last twenty-five years have enabled the Government to arrange that, when a map and record have once been prepared, they shall be kept up-to-date, so as to be at once available for use at a new settlement. By these means and by the simplification of the methods of assessment, the period spent over the settlement of a district, which used to be spread over seven or eight years has now been reduced to an average of about four years or even less. In Bengal and Behar the preparation of maps and records under Chapter X of the Bengal Tenancy Act has made extensive progress and a twenty-five years' programme has been drawn up for carrying out the work throughout the whole of the provinces. The systematic maintenance of the maps and records by registering the changes which take place from time to time is engaging the earnest and serious attention of Government at the present moment.

The reduction of the cost and trouble of temporary settlement.

The above sketch is intended to present the outlines of a system of taxation which, as already noted, must of necessity be strange to the novice who has not been initiated into the mysteries of the revenue systems peculiar to India. Before concluding our retrospect, we should, in strict fairness to the critics of Government, make a passing allusion to some adverse comments passed by them on Indian Land-revenue policy. The chief exponent of this school is the late Mr. R. C. Dutt, a well-known member of the Bengal Civil Service who spent the last years of his life in an earnest advocacy of the Permanent Settlement, long after it was finally discarded by Government.

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It would serve no useful purpose to revive a controversy which was laid to rest about a quarter of a century ago, but it may be worth while to notice in brief some of the stock arguments urged by Mr. Dutt, both in his larger works and in certain fugitive papers written by him. He claims for the Permanent Settlement a multitude of virtues, chief among which is that it has instituted a class of zemindars, who have, by the moderation of their demands,[1] contributed largely to the prosperity of the tenants and thus strengthened their capacity for resisting the pressure of famines. He has sown broadcast the suggestion that the zemindars, by leaving to the raiyat a comparatively large proportion of the produce, have promoted the creation of a surplus which serves the purpose of a famine insurance fund. We have endeavoured in the preceding pages, to show that history bears an altogether different testimony. It is well known to every student of history that the series of agrarian statutes which culminated in the Bengal Tenancy Act of 1885 had to be undertaken with a view to save the raiyats from their extortionate landlords. In fact the raiyats in parts of Bengal were so driven to despair by the conduct of the zemindars that they broke out into mutiny against their oppressors in the early

[1] MR. DUTT SAYS :—"They (zemindars) have protected cultivators, moderated rent, and enabled the poorer classes to save something in good years for bad harvests." The bitter relations between landlord and tenant which prevailed during a considerable period of the last century give the lie direct to this theory and constitute a sad commentary on the conduct of the zemindars. If the Bengal zemindars were to claim any merit for the moderation of rent, which has in fact been forced upon them by latter day agrarian legislation, it might be truly said that they were trying to make a virtue of necessity.

MR. DUTT SAYS of the Bengal zemindars that they have fostered agricultural enterprise and encouraged the accumulation of capital. We have already dwelt on the lack of enterprise which formed in the past a prominent feature of the zemindar's character and on the unproductive expenditure of his profits which he has rarely, if ever, invested as a capital in commercial undertakings.

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seventies. Enquiry has shown that the Bihar tenantry is ground down by hard-hearted landlords whose sole object is to wring as much out of the land as possible and that nowhere in India is the pressure of rent so severe as in the permanently-settled districts of Bihar.[1] The prosperity of the tenants in Bengal—particularly in Eastern Bengal—is due to causes wholly unconnected with the conduct of the zemindars. Owing to the vast extent of rich alluvial land available for cultivation, the tenant in Eastern Bengal has been placed in a position of economical advantage and has succeeded in getting the better of his landlord in the struggle for the unearned increment of land. In fact the present position of the raiyats has been attained not *with the aid* of the zemindars but *in spite* of them. The secret of the agricutural prosperity of the lower Gangetic delta lies in the exceptional fertility of the land which is being constantly enriched by the silt deposits carried down by its mighty rivers[2]; in the facilities of irrigation which enable the raiyats to raise bumper crops for the bare scratching of the soil; in the excellent means of transport furnished by its magnificent waterways and in its practical monopoly of a most profitable trade in jute.

Mr. Dutt seeks in great earnest to prove that the frequent outbreak of famine in India is due to a great extent to the avaricious land-revenue policy of Government which, in his opinion, barely leaves enough to the raiyat to live on and to save in good years in order to meet the strain of the bad.[2]

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[1] Land Revenue Policy, p. 68.

[2] The Government of India deny that there is any intimate connection between revenue assessment and famines. The following extract from their Resolution No. 1 of 1902 contains an exposition of their views: "There remains to be noticed the underlying idea by which they have all alike been animated and which in some parts of Mr. Dutt's writings has found definite expression. It is the theory that the amount of the land-revenue taken by the Government of India, in one form or other, from the people is mainly responsible for famine, with its corollary that,

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This in fact is the burden of his song—the perpetual refrain which runs through all his writings on the subject. He thinks that if the Permanent Settlement were extended to all parts of the peninsula, "India would have been spared those more dreadful and desolating famines which we have witnessed in recent years." It would be beyond the scope of our work to enquire into the genesis of famines but it may not be out of place to briefly touch upon some aspects of the question which are bound up with excessive assessment of rent or revenue. In many parts of the country peopled more or less by landless labourers, the pressure of land-revenue or rent cannot in the very nature of things, have any bearing on the prevalence of famines. The figures compiled during the progress of relief operations show that the majority of the famine-stricken population consists of men who pay neither revenue nor rent. The labours of the Famine Commission of 1901—the last body of experts who worked in the field—have proved that, except in Bombay, the incidence of land-revenue is low and is not sufficient in itself to account for the poverty of the people. Mr. Dutt has taken no small pains to labour the point that the Permanent Settlement may well claim the credit of having banished famines

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were the assessments diminished, famine would be less frequent, or that at least when they do occur they would cause infinitely less suffering. The Governor-General in Council does not believe that countenance to this theory can be derived either from the recorded fact of history or from the circumstances of the present day. The evidence that has been adduced in this Resolution testifies to a progressive reduction of assessments, extending throughout the last century, and becoming more instead of less active, during its second half. If then the severity of famines be proportionate to the weight of assessments, the famines in the earlier part of the nineteenth century ought to have been incomparably more serious than towards its closing whereas the contention is familiar that the reverse has been the case. Again the contention that in recent famines the parts of India that suffered most severely were the parts that were most highly assessed finds, with the exception of Guzarat, no support in fact and was expressly disowned by the recent Famine Commission."

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from Bengal.[1] This is very far from the truth. We have shown that the compartively low rent rates which prevail in Bengal proper, were secured, not by the Permanent Settlement which left the zemindar to screw up rent as high as possible, but by a series of free legislative measures inaugurated sixty-six years after Regulation I of 1793 with the direct object of remedying the defects of that hasty and one-sided legislation. We have also shown that the secret of the raiyats' prosperity is to be sought in circumstances which have nothing to do with rent or revenue.

Mr. Dutt draws upon his own experience as quondam Sub-divisional Officer of Dakhin Sahbazpur in the Bakerganj district, and says that the low incidence of rent prevailing there enabled the raiyats to withstand effects of a severe cyclone and storm wave which swept over the island in 1876 and destroyed their crops and cattle. The humble author of this work who held charge of the sub-division about 30 years after Mr. Dutt vacated it, would venture to join issue with him and to point out certain circumstances which illustrate the fallacy of his argument. In the first place it may be observed that Government estates form the bulk of this sub-division and the low rent rates in these estates, which would compare favourably with the demands of private landlords in the vicinity, furnish an effective defence of the land-revenue policy of Government. But it is not the light land-tax of the tract which has, alone or in the main, secured for it an immunity from famine and distress and which lies at the root of its staying power. Nature has showered her bounty upon this island with an unstinted hand—the vast

[1] This proposition of fact must be taken with considerable reservation. The Western part of the Bengal Presidency—better known as Behar—is liable to agricultural depression and to periodical visitations of famine. The area was visited by a widespread famine in 1873-74 which cost the State £6,000,000 and which was followed in 1897 by another of still greater intensity.

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estuaries which bound it on three sides constitute a most active and fertilising agent and numerous climatic advantages afford a guarantee against the failure of crops. The arecanut and cocoanut trees with which the island is thickly studded have proved a source of great wealth to the people. The produce is exported in shiploads to foreign countries and forms the subject of a most lucrative trade. The raiyats are more than a match for their landlords who have no right to take credit for the low rent rates prevailing in the locality. The officer who conducted the settlement operations of the Dakhin Sahbazpur estates in 1889-1895 wrote: "The landlords are so numerous and their interests are so complicated and consist of such small fractional parts that it would have been impossible to force up rents in an improper way. The raiyats are, as a rule, aware of their rights and are singularly tenacious in regard to them. They fully understand their position with regard to co-sharer landlords, and stand by one another in the event of any attempt being made to enhance their rents."

We shall conclude our work with an extract from a review made by Government of its own revenue policy, to every word of which we feel that we can conscientiously subscribe. The Indian land-tax is a heritage from preceding native rule and the present state of its administration is the result of a natural growth which has proceeded on different lines in different provinces. Starting with a fairly detailed knowledge of native practice and a few axioms of orthodox political economy the officers who have built up the present revenue administration of India have independently arrived at results which will, it is believed, compare very favourably with those reached in the contemporary systems of Continental Europe. The Indian arrangements are no doubt still in many respects defective, some of them are in the experimental stage and experiments in

A brief retrospect of the revenue policy of the British Indian Government.

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land-revenue, like all experiments connected with land, require long periods in which to mature, there are several questions in which finality cannot yet be said to have been attained but the whole procedure is by slow degrees developing on broader and more liberal lines than heretofore. To secure an adequate land-revenue for the State with the least possible injury to the agricultural classes—this in its widest form is the problem which is every year in one or other of its details, taxing the ingenuity and enthusiasm of a large number of officers and it is not unreasonable to expect that as time goes on, the problem will be brought nearer and nearer to a satisfactory solution.[1]

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[1] Imperial Gazetteer of India, Vol. IV, p. 240.

APPENDIX.

RAJA LELANUND SING BAHADOOR

v.

THE GOVERNMENT OF BENGAL.*

1855.
July 25.

[*Reported in* 6 *Moo. I. A.*, 101 ; 1 *P. C. J.*, 505 ; 4 *W. R. P. C.*, 77.]

Judgment was delivered by

THE RIGHT HON. T. PEMBERTON LEIGH. The question to be decided in this case is the validity of a claim made by the East India Company to resume, for the purposes of revenue assessment, against the Raja of Khuruckpore, 755 bighas of land, (between three and four hundred acres), part of his *Zemindary*. Their Lordships had no doubt, at the hearing of the appeal, as to the advice which it would be their duty to tender to Her Majesty ; but it was stated that there were ten other suits which would be governed by the present decision, and it was obvious, from the nature of the claim, that if it could be maintained, it might affect a very great extent of land throughout the provinces included in the Decennial Settlement. Their Lordships were, therefore, anxious to explain fully the grounds of their opinion, and by enabling parties to judge what cases will or will not fall within their decision, to prevent, as far as possible, further litigation.

The lands sought to be resumed, are of what is called *Gatwally* tenure, and the great question in the case is, whether lands of this description are liable to be resumed under Regulation I of 1793, sec. 8, cl. 4, relating to *Tannah* or police establishments.

As the question depends on the effect of the Settlement of 1793, and the changes which were then introduced, it will be convenient to advert to the state of these Provinces, and the mode in which they were administered previously to that time. The three Provinces of Bengal, Behar, and Orissa were ceded by the Mogul to the East India Company, in the year 1765.

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* *Present* :—The Right Hon. T. PEMBERTON LEIGH, the Right Hon. the Lord Justice KNIGHT BRUCE, the Right Hon. SIR EDWARD RYAN, the Right Hon. the Lord Justice TURNER, and the Right Hon. SIR JOHN PATTESON.

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Raja Lelanund Sing Bahadoor v. The Government of Bengal.

At this time the territorial division of the country was into mouzas, or villages, occupied by ryots; pergunnahs, each of which included several villages; and *Zemindaries*, varying in extent, from a moderate English estate, to districts equal to or larger than many European principalities. The *Zemindary* of Beerbhoom, which immediately adjoins Khuruckpore, is stated in a document, dated in 1786, to which we shall have occasion to refer, to be twice as large as the Kingdom of Sardinia. Khuruckpore was probably of inferior but still of vast extent.

Many of the greater *Zemindars*, within their respective *Zemindaries*, were entrusted with rights, and charged with duties, which properly belonged to the Government. They had authority to collect from the ryots a certain portion of the gross produce of the lands. They, in many cases, imposed taxes and levied tolls, and they increased their income by fees, perquisites, and similar exactions, not wholly unknown to more recent times and more civilized nations. On the other hand, they were bound to maintain peace and order, and administer justice within their *Zemindaries*, and, for that purpose, they had to keep up courts of civil and criminal justice, to employ *Kazees*, *Canoongoes* and *Tannahdars*, or a police force. But while, as against the ryots and other inhabitants within their territories, many of these potentates exercised almost regal authority, they were, as against the Government, little more than stewards or administrators. Their *Zemindaries* were granted to them only from year to year; the amount of their *jumma*, or yearly payment to Government, was varied, or might be varied, annually; it was an arbitrary sum fixed by the Government officers, calculated upon the gross produce of the *Zemindary* from all sources after making an allowance to the *Zemindar* for his maintenance, and for the expenses of the collection and of discharging the public duties with which he was entrusted by the Government. Amongst the lands thus granted to the *Zemindars* were often included lands which had been appropriated to the payment and support of public officers of the *Zemindaries*, or villages included in them. These lands were called *Chackeran* lands; and it appears that under the ancient system such lands were usually exempted from assessment in favour of the *Zemindar*, though they had no legal title to exemption. But there was another class of lands, called *Lakhiraj*, which, by reason of a special exemption in a royal grant, or by having been legally devoted to religious uses, or by other means, had become or were claimed by their owners to be free from *Khiraj*, or assessment to the Government.

The police of the country was maintained by means of *Tannahdars*, or police officers, kept by the *Zemindars*, and appointed and paid by them; but, where no other provision existed for their maintenance, the expense was in effect defrayed by

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the Government, either by direct allowances to the *Zemindar*, or by deduction from his *jumma*, or by excluding from assessment or assessing below their value, lands appropriated to that purpose by the *Zemindar*.

In addition to the police force thus kept by the *Zemindar*, at the expense of the Government and which seems to have been usually very inefficient, private individuals and communities were accustomed to keep watchmen for the protection of their persons and property, under the name of *Chokeedars*, and various other names, who were paid by their employers, and from whom no allowance was made by the Government.

Besides the disorder which prevailed generally through the provinces, particular districts were exposed to ravages of a different description. The mountain or hill districts in India were at this time inhabited by lawless tribes, asserting a wild independence, often of a different race and different religion from the inhabitants of the plains, who were frequently subjected to marauding expeditions by their more warlike neighbours. To prevent these incursions it was necessary to guard and watch the *Ghats*, or mountain passes, through which these hostile descents were made; and the Mahomedan rulers established a tenure, called *Ghatwally* tenure, by which lands were granted to individuals, often of high rank, at a low rent, or without rent, on condition of their performing these duties, and protecting and preserving order in the neighbouring districts.

Nothing could be more deplorable than the state of the Provinces under this system. Murder and rapine were common throughout the country; more than half the lands were waste and uncultivated; and neither the Ryots nor the *Zemindars* had any inducement to improve them, as any increase in their value had only the effect of increasing the Government assessment.

It was considered by the East India Company that the first step towards a better system of Government and the amelioration of the condition of their subjects would be to convert the *Zemindars* into land-owners, and to fix a permanent annual *jumma*, or assessment to the Government, according to the existing value, so as to leave to the land-proprietors the benefit of all subsequent improvements.

Accordingly, they determined to make the assessment in the first instance for a period of ten years, with a view to its being ultimately made permanent.

In 1789, the original Rules and Orders for the Decennial Settlement of Behar were issued; the Settlement in the other Provinces being issued in subsequent years.

In 1791, by Regulation LXXII, an amended Code of Regulations relative to the Decennial Settlement of Bengal, Behar and Orissa, was promulgated

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By section 1 of that Regulation it was provided, that a new settlement of the land-revenue should be concluded for a period of ten years.

By section 2, it was provided, that it should be at the same time notified to the land-owners with whom the settlement might be concluded, that the assessment fixed by the Decennial Settlement would be continued after the expiration of the ten years, and remain unalterable for ever, provided such continuance should meet the approbation of the Court of Directors.

By section 31, it was ordered, that the allowances of the *Kazees* and *Canoongoes*, heretofore paid by the landholders, as well as any public pensions hitherto paid through the landholders, be added to the amount of their *jumma*, and be in future paid by the Collectors on the part of Government.

The assessment was to be exclusive of all *Lakhiraj* lands, whether exempt from *Khiraj* with or without authority.

The *Chackeran* lands, or lands held by public officers and private servants in lieu of wages, were not to be excluded, but were to be subject to assessment in common with the other lands in the *Zemindary*, the exemption which such lands had previously enjoyed being thus destroyed.

The landholders were declared responsible for the peace of their districts as therefore, and were to act agreeably to such Regulations on this head as might be thereafter enacted.

The *jumma* was to be fixed by the Collectors on fair and equitable principles, with the reservation of the approbation of the Board of Revenue, to whom he was to report the grounds of his decision.

The Collectors, in fixing the *jumma*, were to adopt the following as a general rule:—that the average product of the land in common years be taken as the basis of the Settlement, and from this deductions be made, equal to the *Malikana* and *Kurcha*, leaving the remainder as the *jumma* of Government.

The *Malikana* is the allowance made to the *Zemindar* for his maintenance, and the disbursements and outgoings allowed to him against his receipts fall under the term "*Kurcha*."

At this period Raja Kadir Ali was the *Zemindar* of Khuruckpore. This *Zemindary* is situated in the Zillah of Bhagulpore, on the frontier of the Province of Behar, and forms a considerable principality including many Pergunnahs and, amongst others, the Pergunnah of Gorda, in which the lands in dispute lie. A very large quantity of lands within this District had been granted by the ancestors of the Raja on the *Ghatwally* tenure before described. In the *Tuppa* of Dhumsaeen, a Subdivision of the Pergunnah of Gorda, no less than thirty-five villages were held at this time upon this tenure by *Ghatwals*, and, amongst others, the lands in question by an ancestor of the original defendant in these proceedings.

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The extent and particulars of these vast estates, and the nature of the *Ghatwally* tenures, were well known to the Government of Bengal at the time when the settlement was made. Some years before, in consequence of disturbances which had taken place in the country during the time of Kadir Ali's father, the Government had found it necessary to interfere with a military force, and having displaced the then Raja and restored tranquillity, had placed the *Zemindary* under the charge of one of their own officers, Mr. Augustus Cleavland, who had the management of it up to the year 1781, about which time Kadir Ali (his father having died) was put into possession of the Raj.

It appears from evidence in the cause (the report of the Collector of Bhagulpore, of the 19th of November, 1813), that Mr. Cleavland, during the time that he was in charge of these estates, had granted no less than 87,084 bighas of land in this and (we presume from the extent) the adjoining District upon *Ghatwally* tenure, in conformity with the orders of Government.

It appears from other evidence (in Mr. Sutherland's Report, dated the 8th of June, 1819) that the grants before Mr. Cleavland's time to the *Ghatwals* reserved a payment of two annas per bigha, as a fee or perquisite to the *Zemindar*; that some *sunuds* were granted unadvisedly by Mr. Cleavland without such reservation, but that he afterwards insisted on such payment being made to the Government while he was in charge on behalf of the Government, and that all grants subsequently made by the Raja of Khuruckpore contained the same reservation.

In 1789-90 the *jumma* to be paid by Kadir Ali was to be fixed, with a view to the Permanent Settlement. As might be expected, considering the magnitude of the estate, it appears to have undergone great consideration. Every village was enumerated and entered in a register; the deductions and allowances to be made out of the income, and the particulars of the lands to be excepted from the assessment (for some lands, called *Nankar* lands, were excepted), were the subject of correspondence between the Collector of the District and the President and Board of Revenue at Fort William, and finally the *jumma* was fixed at Rs. 65,459, 8a. 10½p.

It is beyond dispute, and, indeed, in this case has been fairly admitted, that the *Ghatwally* lands formed part of the *Zemindary*. It is equally clear that they were included in, and covered by, this assessment. Had they been excluded, the accounts to show it are in the possession of the Government, and might have been produced; but the contrary is perfectly clear upon the evidence, and indeed is found as a fact in the cause by the Special Commissioner, Mr. Moore, in his judgment of the 17th May, 1843.

Whether these lands were or were not productive of revenue to the *Zemindar* at this time, is not material; though, if it were

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important, a careful examination of the evidence has satisfied their Lordships that there was some profit derived from them by the *Zemindar* even in money; but, at all events, he derived the benefit arising from the services of the *Ghatwals*, and enjoyed the valuable right of appointing the individuals, who, with the lands, were to take upon themselves the duties of the office. It was not the intention of the Settlement that no lands should be covered by the *jumma* which did not actually produce income, and, therefore, contribute to increase the *jumma* at that time. On the contrary, probably more than half the lands in the country were waste and unproductive at this period, and one of the main objects of the Permanent Settlement was to bring them into cultivation.

Thus matters continued up to the year 1792. The *Tannahdars*, or public police-officers appointed by the *Zemindars*, had been found very inefficient, and the Government had appointed officers of their own to assist in keeping order, who had concurrent jurisdiction with those named by the *Zemindar*. But, in the year 1792, the Government determined altogether to suppress the *Tannahs*, or police establishments, maintained by the landholders, and to take to themselves exclusively the preservation of peace and the prevention of crime by means of a police force of their own, to be established at convenient stations throughout the provinces. As the landholders were to be relieved from the expense to which they were subject for the maintenance of the force now to be suppressed, it was very reasonable that, where allowances for such expenses had been made by the Government, they should no longer be continued, and the Government, therefore, resolved to reserve the right of discontinuing them, or (where lands had been allowed for the purpose) of resuming them.

To carry these arrangements into effect, Regulations XLIX and L of 1792 were issued.

The preamble of Regulation XLIX recites, in strong language, the disorders which prevailed, and the utter inefficiency and frequent corruption of the *Tannahdars* employed by the landholders.

Section 1 provides that the police of the country is in future to be considered under the exclusive charge of the officers of the Government, who may be specially appointed to that trust. The land-owners and farmers of land, who keep up establishments, *Tannahdars* and police-officers, for the preservation of the peace, are accordingly required to discharge them, and all landholders and farmers of land are prohibited from entertaining such establishments in future.

By section 2 landholders and farmers are no longer to be held responsible for robberies committed on their respective estates. Provision is then made for the appointment of a police-

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force in different stations throughout the provinces, each under the charge of a *Darogha* or superintendent, and the whole is subjected to the control of the Magistrate.

It is clear that the police-force here spoken of is distinct from the *Chokeedars* and village watchmen, for these persons are by the 12th section declared subject to the orders of the *Darogha*, and by the 13th section are ordered to apprehend and send offenders to the *Darogha*, and afford every information to him.

By Regulation L of the same year, 1792, a tax is to be levied within the District of each police establishment, for defraying its expenses; and the 17th section, which is very important, is in these words (it is a circular addressed to the Magistrate of each District):—"You will report whether the landholders of your District have been allowed any deductions on their *jumma*, or are in the receipt of any money allowances, or hold any lands either free of, or at a reduced revenue, for the purposes of keeping up *Tannahdars* or other police-officers, and also your opinion whether the whole, or any, and what part of such deductions, allowances, or produce of such lands may with equity be brought to the public account, in consideration of the landholders being now prohibited from keeping up such establishment, and Government having taken upon itself the charge of the police."

Nothing can be clearer than this—that the lands referred to, are lands which the *Zemindars* had been permitted by the Government to hold free from revenue, or at a reduced revenue, for the purpose of keeping up *Tannahdars*; not lands which the *Zemindars* had permitted other persons to hold free from rent, or at a reduced rent, or lands which such persons had a right to hold free from rent, or at a reduced rent; and that any lands which were in the first predicament were to be reported to the Government by the Magistrate, together with his opinion, whether it was consistent with equity that the whole or any part of the produce of such land should be brought to the public account; and further, that this provision relates and is confined to a class of officers whom the *Zemindar* is no longer permitted to keep.

Though the Decennial Settlement had been made as to the several Provinces of Behar, Bengal and Orissa under different Regulations, and although as to some of the estates the Settlement had not been entirely concluded in 1793, it was thought right in that year finally to establish its permanency, and for this purpose the celebrated Regulations of 1793 were published.

They were many in number, and after declaring the Settlement, to be now permanent, re-enacted, with some modifications with respect to the three Provinces collectively, the provi-

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sions which had been previously made with respect to them separately.

The clause relating to the resumption of allowances which had been made to the *Zemindars* for police establishments, is in these words :—" Regulation I, section 8, clause 4. The *jumma* of those *Zemindars*, independent *Talookdars*, and other actual proprietors of land, which is declared fixed in the foregoing articles, is to be considered entirely unconnected with, and exclusive of, any allowances which have been made to them in the adjustment of their *jumma*, for keeping up *Tannahs*, or police establishments, and also of the produce of any lands which they may have been permitted to appropriate for the same purpose ; and the Governor-General in Council reserves to himself the option of resuming the whole or part of such allowances or produce of such lands, according as he may think proper, in consequence of his having exonerated the proprietors of land from the charge of keeping the peace, and appointed officers on the part of Government to superintend the police of the country. The Governor-General in Council, however, declares, that the allowances or produce of lands which may be resumed will be appropriated to no other purpose but that of defraying the expense of the police ; and that instructions will be sent to the Collectors not to add such allowances, or the produce of such lands, to the *jumma* of the proprietors of land, but to collect the amount from them separately."

Upon the meaning of this clause the question in this cause depends. It is obvious that it has reference to the Police Regulation of 1792, and to the allowances with respect to which an inquiry was directed to be made in that year. It is unnecessary, therefore, here to repeat the observation already made as to their effect.

By Regulation XXIII of 1793, the same inquiries are directed to be made by the Collectors as had been ordered to be made by the Magistrates in 1792 ; but, as the language is not precisely the same, it may be as well to state the clause at length. It is section 36, and is in these words :—" The Collectors are to report all allowances that may have been made to the proprietors of land for keeping up police establishments, either by deduction from their *jumma*, or by permitting them to appropriate the produce of lands for that purpose, or in any other mode, which may not have been already resumed, with their opinion how far the whole or any portion of such allowances can with equity be resumed in consequence of the proprietors of lands being exonerated from the charge of keeping the peace, as declared in Regulation XXII of 1793 :" which Regulation had re-enacted the provisions of Regulation XLIX of 1792.

The same provision with respect to *Chackeran* and *Lakhiraj* lands which had been contained in the Regulations of 1789 are

repeated in those of 1793, namely, that the *Chackeran* lands should be included in the Settlement, and the *Lakhiraj* lands excluded from it.

Although both the *Lakhiraj* lands and the *Tannahdary* lands are reserved for further inquiry under these Regulations, there was obviously a great distinction between them with respect to the period at which the decision relating to them ought to be made.

The *Lakhiraj* lands were separate from the *Zemindary*, and were excepted out of the Settlement. The validity of the exemption claimed for them depended on the validity of the grant under which it was claimed. Very many of the grants were believed to be fraudulent; but each case was to depend upon its own circumstances. The investigation of such circumstances might occupy a long time, and a discovery of grounds of suspicion might take place at any period. As these lands were not to be included in the Settlement, no great inconvenience could arise from delay.

But with respect to the allowances for a police-force made by the Government, whether in land or in money, the case was quite different. They were included in the Settlement, and if any additional charge was to be thrown upon the landholder in respect of such allowances, it was necessary that it should be ascertained as part of the Settlement. No difficulty in ascertaining the fact could possibly exist. The assessment had been very recently made, and the officers who had made it must, in every case, be perfectly aware whether any such allowances had or had not been made.

In pursuance of these Regulations, Mr. Dickenson, the Collector of Bhagulpore, was required to report whether, in the Settlement for Khuruckpore, any such allowances had been made; and on the 29th of April, 1794, he makes his report in the negative. His words are these (contained in a letter addressed to the President and Members of the Board of Revenue of Fort William, relating to this and other *Zemindaries*):—"In obedience to the 36th Article, I have made the necessary inquiries, but do not find that any allowances, either by deduction from their *jumma*, permission to appropriate the produce of lands, or any other mode, have been granted to any other proprietor for keeping up a police establishment."

This inquiry took place before any permanent grant had been made of this *Zemindary*, and with a view to such grant. No claim to resumption of lands or to alteration of *jumma* was, or, upon the footing of their report, possibly could be, set up by the Government; and nearly two years afterwards, namely, on the 25th of January, 1796, the Government made a grant to the Raja, of the whole *Zemindary* of Khuruckpore, including the lands in question, to hold to him in perpetuity at the *jumma* assessed in 1789-90, namely, Rs. 65,459 8a. 10½p.

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It is said that Mr. Dickenson made this report under a mistake. A mistake of what? Not of facts, certainly. The existence and nature of these *Ghatwally* tenures, the extent to which they prevailed in this District, and the mode in which they had been dealt with in making the assessment, must, from the circumstances which have been stated, have been perfectly familiar both to the Collector and to the Board of Revenue.

But was he under a mistake of law? That he considered the *Ghatwally* lands as not within the meaning of the clause in question is abundantly clear, and if he was mistaken as to the intentions of the Government who had framed it, a mistake so deeply affecting their revenues, and reaching to such a great extent of territory, must at once have excited the remarks and the remonstrance of the Revenue Board; but they make no objection to his view of the subject, and, accordingly, the grant is made on the terms already stated: the grantee holds under it, and for more than forty years no attempt is made to disturb it.

It would seem to be very difficult, under such circumstances, to permit any part of the lands so granted to be resumed on any allegation of mistake, if there were reason to suppose that any mistake had been made.

Indeed, by Regulation II of 1819, the East India Company formally "renounce all claim on the part of Government to additional revenue from lands which were included within the limits of estates for which a Permanent Settlement has been concluded, at the period when such Settlement was so concluded, whether on the plea of error or fraud, or any pretext whatever, saving, of course, *mehals* expressly excluded from the operation of the Settlement."

But their Lordships are far from thinking that there was any mistake either on the part of the Collector or of the Board of Revenue. All the information which their Lordships can obtain with respect to those lands leads to a different conclusion.

In Mr. Grant's Analysis of the Finances of Bengal, addressed to the Court of Directors, in the year 1786, and printed in the Appendix to the Fifth Report of the Select Committee on the Affairs of the East India Company, p. 268, the *Zemindary* of Beerbhoom is stated to have been conferred by Jaffier Khan on an Afghan or Patan tribe "for the political purpose of guarding the frontiers on the west against the incursions of the barbarous Hindus of Jharcund, by means of a warlike Mahomedan peasantry entertained as a standing militia, with suitable territorial allotments, under a principal landholder;" and Mr. Grant afterward describes the tenure "as in some respects corresponding with the ancient military fiefs of Europe, inasmuch as certain lands were held *Lakhiraj*, or exempt, from the payment of rent, and to be applied solely to the maintenance of troops."

There is no doubt that the tenures here spoken of are *Ghatwally* tenures, though they are not mentioned by that name.

Beerbhoom immediately adjoins Khuruckpore, and in 1795 some *Ghatwally* lands were transferred from Beerbhoom to the District of Bhagulpore in which Khuruckpore is situate, and in 1797 lands of the same description were transferred from Bhagulpore to Beerbhoom.

In 1813, a report was made by the Collector of Bhagulpore to the Magistrate of Beerbhoom in answer to certain inquiries with respect to *Ghatwally* lands in his District. The Collector states, that the *Ghatwally* lands in his District, are of four kinds : First. The lands already referred to as granted by Mr. Cleavland. These he states to have been alloted in the environs of the forests, at the foot of certain mountains, which he names in various Pergunnahs, and amongst others " Pergunnah Kankjole, and in some other villages of the Khuruckpore estates, to certain *Ghatwals* and watchmen in lieu of salaries, in the proportion of the number of watchmen attending the said *Ghatwals* to attend to and guard the watch-stations at the passes, and to patrol the precincts of the villages, that no mountaineers might be able to descend from those passes of the mountains to commit night attacks, to invade or assaults, or plunder money or cattle, or to create disturbance." The second class the report describes as, " The *Ghatwals* attached to the Khuruckpore estates, who pay a stipulated rate or rent for their lands and villages, being bound to protect and guard the highways, to watch the stations at the passes, to prevent disturbances being created by the mountaineers, thieves, and highwaymen. They hold their lands in virtue of *sunuds* granted by the *Zemindar* of Khuruckpore, except some who have received theirs from the former authorities." The report then proceeds to state, " That when the *Zemindar*, or Government authority, wishes to appoint a *Ghatwal* to guard the frontiers of the villages, it is his duty to ascertain the produce of the villages, the quantity of *Ghatwally* lands therein, and after deducting a certain rate in the ratio of the guards with the *Ghatwals*, in lieu of wages, to fix a certain rent to be paid by the *Ghatwals*."

After mentioning other description of *Ghatwally* lands, he states his opinion, that the *Ghatwals* have no right of inheritance or proprietary interest in their lands, but hold right of possession as long as they perform the terms and conditions of their *sunuds*. The report then states, that at the time of the Decennial Settlement, the *Ghatwals* were not treated as independent *Talookdars ;* that no Settlement was made with them, but that they were included in the Settlement of the *Zemindar* of whom their lands were held.

In 1816, another report was made by the Collector of Bhagulpore, in which it is stated, that the *Ghatwals* pay a fixed

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rent to the *Zemindar* of Khuruckpore, and continue under his control, direction, and subjection, and while the Raja is answerable to the Collector for the rents of the entire District of Khuruckpore.

With respect to the *Ghatwally* tenures in Beerbhoom, it is stated in a Regulation passed with respect to them in 1814 (Regulation XXIX of that year), that the class of persons, called *Ghatwals*, in the District of Beerbhoom, from a peculiar tenure, and that every ground exists to believe, that according to the former usages and constitution of the country, this class of persons are entitled to hold their lands, generation after generation, in perpetuity, subject, nevertheless, to the payment of a fixed and established rent to the *Zemindar* of Beerbhoom, and to the performance of certain duties for the maintenance of the public peace and support of the police.

This description is confined in terms to the District of Beerbhoom, but in the case of *Hurlall* v. *Jorawun Sing*(1), which occurred in 1837, a question arose as to the nature of these tenures generally, the point for decision being, whether they were divisible on the death of a *Ghatwal* or descended to his eldest son. One of the Judges states, that these tenures are very common in the Nerbudda territory for the protection of the *Ghats*. Another of the Judges seems to consider them as *Chackeran* lands; and the Court was of opinion, that the land; being held conditionally on the performance of certain defined duties, they were not divisible on the death of the *Ghatwal*, but descended to the eldest son.

Lands of this description could not properly be considered as lands of which the *Zemindars* had been permitted by the Government to appropriate the produce to the maintenance of *Tannah*, or police establishments. They were held by a tenure created long before the East India Company acquired any dominion over the country, and though the nature and extent of the right of the *Ghatwals* in the *Ghatwally* village may be doubtful, and probably differed in different Districts and in different families, there clearly was some ancient law or usage by which these lands were appropriated to reward the services of *Ghatwals;* services which, although they would include the performance of duties of police, were quite as much in their origin of a military as a civil character, and would require the appointment of a very different class of persons from ordinary police-officers.

We find accordingly that the office of *Ghatwal* in this *Zemindary* was frequently held by persons of high rank.

Before the date of the Regulations, and in 1783, we have a letter from the Collector of Bhagulpore to the Raja Kadir

(1) 6 Sud. Dew. Rep., 170.

Ali, informing him that the Ranee Surbissuree (who from the title must have been a female of high rank), had been dismissed from her office of *Ghatwal* of Jummee Humapa, which is situate in the Khuruckpore estates by order of the Governor-General in Council, and intimating that, "as the office is in your Highness's gift, Your Highness will, should you deem it necessary and proper, appoint a person to the office of *Ghatwal* of the said Pergunnah, to watch day and night at the said *Ghat*. Should it be advisable, your Highness may retain it under your Highness's control informing the Court of the circumstance." Surely the language here used in speaking of the *Ghatwal* is little suited to the appointment of a police-officer. It is rather that which in ancient times in England might have been addressed to a Lord of the Marches with respect to a chieftain under his orders.

Again, the officers contemplated by the resumption clause, were a class whom the landowner was in future prohibited from keeping. Was this the case of the *Ghatwals*? Why, we have a letter from the Collector of Bhagulpore to the Raja of Khuruckpore, on the 1st of September, 1808, in which he observes, "as the settlement of rent between the watchmen and yourself rests with you, as also does the dismissal and transfer of the *Ghatwals*, &c., as usual and customary on your estate, the Magistrate has no objection to the measure" (which the Raja had proposed to take), "nor is the Collector opposed to the step:" and in the reports of the Collectors to which we have already referred, it is stated, that it is the province of the Raja to appoint and dismiss the *Ghatwals* attached to the Khuruckpore estates; that he usually, but not always, makes a report to the Government when he does so, "that the settlement rests with him, and he raises or depresses the rent."

The appointment of *Ghatwal* has been continued, with the assent of the Government, up to the present time.

Upon this review of the evidence, their Lordships are of opinion, that if any attempt had been made in 1796 to resume these lands under the Regulation now in question, such attempts must have failed, and that, therefore, there can be no ground for the claim now set up by the Bengal Government

It may be proper to notice the proceedings which have ended in the judgment against which the present appeal is brought.

It appears that on the 29th of November, 1836, the Government in India ordered that if the *Ghatwally* lands were of a nature to be resumed they be subjected to resumption.

The proceedings to be taken for the purposes of resumption, and the Court or tribunal which is to decide the matter, are of a special character.

The Collector of the District, or his Deputy, enters on record, a claim to assess the disputed lands; notice is given to the owners;

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upon their answers, and upon evidence, the Collector who has made the claim, or one of his deputies, decides upon its validity, and if either party is dissatisfied, there is an appeal to a Special Commissioner appointed by the Government.

On the 1st of May, 1838, Mr. Travers, then Special Deputy Collector of the Districts of Bhagulpore and Monghyr, entered the following claim on the part of the Government against Toofany Sing, *Ghatwal*, who was in possession of the disputed lands in this case :—

"Claim to assess 755 bighas of *Ghatwally* lands, situate on *Ghat Foujdar* Tuppa Dhumsaeen. As it appears from an examination of the *Ghatwally* books, furnished by the Magistrate of this District, for the year 1819, C. E., that the lands in dispute have been appropriated rent-free by the said defendant, as belonging to the said *Ghatwally*, and as it is necessary under Regulation II of 1819, C. E., and Regulation III of 1828, C. E., to inquire into the legality or otherwise of the deeds of grant, it is, therefore, ordered, that this case be numbered and placed upon the file of the Court, and that notice be served upon the defendant."

It does not very distinctly appear from this statement of the claim, upon what grounds it was intended to be rested, but we collect that it was thought that these lands were not included in the estate of Khuruckpore ; that they belonged to the *Ghatwal* ; and that as no Settlement had been made with him, they were still the subject of settlement, or, in other words, of assessment.

The matter then came upon some interlocutory proceedings before Mr. Alexander, described as Officiating Special Deputy Collector of the Districts of Bhagulpore and Monghyr, and on the 10th of November, 1838, he made a minute in part in these terms :—"It is consequently decided that these lands were conditionally granted : but, *firstly*, the officers do not perform those conditions ; and, *secondly*, the Government have no need of their services ; besides which, it is evident that the said lands have not undergone any settlement up to the present time, for the settlement was effected in 1197, F. E., while the said lands were set apart in 1181, F. E. ; and notwithstanding that 2 annas per bigha used to be paid to the *Zemindar* for certain lands, yet, as that cannot be considered rent, but a simple fee, in acknowledgment of the right of the *Zemindar*, the said lands are consequently of a nature to be resumed." It was then ordered, "that the defendant produce any document in his possession invalidating the above-mentioned circumstances within a week, otherwise judgment would go in favour of Government, without any plea in opposition being taken into consideration."

The Raja of Khuruckpore was apparently supposed to have nothing to do with the question ; he was not made a party to the proceedings, nor served with notice of them ; but on the 27th

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of November, 1838, he presented a petition, stating that he was the owner of the land, and that Toofany Sing held under a leas from him.

The original defendant put in his answer, stating, that he and his ancestors for several generations had held these lands at a rent of 2 annas per bigha from the Raja of Khuruckpore, and that lands, including thirty-six original villages, beside others subsequently added, were held by the same tenure of the Raja.

A great deal of evidence was gone into; many inquiries were ordered, in the result of which, it distinctly appeared, that these lands were part of the estate of Khuruckpore, and had been included in the Settlement for that estate; and, accordingly, on the 9th of December, 1838, Mr. Alexander pronounced a decision founded on those proofs, in which he declared that the lands were of the nature of *Chackeran* lands; that they were not of a nature to be resumed; and he ordered the claim of Government to be dismissed.

Like decrees were at the same time pronounced by Mr. Alexander in the ten other suits.

Not long after these judgments were pronounced, judgments to which no objection can be made, except that they ought to have awarded costs of suit to those who had resisted the claims made against them, Mr. Alexander, unfortunately for all parties, altered his opinion, and thought that although the suits might not be maintainable, on the grounds originally taken, they might be supported under clause 4, section 8, of Regulation I of 1793, and he applied for permission to review his judgment.

The form of proceeding did not allow this to be done; and on the 31st of December, 1839, the Government appealed to the Special Commissioners, bringing forward the clause just mentioned, and also insisting that the lands were not included in the Settlement of the Khuruckpore estate.

Before his appeal was heard, the interest of Maharaja Rehmut Ali Khan, the original opponent of the Government, had been assigned to the father of the present appellant, and he was admitted a respondent to the appeal of the Government.

During the course of these proceedings, the same question had been raised by the Government with respect to other *Ghatwally* lands in other Pergunnahs of this *Zemindary*; and on the 29th of May, 1838, Mr. Travers, in some of these suits, decided in conformity with Mr. Alexander's decision, and dismissed the claim of the Government, and, it is said, that these decisions were confirmed by the Special Commissioner on appeal.

Other suits, on the other hand, of the same description, came before Mr. Alexander, who decided them, not in conformity with his first determination, but according to the view which he had subsequently taken.

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On the 21st of May, 1841, the appeal in the present suit came before Mr. Elliott, Special Commissioner, who reversed the decision of Mr. Alexander, stating as the ground of his judgment, that it was evident that the *Ghatwally* lands in dispute in this case, as well as in the other *Ghatwally* suits, were distinct and separate from the Settlement made by the Government. He established, therefore, the claim of the Government, and ordered that all the costs of the suit should be borne by the then respondents.

The concurrence of another Special Commissioner was necessary to give effect to this decision (1), and on the 27th of December, 1842, the case came before Mr. D'Oyley.

Mr. D'Oyley differed from Mr. Elliott, and the case was, therefore, remitted to Mr. Moore, Special Commissioner for Calcutta and Moorshedabad.

That gentleman directed an inquiry to be made of the Secretary of the Sudder Board, for the purpose of ascertaining whether the *Ghatwally* lands had been excepted from the Settlement of the Khuruckpore estates or not; and finding that they had not been so excepted, he concurred in the opinion of Mr. D'Oyley, and ordered that the appeal of the Government in this, and the other ten suits of the same nature, should be dismissed.

The Government was still dissatisfied, and on the 19th of September, 1843, they applied for a review of the judgment.

The case came again, on several occasions, before Mr. Moore, who directed many more inquiries, the result of which, in the opinion of their Lordships, was to confirm the decision at which he had already arrived. Mr. Moore, however, considered that his former judgment was erroneous, and on the 9th of July, 1844, he reversed it. On the 9th of September of the same year, the case came before Mr. Gordon, a Judge of the Sudder Court, vested with the powers of a Special Commissioner, under the orders of Government, who expressed his concurrence in that decision; and, at last, on the 27th of June, 1845, a final judgment in favour of the Government was pronounced by those gentlemen, resting their decision, as we understand it, on the ground that these lands were, in reality, lands granted for police establishments, and were to be considered as provided for in clause 4, section 8, Regulation I of 1793.

From that decision the present appeal is brought to Her Majesty in Council, and it is scarcely necessary to say, that Their Lordships must humbly report to Her Majesty their opinion that the decision complained of ought to be reversed. They have already sufficiently explained the reasons for their opinion, namely, that these lands are not properly within the meaning

(1) *See* Ben. Reg. III of 1828, sec. 4, cl. 6.

of the clause relied on by the respondent, that they were a part of the *Zemindary* of Khuruckpore, and were included in the Settlement for that *Zemindary*, and covered by the *jumma* assessed upon it.

If any case should occur in which lands of *Ghatwally* tenure, though not, in their Lordships' opinion, properly falling within the meaning of the Regulation, have nevertheless been dealt with as such, and have not been included in the Settlement of 1793, such case will have to be decided upon its own circumstances, and will not be governed by their Lordships' present decision.

With respect to the costs of the proceedings which have taken place, their Lordships do not doubt that the Bengal Government, in bringing forward this claim, have acted under a sense of public duty, but it is an attempt to disturb, upon insufficient grounds, a Settlement which subsisted without dispute for above forty years, during all which time the right to disturb it, if it exists at all, existed with as much force as when the proceedings were instituted. The claim has been persisted in after several decisions against the Government by their own officers acting as Judges; the decree in their favour has been finally obtained upon grounds different from those on which it was originally sought, and the appellant has been exposed to a long and most expensive litigation. Under these circumstances, their Lordships think that they should do but imperfect justice, if they did not humbly recommend to Her Majesty that the respondent should be ordered to repay to the appellant all the costs which they have received from him under orders of the Judges below, and should also be ordered to pay to him the costs which he has himself incurred in these proceedings, including the costs of the present appeal.

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JOYKISHEN MOOKERJEE

v.

THE COLLECTOR OF EAST BURDWAN.*

[*Reported in* 10 *Moo. I. A.*, 16; 1 *W. R.*, *P. C.*, 26; 2 *P. C. J.*, 54.]

Judgment was delivered by

THE RIGHT HON. LORD KINGSDOWN.—The question in this case relates to a small quantity of land, consisting of nineteen bighas and some cottahs, in the *Talook* of Gobindopore. This *Talook* originally formed part of the great *Zamindary* of Burdwan and previously to its purchase by the appellant it had been granted in *Putnee* by one of the Rajahs of Burdwan. In the year 1852 it was put up to sale by the Collector of the *Zillah* of East Burdwan, under the provisions of Ben. Reg. VIII of 1819, in order to realize the amount of arrears of rent due from the then *Putneedar*. The appellant became the purchaser, and entered into the receipt of the rents and profits of the *Talook*, and it must be assumed that, as *Putneedar*, he became entitled to the same rights in the subject-matter of the suit which were enjoyed by the *Zemindar*.

At this time the lands now in dispute were in the possession of a person named Ahmed Buksh, who paid no rent for them either to the Government or to the *Talookdar*, but, instead of rent, performed certain services. What was the nature of those services is one of matters now in question. Another is, what is the character of the lands thus held by these services; are they legally appropriated for the performance of these services, or are they lands which are the free and absolute property of the *Talookdar*, and which he is at liberty to resume and dispose of, as he may think fit, either dispensing altogether with the services or providing from other sources for the performance of these services if he be under any obligation to secure their performance?

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* *Present* :—Members of the *Judicial Committee*.—The Right Hon. LORD KINGSDOWN, the Right Hon. the LORD JUSTICE KNIGHT BRUCE, and the Right Hon. the LORD JUSTICE TURNER.

Assessors :—The Right Hon. SIR LAWRENCE PEEL, and the Right Hon. SIR JAMES W. COLVILE.

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On the 11th of January, 1855, the plaint in the present suit was filed, and the Collector of East Burdwan, as representing the Government, was made a defendant. The plaint insisted that the lands in question were part of the *Talook*; that the lands were what are called "*Mâl Surunjamee*" or "*Gram Surunjamee*" held for the performance of services personal to the *Zemindar*, and for the protection of his property; that Ahmed Buksh had ceased to perform any *Zemindary* services; and that the plaintiff had appointed another person to perform such services, and was entitled to resume possession of the lands.

On the 9th of January, 1856, the Collector of East Burdwan filed his answer, and he thereby insisted, "that the land in question was not *Mâl Surunjamee* (service land for taking care of the *Mâl* or *Zemindar's* property), but *Chackeran* land for the performance of Police or *Chowkeedary* duties; that the land being *Chowkeedary Chackeran* land, the *Zemindar* has no power to interfere with the property as long as the Policemen carry out their various duties."

The main issue raised between the parties, therefore, was as to the nature of the tenure on which the land was held: the contention on the part of the appellant being that they were of one description and subject to the performance of no Government services, and the contention of the respondent that they were of another description and subject to the performance of no services to the *Zemindar*. Shortly before the Collector put in his answer, the *Foujdary* Court of East Burdwan had issued an order "that a *Perwannah* be sent to all the *Darogahs* of this jurisdiction, that the *Chowkeedars* under their control be instructed not to attend to *Zemindary* duties."

It appears that these *Zemindars* were entrusted, previously to the British possession of India, as well with the defence of the Territory against foreign enemies, as with the administration of law and the maintenance of peace and order within their district; that for this purpose they were accustomed to employ not only armed retainers to guard against hostile inroads, but also a large force of *Tannahdars*, or a general Police force, and other officers in great numbers, under the name of *Chowkeedars*, *Pykes*, and other descriptions, as well for the maintenance of order in particular villages and districts as for the protection of the property of the *Zemindar*, the collection of his revenue, and other services personal to the *Zemindar*.

All these different officers were at that time the servants of the *Zemindar*, appointed by him and removable by him, and they were remunerated in many cases by the enjoyment of land-rent free or at a low rent in consideration of their services.

The lands so enjoyed were called *Chackeran* or service lands. These lands were of great extent in Bengal at the time of the

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Decennial Settlement, and the effect of that Settlement was to divide them into two classes :—

First. *Tannahdary* lands, which, by Ben. Reg. I of 1793, sec. 8, cl. 4, were made resumable by the Government; the Government taking upon itself the maintenance of the general Police force and relieving the *Zemindar* from that expense.

Second. All other *Chackeran* lands, which, by Ben. Reg. VIII of 1793, sec. 41, were, whether held by public officers or private servants, in lieu of wages, to be annexed to the *Malguzary* lands, and declared responsible for the public revenue assessed on the *Zemindars'* independent *Talooks* or other estates, in which they were included in common with all other *Malguzary* lands therein:

It is clear upon the evidence, and in fact was not disputed at the Bar, that the lands in question are *Chackeran* lands of the second class, and it follows that, if resumable at all, they are resumable by the appellant; and secondly, that if the services on which they are held are Police services at all, they are the services of *Chowkeedars* or village watchmen.

The *Zemindar* had an interest in the performance of the duties of the village watchmen, inasmuch as they protected his property; but the public also had a great interest in their maintenance, and in the peace and good order which they were employed to preserve, and the Government, as representing the public, reserved therefore a strict control over them.

Accordingly, various Regulations were passed for the purpose of enabling the Government to effect this object. Registers were required to be kept of the different persons filling these offices in each *Zemindary*, with a statement of the funds allotted for their support. The officers themselves were made subject to the orders of the *Darogah*, or Superintendent of the Police of the District. The *Zemindar* was required to remove them on complaint of their misconduct by the *Darogah*, and, finally, they were made removable by the Magistrate on sufficient cause. But we can find nothing in these Regulations which takes from the *Zemindar* the right of nomination of these officers, or which deprives him of the power of himself removing them and appointing other fit persons in their stead, and nothing which deprives him of the right of requiring from the *Chowkeedar* such services as he was bound by law or usage to render to the *Zemindar*. It might well happen that, either by long usage or by the original contract, when the lands were granted, the village watchman might become liable, in addition to his Police duties, to the performance of other services personal to the *Zemindar*, as the collection of his revenue and the like. Indeed, the rules laid down for the Decennial Settlement appear to us to recognize the interests both of the *Zemindars* and the public in lands of this description. They were not to be included in the

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Malguzary lands for the purpose of increasing the *jamma*, because the *Zemindars* had not the full benefit of them ; but they were to be included in the *Malguzary* lands for the purpose of securing the assessment, because in the event of a sale upon default of payment of the assessment, it would be important that they should be transferred to the purchasers under the Government, with whom the appointment of the person whose duty would in part be to attend to public interests would vest.

Such being in our opinion the general law, let us look at the facts of this particular case. It is found by the *Zillah* Judge(1) that the duties performed by the persons in possession of these lands, both before and since the Decennial Settlement, have been partly Police and partly *Zemindary*, as follows :—*Zemindary :* First (personal to the *Zemindar*). To collect or enforce collection of rents ; to guard Mofussil treasuries, and perhaps to escort Mofussil treasures. Second (common to the village community). To keep watch at night, and to secure the harvests. Police : To maintain the peace ; to apprehend offenders under the orders of the *Tannahdar ;* to report criminal occurrences ; to convey public money to the Sudder Treasury (this duty has ceased since the Decennial Settlement); to serve as guides to travellers. The Judge adds :—" I may add that it is notorious, and in my certain knowledge, that most of these duties are at this time performed by the village watchmen in Burdwan."

From this finding their Lordships see no reason to dissent.

But it may well be that although these lands have been held by the predecessors of the defendant, Ahmed Buksh, and were held by him as *Chowkeedar*, liable to perform services to the public as well as to the *Zemindar*, yet that there has been no legal appropriation of the land for that purpose, and that the appellant may be entitled to recover the land, though he may be under an obligation to provide for the performance of such services as a *Chowkeedar* is liable to perform for the public.

The evidence appears to stand thus :—

At the time of the Decennial Settlement, though these lands were included in the *Zemindary*, their annual value does not seem to have been taken into account in fixing the *jumma*. This is consistent at least with the hypothesis that they were then appropriated to the payment of some officers whom it would be necessary for the *Zemindar*, either for his own or for the public interest, to maintain. We find that in 1813, the particular lands in question were in this *Talook* held by Srishteedur, who is described as *Tannahdar*, and they appear ever since to have been held by persons succeeding him in the same character. They were not held as *Tannahdary* lands in the strict sense of

(1) 10 Moo. I. A., p. 28.

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the expression—lands of that description had already been resumed by the Government—but as *Chowkeedary* lands: lands appropriated to the maintenance of an officer who performed, and was liable to perform, duties as a village watchman. We think that these circumstances are sufficient to warrant the inference that the lands in question were at the time of the Decennial Settlement appropriated, and still are liable, to the maintenance of such an officer, and that the *Talookdar* has no right to take possession of them for his own purposes, and hold them, discharged of the obligation to which they are subject.

On the other hand, it is established by the evidence that the *Chawkeedars* in this district have always been accustomed to perform services, personally to the *Zemindar* as well as to the Police. This is distinctly stated to be the fact by Mr. Skipwith, the officiating Collector in 1837, and by the Judge of the *Zillah* Court in the present case, and it is admitted by the Government. We think, therefore, the order of the *Foujdary* Court in December, 1855, forbidding the performance of *Zemindary* services by the *Chowkeedar*, was without any warrant in law.

Cases of this descripiton must, as it seems to us, depend mainly, if not wholly, for their decision upon the question, what was the tenure or character of the lands at the time of the Decennial Settlement, and how they were dealt with in that settlement.

In this case, the result, in our opinion, is, that both parties have insisted on more than they were entitled to. One side has contended that the holder of these lands is liable to the performance of none but *Zemindary* duties; the other, that he is liable to the performance of none but Police duties.

Under these circumstances, we feel considerable difficulty as to the course which we ought to take. If we advise the affirmance of the judgment, we may seem to countenance the opinion that the Government has the right to take possession of these lands, and to appoint a person to perform, as *Chowkeedar*, general Police duties, to the exclusion of duties to the *Talook* and the *Talookdar*; and this is very far from being our opinion.

On the other hand, we think that we cannot advise the reversal of the judgment, having regard to the form of the pleadings, without maintaining the position assumed by the appellant, that these are *Gram Surunjamee* lands, not liable to the performance of any but personal services to the appellant; and from this opinion also we dissent.

The state of the pleadings prevents us from reaching the real merits of the case. It is not for us to say how these merits may best be reached. It may be that the appellant having appointed a fit person to discharge the duties of village watchman, and to perform the duties personal to himself, may be entitled to recover the land for the purpose of its being held

by the person so appointed, or it may be that the person so appointed may himself be entitled to recover the land. On these points we give no opinion. But on the whole, having regard to the appellant being plaintiff in the suit, and having failed to make out the case which he set up, we think that we shall best discharge our duty by humbly advising Her Majesty to affirm the judgment complained of, but without giving any costs, and to declare that the lands in question are to be considered as appropriated to the maintenance of a *Chowkeedar* or village watchman in this *Talook*, and that the right of appointing such officer belongs to the *Talookdar*, and that such officer is liable to the performance of such services to the *Talookdar* as, by usage in the *Zemindary* of Burdwan, *Chowkeedars* have been accustomed to render to the *Zemindar*, and to declare that the affirmance of the judgment is to be without prejudice to any (if any) other suit which the appellant may think fit to institute in respect to the matters in dispute in this cause.

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July 11.

LOPEZ

v.

MUDDUN MOHUN THAKOOR.*

[*Reported in* 13 *Moo. I. A.*, 467; 5 *B. L. R.*, 521; 14 *W. R. P. C.*, 11; 2 *P. C. J.*, 594.]

Their Lordships' judgment was pronounced by

THE RIGHT HON. THE LORD JUSTICE JAMES.—The plaintiff in this case Felix Lopez, was the proprietor of a very considerable estate, a *mouzah*, on the banks of the Ganges. By the year 1840, by reason of the continued encroachment of that river, it was wholly submerged, and it was, to adopt an expression used in this class of cases in India, "diluviated"; that is, the surface soil, the culturable soil, was wholly washed away. After the lapse of some years, and after one temporary recession and re-encroachment which has occurred in the interval, the water has ultimately retired, and the land, having been for some time in a state described as admitting of only temporary cultivation by hand sowing, has become hard and firm soil, capable of being cultivated in the usual manner. The plaintiff says, "This was my property. The Ganges, which swallowed it, has again yielded it up, and I claim my property, which, having been buried and lost to sight, has again re-appeared."

The rule of the English law applicable to this case, is thus expressed in a work of great authority, Hale, de Jure Maris, p. 15:—"If a subject hath land adjoining the sea, and the violence of the sea swallow it up, but so that yet there be reasonable marks to continue the notice of it; or though the marks be defaced, yet if by situation and extent of quantity and bounding upon the firm land, the same can be known, or it be by art or industry regained, the subject doth not lose his property." "If the mark remain or continue, or the extent can reasonably be certain, the case is clear." And in another place, p. 17, he says: "But if it be freely left again by the reflux and recess of the sea, the owner may have his land as before, if he

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* *Present*:—Members of the *Judicial Committee*.—The Right Hon. SIR JAMES WILLIAM COLVILE, the Right Hon. SIR JOSEPH NAPIER, BART., and the Right Hon. the LORD JUSTICE JAMES.

Assessor:—The Right Hon. SIR LAWRENCE PEEL.

can make out where and what it was: for he cannot lose his propriety of the soil, although it for a time becomes part of the sea, and within the Admiral's jurisdiction while it so continues."

This principle is one not merely of English law, not a principle peculiar to any system of Municipal law, but it is a principle founded in universal law and justice; that is to say, that whoever has land, wherever it is, whatever may be the accident to which it has been exposed, whether it be a vineyard which is covered by lava or ashes from a volcano, or a field covered by the sea or by a river, the ground, the site, the property, remains in the original owner.

There is, however, another principle recognized in the English law, derived from the Civil law, which is this,—that where there is an acquisition of land from the sea or a river by gradual, slow and imperceptible means, there, from the supposed necessity of the case, and the difficulty of having to determine, year by year, to whom an inch, or a foot, or a yard belongs, the accretion by alluvion is held to belong to the owner of the adjoining land, *Rex* v. *Lord Yarborough*.(1) And the converse of that rule was, in the year 1839, held by the English Courts to apply to the case of a similar wearing away of the banks of a navigable river, so that there the owner of the river gained from the land in the same way as the owner of the land had in the former case gained from the Sea [*In re The Hull* v. *Selby Railway*(2)]. To what extent that rule would be carried in this country, if there were existing certain means of identifying the original bounds of the property, by landmarks, by maps, or by a mine under the sea, or other means of that kind, has never been judicially determined.

This principle of law, so far as relates to accretion, has, to some extent, been made part of the positive written law of India, and it is on the operation of such positive written law that the defendants' case is based. This law is to be found in the Regulation XI of 1825, a Regulation for declaring the rules to be observed on the determining of claims to lands gained by alluvion, or by the dereliction of a river, or the sea. There is a recital in that Regulation, as to disputes which had arisen with regard to such claims, and the necessity of having some definite rule laid down with regard to several matters, only one of which is material or relevant to the present case; and that is the case provided for by the 4th section of the Regulation. By cl. 1 of that section it is provided that, "when land may be gained by gradual accession, whether from the recess of a river or of the sea, it shall be considered an increment to the tenure of the person to whose land or estate it is thus annexed,

(1) 2 Bligh., N.R., 147. (2) 5 Mee. & Wel., 327.

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whether such land or estate be held immediately from the Government," or from any intermediate landowner. And the defendants' contention is that the plaintiff's land having been wholly submerged, so as to make their (the defendants') land the river boundary, the subsequent recession of the river has caused a gradual accession to their land, and an increment by annexation to their estate, notwithstanding that the land has been re-formed on the ascertainable and ascertained site of the plaintiff's *mouzah*.

It is to be observed, however, that that clause refers simply to cases of gain, of acquisition by means of gradual accession. There are no words which imply the confiscation or destruction of any private person's property whatever. If a Regulation is to be construed as taking away anybody's property, that intention to take away ought to be expressed in very plain words, or be made out by very plain and necessary implication. The plaintiff here says: "I had the property. It was my property before it was covered by the Ganges. It remained my property after it was submerged by the Ganges. There was nothing in that state of things that took it from me and gave it to the Government. When it emerged there was nothing that took it from me and gave it to any other person." And in answer to such a claim it would certainly seem that something more than mere reference to the acquisition of land by increment, by alluvion, or by what other term may be used, would be required in order to enable the owner of one property to take property which had been legally vested in another.

In truth, when the whole words are looked at, not merely of that clause, but of the whole Regulation, it is quite obvious that what the then Legislative authority was dealing with, was the gain which an individual proprietor might make in this way from that which was part of the public territory, the public domain not usable in the ordinary sense, that is to say, the sea belonging to the State, a public river belonging to the State; this was a gift to an individual whose estate lay upon the river or lay upon the sea, a gift to him of that which, by accretion, became valuable and usable out of that which was in a state of nature neither valuable nor usable.

And on the very words of the section itself, if the ownership of the submerged site remained as it was (and there seems nothing to take it away), it is difficult to see why a deposit of alluvion directly upon it is not at least as much an accretion and annexation vertically to the site as it would be an accretion and annexation longitudinally to the river frontage of the adjoining property.

If we had then to consider the question for the first time, we should have come to the conclusion that the 4th section did not govern the case, and that the question would have to be deter-

mined by the general principles of Equity, to which all cases not in terms provided for are referred by the 15th section. Those principles would not give the plaintiff's property to the defendant. But the question is not raised for the first time. The very point came for consideration in India before a Court comprising Sir Barnes Peacock, Mr. Justice Bayley, and Mr. Justice Kemp; and after full consideration, it was decided that lands washed away and afterwards re-formed on an old site, which could be clearly recognized, are not lands gained within the meaning of section 4, Regulation XI of 1825, *viz.*, they do not become the property of the adjoining owner, but remain the property of the original owner.

And the same point arose in a case in this Court of *Mussumat Imam Bandi* v. *Hurgovind Ghose*.(1) It is there said:—"The whole of the District adjoining the land in dispute, as well as that land itself, is flat, and very liable to be covered or washed away by the waters of the Ganges, which river frequently changes its channel. The land in dispute was inundated about the year 1787; it remained covered with water till about 1801, and then became partly dry, until, in the year 1814, it was again inundated. After this period it once again re-appeared above the surface of the water, and, by the year 1820, it became very valuable land." That is a state of things very singularly like what has occurred in this case.

In that case it was held as follows:—"The question then is to whom did this land belong before the inundation? Whoever was the owner then remained the owner while it was covered with water, and after it became dry."

This authority appears to their Lordships conclusive in the present case.

In a subsequent case, however, *Katteemonee Dossee* v. *Ranee Monmohinee Dabee*(2), it was held by a Court comprising Justices Trevor, Loch, Bayley and Morgan, that all gradual accessions from the recess of a river or the sea are an increment to the estate to which they are annexed without regard to the site of the increment, and a distinction was taken between the two cases; and it seems to have been considered that the former case did not apply to any case where the property was to be considered as wholly lost and absorbed, and no part of the surface remained capable of identification; where there was a complete diluviation of the usable land, and nothing but a useless site left at the bottom of the river. Their Lordships, however, are unable to assent to any such distinction between surface and site. The site is the property, and the law knows no difference between a site covered by water and a site covered by crops, provided the ownership of the site be ascertained.

(1) 4 Moo. I. A., 403; 1 P. C. J., 371. (2) (1865) 3 W. R., 51.

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Their Lordships, however, desire it to be understood that they do not hold that property absorbed by a sea or a river is, under all circumstances, and after any lapse of time, to be recovered by the old owner. It may well be that it may have been so completely abandoned as to merge again, like any other derelict land, into the public domain, as part of the sea or river of the State, and so liable to the written law as to accretion and annexation.

But in this case not only did the parties themselves take the proper, prudent and honest means of preventing the necessity of any dispute arising by interchanging the *Tanabundee* which has been put in evidence, but the plaintiff, as between him and the State, did also take the most effectual means in his power (having the description and measurement of the submerged *mouzah* recorded, and continuing to pay rent for it) to prevent the possibility of any question of dereliction or abandonment being raised against him. Their Lordships are, therefore, of opinion that the property now being capable of identification by means of that *Tanabundee* and otherwise, the property having been the property of the plaintiff when it was submerged, never having been abandoned or derelict, having now emerged from the Ganges, is still his property ; and they will, therefore, recommend to Her Majesty to reverse the decision of the Court from which the appeal has come, to affirm the decision of the Principal *Sudder Ameen*, and that the cost of the litigation both below and here should be given to the appellant, the plaintiff.

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HURRYHUR MOOKHOPADHYA

v.

MADUB CHUNDER BABOO.*

NOBOKISHTO MOOKERJEE

v.

KOYLASH CHANDRO BHUTTACHARJEE.

[*Reported in* 14 *Moo. I. A.*, 152; 2 *P. C. J.*, 713; 20 *W. R.*, 459; 8 *B. L. R.*, 566.]

THE RIGHT HON. SIR JAMES WILLIAM COLVILE.—This appeal, and that of *Hurryhur Mookhopadhya* v. *Madub Chunder Baboo*, were lately argued *ex parte* before this Committee. The principal question involved in them is common to both, but inasmuch as in each some subordinate point peculiar to it was also raised, their Lordships will deal with them separately. They propose to take first the appeal of Nobokishto, though the last argued, because that record contains a judgment pronounced on the 27th of March, 1865, in a third case, No. 268 of 1864,(1) wherein the High Court stated fully the grounds upon which the ruling, impugned by both these appeals, is founded.

This suit was instituted by the appellant as a *Durputneedar*. Its object was to obtain a declaration that certain lands which the respondents claimed to hold as *Lakhiraj* land were so held by them under an invalid title; that they were the *mâl* lands of the appellant, liable, as such, to pay rent to him, and to have them assessed accordingly. The suit was originally brought before the Collector, but under the provisions of an Act of the Bengal Council, No. VII of 1862, was afterwards transferred to the Principal *Sudder Ameen* of Zillah Hooghly. The plaint expressly stated, that the suit was brought under the 1st clause of section 30 of Regulation II of 1819. Their Lordships need not consider particularly the provisions of that enactment. It is only material to observe, that in suits brought under it by a *Zemindar*,

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* *Present*:—Members of the *Judicial Committee*.—The Right Hon. SIR JAMES WILLIAM COLVILE, the Right Hon. the LORD JUSTICE JAMES, and the Right Hon. the LORD JUSTICE MELLISH.

Assessor:—The Right Hon. SIR LAWRENCE PEEL.

(1) *Khelat Chunder Ghose* v. *Poornochunder*, 2 W. R. 258.

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or one to whom the *Zemindar's* rights have been transferred, the whole burthen of proving the nature and commencement of his title was understood to be thrown upon the defendant, the *Lakhirajdar*, whom the plaintiff, who disputes the validity of the tenure might compel to produce the *Sunnuds* and other ancient documents upon which such title rested. The sole proof of title which the defendant could require, in the first instance, from the plaintiff was that the lands in question were within the ambit of his *zemindary* or *putnee*, as the case might be. This issue the respondents in the present case did raise, and successfully raise, as to part of the land. As to the rest of the land, the only issue, except that of limitation, was, whether it was the respondents' valid rent-free land or not, the whole burthen of proof on this issue being cast on them.

The Principal *Sudder Ameen*, the Judge of the Court of First Instance, found that of the land in suit, 2 bigahs and 1 cottah were not within the appellant's *putnee*; that as to 12 bigahs and 14¾ cottahs, other part of that land, the respondents had proved, by certain ancient documents, that they had held and enjoyed them as rent-free lands from long before the 1st of December, 1790, and that, consequently, the claim to assess them was barred by limitation. The residue, being 3 bigahs 17¾ cottahs, be held liable to assessment. Both parties appealed against this decision to the Zillah Judge who, on the 21st of June, 1864, confirmed the decree of the Principal *Sudder Ameen*, so far as it related to the 2 bigahs and 1 cottah, but reversed it as to the rest of the land, making as to that a decree in favour of the appellant's claim. The grounds of his decision were, that the documents produced by the respondents were untrustworthy, and, therefore, that they had failed to prove either a valid title to hold the land rent-free, or that the land, having been held rent-free for a period commencing before the 1st of December, 1790, the appellant's right to assess them was barred by limitation.

The respondent then preferred a special appeal to the High Court. Of the grounds stated for the appeal it is only necessary to notice the third and the fourth. The third is, that the suit being brought, though improperly, under section 30, Ben. Reg. II of 1819, was admittedly barred by limitation. The fourth, that the *onus probandi* had been improperly thrown upon the defendants. On the 13th of April, 1865, the High Court remanded this suit, with five others, which it treated as being in the same category, to the Court of First Instance, stating only that "the *onus* having been misplaced, these cases must go back to the First Court with reference to the principles laid down in case No. 268 of 1864."(1)

(1) 2 W. R., 258.

Before considering the propriety of this remand, which is the principal question raised by the appeal, it will be convenient to complete the history of this particular case. The appellant went again before the Principal *Sudder Ameen*, amending his plaint pursuant to the Order of remand by striking out all reference to the Reg. II of 1819, and making it a plaint for the resumption of land fraudulently made *Lakhiraj* after the 1st of December, 1790, and, therefore, falling within the 10th section of Regulation XIX of 1793. The Principal *Sudder Ameen* thereupon framed fresh issues, the first of them being, whether the land in dispute ever formed a portion of *mâl* land at the time of the Government settlement, and whether at any subsequent time it had been fraudulently made rent-free; and on the 13th of September, 1865, he dismissed the suit upon the ground, that the plaintiff, the appellant, had produced no documents or evidence in the suit, and had thereby failed to support the burthen of proof which this issue cast upon him. The appellant, afterwards in August, 1865, obtained from the High Court a very special leave to appeal to Her Majesty in Council, on the ground that this suit, though the subject-matter of it was far below the appealable value, was one of a large class in which similar remands had been made. Their Lordships will assume that this leave to appeal was properly granted, and that the object of the appeal, or at least its principal object, is to test the correctness of the principle on which remands in this and similar cases have been directed, and the burthen of proof to some extent cast on the plaintiff in suits of this nature.

In order to do this, it is necessary shortly to review the law relating to *Lakhiraj* tenures within the Provinces embraced by the Perpetual Settlement, and some recent decisions of the High Court of Calcutta concerning it.

The foundation of that law is well known to be Regulation XIX of 1793. That Regulation, after affirming in the strongest terms the *primâ facie*, or, so to speak, Common law right of the ruling power to a certain proportion of the produce of every bigah; after declaring all *Lakhiraj* tenures to be exceptional and in contravention of that right; that many of the existing tenures of that kind were invalid; but that all, whether valid or invalid, had been excluded from the Decennial Settlement; and that the *jumma* assessed upon the estates of individuals under that Settlement was to be considered as exclusive and independent of all *Lakhiraj* lands, whether exempted from the *Khiraj* or public revenue, with or without due authority, proceeded thus to deal with the then subsisting *Lakhiraj* tenures. It divided them into two classes, *viz.*, those created by grants made previous to the 12th of August, 1765, the date of the Grant of the *Dewanny* to the East India Company, and those created by grants made between that date and the 1st of

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December, 1790. The former by the second section were, subject to certain conditions, declared to be valid. The latter, with certain exceptions, and subject to certain conditions, were, by the third section, declared to be invalid; and, as such, to be resumable and subject to future assessment. The Regulation then went on to sub-divide the invalid and resumable tenures into two classes, *viz.*, those which comprised lands not exceeding 100 bigahs, and those which comprised lands in excess of that quantity. The revenue which might thereafter be assessed on the former was declared to belong to the *Zemindar* or *Talookdar*, within whose estate the lands were situate. The revenue, which might thereafter be assessed on lands falling within the latter class, was declared to belong to the Government. And thus the power of bringing a resumption suit to impeach a *Lakhiraj* tenure existing at the date of the Decennial Settlement, and to have revenue or rent assessed thereon came to belong to the Government, or to private proprietors, according to the quantity of land comprised in such tenure. Having thus dealt with all the *Lakhiraj* tenures then subsisting, the Regulation proceeded to legislate against the future conversion of any rent-paying lands comprised in the Decennial Settlement into rent-free lands. This was done by the 10th section, which is in these terms:—

"All Grants for holding land exempt from the payment of revenue, whether exceeding or under 100 bigahs, that may have been made since the 1st of December, 1790, or that may be hereafter made, by any other authority than that of the Governor-General in Council, are declared null and void, and no length of possession shall be hereafter considered to give validity to any such grant, either with regard to the property in the soil or the rents of it. And every person who now possesses, or many succeed to the proprietary right in any estate or dependent *Talook*, or who holds, or may hereafter hold, any estate or dependent *Talook*, in farm of Government, or of the proprietor, or any other person, and every Officer of Government appointed to make the collections from any estate or *Talook* held *Khas*, is authorised and required to collect the rents from such lands at the rate of the Pergunnah, and to dispossess the grantee of the proprietary right in the land, and to re-annex it to the estate or *Talook* in which it may be situated, without making previous application to a Court of Judicature, or sending previous or, subsequent notice of the dispossession or annexation to any Officer of Government; nor shall any such proprietor, farmer or dependent *Talookdar* be liable to an increase of assessment on account of such grants which he may resume and annul during the term of the engagements that he may be under for the payment of the revenue of such estate or *Talook* when the grant may be so

resumed and annulled. The managers of the estates of disqualified proprietors, and of joint undivided estates, are authorized and required to exercise, on behalf of the proprietors, the powers vested in proprietors by this section."

It is obvious that this enactment relates solely to lands which, on the 1st of December, 1790, were *mál* or rent-paying lands; that it treats the grant of a rent-free tenure in such lands not as voidable, but as absolutely void; that it reserves to the Government no right in such lands unless they happened to be held *khas*; and that it positively declared, that no length of possession should give validity to any such grant. It further expressly authorized the land-owner to dispossess the grantee by the high hand, without having recourse to the machinery provided by other sections of the Regulation for the resumption or assessment of resumable *Lakhiraj* tenures; or to any other legal proceeding.

The machinery, provided for resumption suits by the Regulation of 1793, was modified by several subsequent Regulations, and in particular by the Regulation II of 1819, which has been already mentioned. And in process of time land-owners, seeking to enforce their rights under the 10th section of that Regulation, seem to have found it expedient to do so by means of legal proceedings rather than in the summary manner authorized by that enactment. An important distinction was, however, established by judicial decisions between a suit to enforce a claim under this 10th section, and ordinary resumption suits whether brought by Government or indvidual proprietors under the earlier sections of the Regulation. Whatever doubts may at one time have existed, it became unquestionable, after the decision of this Committee in the case of the *Maharajah of Burdwan* (1), that the right of the Government to resume a voidable *Lakhiraj* tenure comprising more than 100 bigahs was subject to the sixty years' limitation; and that by parity of reasoning the right of a *Zemindar* to resume a voidable *Lakhiraj* tenure, comprising less than 100 bigahs, was subject to the twelve years' limitation. On the other hand, the Courts construing the Regulation of Limitation in connection with that part of sec. 10 of Regulation XIX of 1793, which says, that no length of possession shall give validity to such a grant, came (whether on sound principles or not it is immaterial here to consider) to the conclusion, that the claim of a land-owner under this section was subject to no limitation. Notwithstanding, however, these distinctions between the two rights, and between the suits to enforce them, a loose practice seems to have sprung up, under which land-owners claiming the right to assess lands held and enjoyed rent-free brought their suits generally under

(1) 4 Moo. I. A., 466.

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Regulation II of 1819, without specifying whether they were seeking to enforce the right given to them by the 7th and 9th sections of Regulation XIX of 1793, or that given to them by the 10th section. The result was that the stringent provisions of Regulation II of 1819, and of the other Regulations *in pari materia* were indiscriminately applied; and that in all cases the burthen was cast upon the defendant of proving, by the production of ancient documents, that his tenure existed before the 1st of December, 1790. If he established this he would probably succeed, whether his ancient *Lakhiraj* tenure was voidable or not, the suit, unless the plaintiff happened to be an auction-purchaser at a Government sale, being barred by limitation.

So stood the law and practice until Act X of 1859 was passed. The 28th section of that Act repealed so much of the 10th section of Regulation XIX of 1793 as authorized the land-owner summarily to dispossess the grantee of a rent-free tenure; it provided that every land-owner, who should desire to assess any such land or to dispossess the grantee, should take proceedings before the Collector which were to be dealt with as a suit under that Act; and it fixed a period within which such suits were to be brought.

Between the passing of this Act and the beginning of the year 1865, the Courts of Bengal seem to have been somewhat divided upon several questions touching the proper mode of enforcing the claims of *Zemindars* and other land-owners, under the 10th section of Regulation XIX of 1793; and some, at least, of such questions were finally referred for adjudication by a Full Bench, consisting of seven Judges of the High Court, in the appeal of *Sonatun Ghose* v. *Moulvi Abdool Farar*. This case, which was numbered No. 869 of 1864, was decided on the 25th of January, 1865(1). The Judges were divided in opinion, each delivering a separate judgment, in which the law on the subject was elaborately reviewed. But the following was the final judgment of the Court. All the Judges held, that before the passing of Regulation II of 1819 the Civil Courts under their ordinary jurisdiction were competent to entertain regular suits by *Zemindars* for the declaration of their rights to resume revenue illegally alienated subsequent to 1790, and for possession of the land held rent-free under grants or titles which had their origin subsequently to the 1st December in that year. Four of the Judges against three held, that such suits were unaffected by the passing of Regulation II of 1819, section 30, of which the proper operation was limited to suits for the resumption of *Lakhiraj*, existing prior to the 1st of December, 1790. And four

(1) 2 W. R., 91; B. L. R., Sup. Vol., 109. See also *Parbati Charan Mookerjee* v. *Rajkrishna Mookerjee*, B. L. R., Sup. Vol., 162.

of the Judges against three held, that the jurisdiction of the ordinary Civil Courts to try the suit was not taken away or affected by the 28th section of Act X of 1859.

The second of these rulings is, that which is most material to the decision of the present appeal: the necessary consequence of it being that a suit to enforce a claim arising under the 10th section of Regulation XIX of 1793, if brought under the 30th section of Regulation II of 1819, in order to get the benefit of the procedure there prescribed, is improperly framed.

The same case came again before a Full Bench of seven Judges,(1) somewhat differently composed, on the 22nd of February, 1865. They unanimously held, that they were bound by the decision of the 25th of January, 1865, so far as it went. But they further decided, that the regular suit which, notwithstanding the 28th section of Act No. X of 1859, might still be brought to assess or resume invalid *Lakhiraj*, created since the 1st of December, 1790, was not subject to limitation; and further, that in every fresh suit it lay upon the plaintiff to prove that the case was one falling within the 10th section of Reg. XIX of 1793. And the Court added, "He must prove his allegation, that the land held by the defendant, and which he claims to be *Lakhiraj*, is part of the *mâl* land of the plaintiff. If he prove that fact, and show that it was assessed to the public revenue at the time of the Decennial Settlement, it may be presumed that the right under which the defendant claims to hold as *Lakhiraj* commenced subsequently to the 1st of December, 1790, unless the defendant gives satisfactory evidence to the contrary." In another case, decided the same day by the same Judges,(2) they adhered to the ruling in No. 869 of 1864, to the effect, that section 30 of Reg. II of 1819 related only to suits for resumption of *Lakhiraj* created prior to the 1st of December 1790, and held that, as a consequence of that ruling, every suit alleged to be brought under section 30 was necessarily not one to which the rule created by section 10, Reg. XIX of 1793, of exemption from limitation, applies. They further decided, that the plaintiff, having erred in stating that the suit was brought under section 30 of Reg. II of 1819, should, if he wished to do so, be allowed to amend his plaint, and that, in such case, the cause should be remanded for re-trial; but that if the plaintiff did amend his plaint, he must show on the face of it, as required by the law of procedure, when his cause of action accrued, and if it accrued beyond the period ordinarily allowed by any law for commencing such a suit, upon what ground an exemption was claimed.

There has been, so far as their Lordships are aware, no appeal from these decisions of a Full Bench of the High Court.

(1) *Sonaton Ghose* v. *Moulvie Abdool Turrub*, 2 W. R., 205.
(2) *Heera Money* v. *Koonj Beharee Holdar*, 2 W. R., 207.

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They have since given the law to the Division Benches of that Court; and the order of remand, of which the present appeal complains, is one of many which have been made in accordance with them. The judgment in the case of *Khelut Chunder Ghose* v. *Poorno Chunder Roy*,(1) (No 268 of 1864), is, in fact, only a recapitulation of what had been decided and laid down in one or other of the above-mentioned decisions of the Full Bench.

No attempt was made at the Bar to impugn the correctness of the first decision in No. 869 of 1864. It must be held, therefore, to be settled law that the provisions of the 30th section of Reg. II of 1819 do not apply to such a suit as the appellant's and the only questions which the appeal raises, are whether, this being so, the High Court has been right in remanding this and other suits similarly circumstanced for re-trial; whether on such a re-trial the burthen of proof should be cast in the degree in which the High Court cast it on the plaintiff; and lastly, whether there is anything in this particular case which renders such an order of remand, though otherwise correct, improper.

Their Lordships are very clearly of opinion, that the remand for re-trial upon an amended plaint was not only correct, but an indulgence to the plaintiff, whose suit, if not so remanded, ought to have been dismissed. The invocation of the 30th section of Reg. II of 1819 is not mere matter of form to be rejected as surplusage. The effect of it is to cause the case to be tried according to the procedure and presumptions, prescribed by that enactment, and the enactments *in pari materiâ*, greatly to the advantage of the plaintiff, and consequently to the prejudice of the defendant. It follows that, if the procedure was not applicable to the case, there had been a mis-trial.

Again their Lordships think that no just exception can be taken to the ruling of the High Court touching the burthen of proof which in such cases the plaintiff has to support. If this class of cases is taken out of the special and exceptional legislation concerning resumption suits it follows that it lies upon the plaintiff to prove a *primâ facie* case. His case is, that his *mâl* land has, since 1790, been converted into *Lakhiraj*. He is surely bound to give some evidence that his land was once *mâl*. The High Court, in the judgment already considered, has not laid down that he must do this in any particular way. He may do it by proving payment of rent at some time since 1790, or by documentary or other proof that the land in question formed part of the *mâl* assets of the estate at the Decennial Settlement. His *primâ facie* case once proved, the burthen of proof is shifted on the defendant, who must make out that his tenure existed before December, 1790.

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(1) 2 W. R., 258.

It may be objected that the result of this ruling may be that plaintiff will sometimes fail where under the former and looser practice they would have succeeded in assessing or resuming the land. But this can only happen by reason of the inability of the plaintiff to give *primâ facie* proof of the fact which is the foundation of his title; a circumstance not likely to occur unless the defendants, or those from whom they claim, have been long in possession of the tenure impeached. Nor is it, in their Lordships' opinion, to be regretted if in such cases effect is given to those presumptions arising from long and uninterrupted possession, which were heretofore excluded only by the exceptional procedure applied to resumption suits under the Regulations, which have now been decided to be inapplicable to suits of this nature, and by relieving defendants from a burthen which every year made it more difficult to support.

The only other point to be decided on this appeal is, whether there is any peculiarity in this case which ought to take it out of the general rule. Their Lordships are of opinion, that there is not. Mr. Doyne argued that the defendants had admitted that the lands in question, with the exception of the small quantity no longer claimed, were within the appellant's estate. But such an admission is obviously not sufficient to meet the burthen of proof thrown upon the plaintiff. It was at most an admission that the lands were within the ambit of the estate, not that they had ever been *mâl* lands. In fact, the defendants strenuously asserted the contrary. The appellant, therefore, having failed to give any evidence on the second trial in support of his amended plaint, the decree dismissing his suit was right.

In the other appeal, that of *Hurryhur Mookhopadhya* v. *Madub Chunder Baboo* the suit was also, on the face of it, brought under section 30 of Ben. Reg. II of 1819, though to enforce a claim under section 10 of Reg. XIX of 1793. In fact, in this case there was a preliminary proceeding under the 28th section of Act No. X of 1859. The defendants (the respondents) undertook to prove that their tenures existed before December, 1790. The Principal *Sudder Ameen* decided on the 9th of April, 1863, that they had failed to do so and decreed in favour of the appellant. That decree was affirmed on appeal by a Division Bench of the High Court on the 14th of March, 1864. An application for a review of judgment was made on the 10th of June, 1864, on the ground, amongst others, that the appellant having stated that the lands were his *mâl* lands, the Court had erred in throwing the *onus* of proof on the defendants. The review was admitted on this ground; and on the 24th of August, 1865, the Court made an order in these terms:—"A notice will issue to the other side, when the case will be argued, whether or not our decision, which has been over-ruled by a subsequent ruling

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of the Full Bench, should not be altered;" and on the 6th of September, 1867, the Court made the second order for a remand saying "the *onus* being on the *Zemindár*, he will be permitted to amend his plaint; and he will have to prove that the land is *mál* by showing that he has received rent for the same."

Their Lordships conceive that, subject to the point which will be subsequently noticed, the question, whether this remand was correct must be governed by their decision on the other appeal. They do not think that the order is vitiated by the specification of one amongst the various methods by which the plaintiff might prove his case. They do not conceive that the High Court really meant to limit him to that kind of proof. It was, however, argued by Sir Roundell Palmer that the remand of this particular case was improper, because the suit had already been finally decided in the appellant's favour and ought not to have been admitted to a review, in order to give the defendants the benefit of what had been decided in other cases after such final judgment had passed. Their Lordships, however, observed that the application for a review seems to have been regularly made within ninety days of the date of the decree sought to be reviewed, pursuant to Sec. 377 of the Code of Procedure; and this being so their Lordships conceive that it was competent to the High Court to delay, if they did delay, their final decision on that application until the law on which so much doubt existed had been settled by the judgments of the Full Bench of the High Court, which have been already noticed. Therefore, in this case also, their Lordships think that the final order of the High Court was correct. They will, accordingly, humbly advise Her Majesty to dismiss both appeals. As the respondents have not appeared on either, it is unnecessary to say anything about costs.

See however the recent case of *Sashibhusan Bakshi* v. *Mahomed Matain* (1906), 4 C. L. J., 548, which distinguished the case of *Hurryhur Mukhopadhay* v. *Madhobchandra*, and it was held that when a purchaser at a *putni* sale proves his purchase and on his applying for possession is resisted by persons holding lands included within the ambit of the *putni* tenure, who set up the defence that the lands held by them are *lakhiraj* and not *mál*, it is for the defendants to prove that the lands have been held not under the *putni* tenure, but as *lakhiraj*.

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May 25.

v.

MAHOMED ESOF.

[*Reported in* 10 *B. L. R.*, 406 *P. C.*; 3 *P. C. J.*, 151; 18 *W. R.*, 113.]

Their Lordships delivered the following judgment:—

The subject-matter in dispute on this appeal is a portion of *chur* land thrown up by the Kurnafoolee, a navigable and tidal river in the District of Chittagong.

The appellants are the representatives of one Anundonarain Ghose, and, as such, are the *Zemindars* of Turruff Tej Sing, situate on the eastern shore of the river. Their estate appears to have been, in 1837, the subject of a careful Government revenue survey, and, as then surveyed and settled, comprehended three mouzahs, named Kalagaon, Chukra, and Lakhera, of which the *chittahs* or measurement papers made on the occasion of that survey are set forth in the record.

The respondents, other than the Collector,—so far as it is necessary to notice them—are the co-sharers in an estate known as *Talook* Koreban Ally, and situate on the western shore or bank of the river. That estate was also surveyed and measured in or about the year 1839, and the *Chittahs* of one of the villages included in it, Bakolea, is set forth in the record.

These parties, though made respondents, have not appeared on the appeal, which has been therefore heard against them *ex parte*. Their title, however, has been fully and ably supported by the learned Counsel for the Government which is in the same interest with them.

From what has been stated, it appears that the estates of the appellants, and these *Talookdars*, whom it will be convenient to call the respondents, speaking of the Government, whenever it is necessary to do so, as the Government, were, as originally measured and settled, bounded and separated by the Kurnafoolee.

Sometime before 1847, that river threw up in its main and navigable channel certain islands or *churs*, of which it is only necessary to specify two, *viz.*, Chur Durmeean and Chur Dukhin. A settlement of these was made by Government with the respondents in 1847; the revenue assessed on Chur Dukhin being

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Rs. 200-6-6. Anundonarain Ghose is said to have presented at least one petition complaining of this proceeding; but, for the purposes of this litigation, it must be assumed that the *churs* in question were the property of Government, and were duly granted to and settled with the respondents. And it appears from some of the proceedings, that they were treated as appurtenant to Mouzah Bakolea.

Before the end of 1852, the river had swept away the whole of Chur Durmeean, but had formed another low *chur* in the vicinity of its site. Nor is there now, if there ever was, any question that this, which was known as Lami or Lamchi Chur, was settled by Government with the respondents in lieu of Chur Durmeean in December, 1852.

Besides this latter *chur*, however, the river had before 1854 thrown up a considerable quantity of other *chur* land towards its eastern shore. This included the land now in dispute or so much of it as was then above water. The record shows that Government determined to make no claim to this under Act IX of 1847 as an island thrown up in a large and navigable river, but that, having been claimed by several of the proprietors in the neighbourhood, it was, in order to prevent affrays, attached by the Collector until the right of possession should be determined, and thereupon became the subject of a proceeding under Act IV of 1840 before the Magistrate, who had to adjudicate on the *primâ facie* right to possession between no less than sixteen different claimants. That officer began by directing the *Darogah* to make a local investigation and cause a map to be prepared. The result of this was the *Darogah's* map No. 43, which is in evidence, and his report of the record. This map shows four principal *churs* on the eastern side of the then main channel of the river, A, B, C, and D. Of these A and B are colored green, and represent the land then in dispute. C and D are colored yellow, and are treated as *churs* not in dispute which had been settled with the respondents. D, their Lordships believe, is admitted to be the Lamchi Chur. Whether C is or is not the Dukhin Chur, or whatever remained of that *chur*, is still matter of dispute. But it is perfectly clear that it was, in 1854, treated as *chur* land which had been settled with the respondents, and was then in their undisputed possession.

A was divided into several portions, and the result of the Magistrate's proceeding was to award possession of these two different claimants; Grindochunder Ghose and Sreemutty Noberungeny Dossee, who then, as managers or otherwise, represented the estate of Anundonarain Ghose, getting part, and the respondents getting the larger portion lying to the west of the old channel of the river which was adherent to their settled Chur D. It is, however, unnecessary to pursue this part of the

case, since the title to no part of A is now in dispute. B was claimed by those who then represented the appellants' estate as a reformation on the site of that part of their Mouzah Kalagaon, which had been previously diluviated, or washed away by the river. It was claimed by the respondents as formed by "alluvion on the east of the Dukhin Chur, within the *chuck bund* recorded in their decree of the appellate Court." *The Darogah* found that Chur B was an accretion to the *chur* marked C, which had been settled with the respondents. But he also found that it had been formed by alluvion in the place where the lands of Mouzah Kalagaon, belonging to the appellant's *Zemindary*, were formerly broken; and that during the ebb-tide men could walk on foot from the said Mouzah to the said *chur*. The Magistrate's proceeding shows how that officer dealt with the question of possession. He seems to have considered that the disputed *churs* being still under water at flood-tide, could not have been effectually in the possession of any of the parties; that claims founded on reformation upon a site capable of identification could not be tried in any but a regular civil suit, and that the adherence of the land in dispute to lands not in dispute constituted a *primâ facie* title by accretion, on which he ought to award possession. He accordingly did award possession of B to the respondents as the holders of the settled Chur C, and left those who represented the estate of Anundonarain Ghose to their remedy by civil suit. The date of this proceeding was the 22nd of December, 1854.

The present suit was accordingly brought by Mr. Fagan, who had been appointed Receiver of Anundonarain Ghose's estate by the late Supreme Court of Calcutta. It was not, however, commenced until the 3rd of May, 1861, *i.e.*, more than six years after the date of the Magistrate's award. The appellants seek to account for this delay by attributing it to circumstances connected with the administration of Anundonarain's estate. However that may be, it is obvious that the consequences of this delay, in so far as it may have occasioned any difficulty in the determination of the questions between the parties by means of the loss of evidence, or the intermediate changes caused by the action of the river, ought to fall upon the appellants. The suit, as originally brought, was to recover possession of 71 drones of alluvial land; the defendants to it were not the only co-sharers in *Talook* Koreban Ally, but also Horo Lal Mohunt, another of the sixteen claimants before the Magistrate: and the lands appear to have been claimed partly as a reformation on sites forming part of the wholly or in part, diluviated villages of Mouzahs Kalagaon, Chukra and Lakhera; and partly as an accretion to such reformed lands. The Collector, as representing Government, was afterwards made a party to the suit; Government having an interest adverse to the claim

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of the appellants, inasmuch as it was entitled to the additional revenue assessable on the lands in dispute, if they were an accretion to the *chur* land of the respondents; whereas it was not entitled to any additional revenue upon them, if they were a reformation on the appellants' lands, and, therefore, included within the limits of his formerly settled *Zemindary*.

The first proceeding in the suit which it is material to notice, is the local inquiry made under the order of the Court by the *Ameen* Moonshee Ashanoollah. His report bears dated the 28th of December, 1861, and the map accompanying it is No. 7. The report and the map showed, among other things, that of the 71 drones of land claimed, between 8 and 9 drones composed or formed part of a *chuck* marked in the map with the Bengali letter (*kha*); and were in the possession of the defendant, Horo Lal Mohunt, though claimed adversely to him in another suit by one Abdool Mujeed. A compromise was afterwards effected by Mr. Fagan, as Receiver, and this person, who admitted the appellants' title, and there is no longer any question touching this portion of the land claimed, or with the Mohunt as defendant. The report and map also proved that between 44 and 45 drones, forming other part of the land claimed, composed the *chuck* marked in the map with the Bengali letter "খ" (*kha*); and that they were held by the defendants, the co-sharers in *Talook*, Koreban Ally on the strength of the Magistrate's award. The son and representative of Abdool Ali, one of these defendants, afterwards made a compromise with the Receiver (admitting the title of the appellants) in respect of his share which comprised between 4 or 5 drones of the disputed land. It is not easy, if possible, to distinguish these 4 or 5 drones on map No. 7: but they are indicated on map No. 20, which will be afterwards mentioned. The result of this *ameen's* investigation and his report was altogether in the appellants' favour. He found that all the land in the two *chucks* was a reformation on sites which, upon local inquiry and measurement, he succeeded in identifying with the *dags* appertaining to the diluviated *Mouzas* of the appellants' *Zemindary*; and in paragraph 5 of this report, he seems to intimate that no part of Chur Dukhin was to be found in the disputed land; and that the latter could not be identified by any *dags* as formed on the site of any part of the respondents' *Mouzah* Bakolea. The last sentence of this paragraph, however, suggests a doubt whether he clearly apprehended the respondents' case; and did not make some confusion between Mouzah Bakolea, as originally settled, and the Chur Dukhin to which, as they alleged, the land in dispute had accreted. This map did not give in detail the *dags* by which the identification of the site was said to have been established.

The suit, at this stage of it, was transferred from the Principal *Sudder Ameen* to the Zillah Judge, who caused a second local

investigation to be made by another *ameen*, named Guggun Chunder Dutt. His report and the map made by him is that numbered 20. This report and map purporting to be founded on local survey, the comparison of *dags*, and the examination of witnesses, go to establish these facts: 1st that the whole of the *chur* marked A in that map, being all the land that now remains in dispute, was a reformation on the site of the appellants' diluviated Mouzahs; 2nd, that the *chur* marked B was a similar reformation, but comprised the lands in respect of which the compromises with the Mohunt and the heir of Abdool Ali had been effected; and, 3rd, that the *chur* Dukhin, settled with the respondents in 1847, had then been diluviated, no part of it being included in *chur* A, and its site being assumed to be identical with that of a sandy *chur* in process of reformation near the western shore of the river. These conclusions were supported by, and in a great measure founded on, the supposed tracing and identification of the *dags* contained in the measurement papers of the appellants' estate as measured and surveyed in 1837. No attempt seems to have been made by this *ameen* to trace in the disputed land the *dags* of the respondents' Mouzah Bakolea or Kismut Dukhin Chur. His view of the formation of the *chur* in dispute is thus stated in the 5th paragraph of his report:—"The disputed *chur* has arisen on the site of the diluviated lands of the plaintiffs at first on the eastern part of the river, and gradually increasing, has accreted on the southern and eastern parts to the plaintiffs' original land. It is not seen that the alluvion began as accretion to the Kismut Dukhin Chur alleged by the defendants to be settled with them"

The suit was after this heard by the Judge, who erroneously dismissed it on the ground that it was barred by limitation. This was set right by a decree of the High Court dated the 22nd of June, 1863, which remanded the cause, directing the Judge to inquire and decide whether the whole or any portion of the land claimed was in the possession of the defendants for more than twelve years prior to the suit, and, if not, to try it on its merits and with reference to the provisions of Regulation XI of 1825.

The form of this remand seems to have led to another local investigation by a third *ameen*, named Gour Mohun Biswas, whose report is dated the 10th of March, 1865, and whose map is numbered 29. The object of this investigation was to trace, in the disputed land, if possible, land which had been settled with the respondents in 1847, or at all events more than twelve years before the commencement of the suit. The report speaks of Mouzah Bakolea, but their Lordships conceive that the attempt really was to trace the *dags* of Chur Dukhin, which after the settlement and survey of 1847, seems to have been treated as appurtenant to Mouzah Bakolea. This report was altogether adverse to the contention of the respondents. The

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investigation occupied fourteen days, and its result was to show that the boundaries of the respondents' settled land would fall within the then main channel of the river, and considerably to the west of the disputed *chur*. This report, therefore, by negativing the case of the respondents, went to confirm that made in favour of the appellants by the reports of the two other *ameens*.

The cause then came on for a second hearing before the Judge who tried it on the following issues:—1st, whether the suit was barred by limitation; and, 2ndly, whether the land in suit was a formation on or an accretion to the original site of land in the plaintiffs' estate; or whether it formed a portion of, or an accretion to, the land settled with the defendants. He found both these issues in favour of the appellants. He seems to have held that the first was determined by the result of the last local investigation, which showed conclusively that the disputed *chur* contained no part of the land settled with the respondents in 1847. On the second issue he found, in conformity with all the *ameen's* reports, that the land in suit was clearly a formation on the original site of the plaintiffs' estate, and was connected with it, and that the plaintiff was, therefore, entitled to be placed in possession of it.

This decision was reversed, and the suit dismissed on appeal to the High Court, by a decree dated the 1st of December, 1865, which, on a re-hearing on review before the same Judges, was confirmed by an order dated the 1st of April, 1867. The present appeal is against that decree, and that order on review.

Their Lordships cannot say that either judgment of the High Court affords satisfactory grounds for the dismissal of the appellants' suit.

The first deals only with the latest *Ameen's* report, and explains away the effect of that by assuming that, in making his measurements, he may not have taken a correct starting point. The Zillah Judge, however, in his judgment, expressly states twice that no objection was taken before him to the *ameen's* starting point. The investigation was carefully conducted in the presence of the respondents' agents, and it is difficult to suppose that the objection would not have been taken, if there was any foundation for it. Again, the learned Judges of the High Court proceeded on the assumed incompatibility of the case thus made by the appellants with the state of things which existed in 1854 at the date of the Magistrate's proceeding. They came to the conclusion that Chur Dukhin was the *chur* marked C in the *Darogah's* map; that the Magistrate had carefully decided against the title set up by the appellants and in favour of the respondents; that the disputed Chur B, was an accretion to Chur Dukhin; and that the latter had never been diluviated.

But if, for the sake of argument, it be admitted that C in the *Darogah's* map correctly represented what then remained of Chur Dukhin, it would by no means follow that what constituted C in 1854 had not afterwards been washed away, and the conclusion that it still existed as part of the land in dispute seems to be incompatible with the reports of all the *ameens*, and notably with that of the last. Moreover, as their Lordships have already observed, the Magistrate by his proceedings seems expressly to have declined to decide on the rights resulting from an identification of site, and merely to have held that the land in dispute, being adherent to C, was *primâ facie* to be treated as an accretion to it. Again, the judgments under appeal do not seem to their Lordships effectually to distinguish or deal with the questions raised in the cause.

It undoubtedly lay on the appellants, who were seeking to disturb the respondents' possession of nearly seven years' duration, to show a good title to the land in dispute. They seem to have set up an alternative title, claiming the land either as a reformation on a site identified with that of their diluviated Mouzahs, or as an accretion to their estate by reason of its being a formation opposite to their lands, and only separated from them by a small channel, fordable at low-water. This latter was the question chiefly discussed on the review; and if it had been the only ground on which the appellants could recover, their Lordships would have great difficulty in saying that they had made out a good title, or had shown that the Magistrate was wrong in treating the land in question as an accretion to the respondents' settled land represented by C, and in awarding possession of it accordingly. But it seems to their Lordships that, inasmuch as the result of all the local investigations, including that of the *Darogah*, was in favour of the assertion that the land now in dispute was a reformation upon the site of the appellants' diluviated Mouzahs, the Zillah Judge was right in finding that fact to be proved. The question then arises, what is the legal result of such a finding? Is the *primâ facie* title to the land thus shown capable of being displaced by any better title existing in the respondents? According to their Lordships' view of the evidence, no part of Chur Dukhin at the date of the decree, formed part of the disputed land, which may be assumed to be correctly indicated by Chur A, in the map No. 20 of Guggun Chunder Ameen. They are, however, not so clear that Chur C, in the *Darogah's* map, did not correctly indicate what remained of Chur Dukhin in 1854. This supposition is no doubt inconsistent with the report of the last-named *ameen*, confirmed in some measure by the map of a Deputy Collector made in November, 1852 (No. 30), which also assigns a different site to the now diluviated Chur Dukhin. On the other hand, it is difficult to see how the award of the Magistrate ever came

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to be made, if C in the *Darogah's* map did not correctly indicate land settled with the respondents, and then in their possession. And this latter map is on that point consistent with the Collector's map, No. 46.

Whilst, therefore, their Lordships think that the appellants have established the identity of the site of the land in dispute with that of lands originally included in their *Zemindary*, and afterwards washed away by the river, they will, for the determination of this appeal, take as also proved, that the *chur* marked C on the *Darogah's* map, though it has since been swept away, existed in 1854 as a *chur* settled with, and in the possession of, the respondents, and that the land in dispute was then adherent to it. They here advisedly use the term "adherent," because it appears to them that there is an important distinction between mere physical adhesion and that "accretion" or *incrementum latens*, which, by reason of its gradual and imperceptible formation, is recognised by the law as belonging to the persons to whose land it is adjacent. In the present case, the evidence touching the manner in which the *chur* in question was formed, is extremely scanty; and their Lordships are by no means satisfied that it was such as would make the land an "accretion" according to the strict legal definition of the term.

Their Lordships have now to consider what is the law applicable to the facts thus found, and what are the rights of the parties thereunder. And the long and able arguments addressed to them on this subject, render it desirable to review the law of alluvion which obtains in Bengal, as declared by the positive provisions of Regulation XI of 1825, or by the decided cases, which the learned Counsel for the respondents have contended cannot easily, if at all, be reconciled with each other.

The first section of the Regulation,—after specifying as the subjects which called for legislation the following cases, *viz.*, firstly, the throwing up of *churs* or small islands in the midst of the stream or near one of its banks; secondly, the carrying away of portions of land by an encroachment of the river on one side, and an accession of land at the same time or in subsequent years, gained by the dereliction of the water on the opposite side; and, thirdly, similar instances of alluvion, encroachment, and dereliction on the sea coast bordering the southern and south-eastern limits of Bengal—enacts that the rules declared by the following sections shall have force of law throughout the Presidency of Fort William. The second section provides that local usage, whenever it exists, shall prevail. The third section that, when there is no local usage, the general rules declared in the fourth section shall be applied to the determination of all claims and disputes relative to lands gained by alluvion, or by dereliction either of a river or the sea.

This fourth section is divided into five clauses :—

The first deals with land gained by gradual accession (*i.e.*, alluvion in the proper sense of the word), and provides that it shall be considered an increment to the tenure of the person to whose land or estate it is annexed, subject to the right of Government to assess additional revenue upon it.

The second provides that the former rule shall not be applicable to cases of sudden avulsion, where the identity of the land is not destroyed, preserving in that case the rights of the original owner.

The third makes a *chur* or island thrown up in a large navigable river (the bed of which is not the property of an individual), or in the sea, the property of the Government, if the channel between it and the shore be not fordable, but provides that, if such channel be fordable at any season of the year, the *chur* shall be considered an increment by alluvion to the tenure of the person whose estate is most contiguous to it, and shall be subject to the provisions of the first clause.

The fourth clause deals with *churs* in small rivers, the beds of which have been recognised as the property of individuals; giving them to the proprietor of the bed of the river. And the fifth clause provides that "in all cases of claims and disputes respecting lands gained by alluvion, or by dereliction of a river or the sea, which are not specially provided for by the foregoing rules, the Courts shall be guided by local usage, if any be established as applicable to the case; and, if not, by general principles of equity and justice."

Two observations arise on this statute :—

1. There is nothing to show that the first rule contemplates land other than that which commonly falls within the definition of "alluvion," *viz.*, land gained by gradual and imperceptible accretion, the *incrementum latens* of the Civil law.

2. No express provision is made for the case of land which has been lost to the original proprietor by the encroachment of the sea or a river, and which, after diluviation, re-appears on the recession of the sea or river. But on the other hand, there is nothing to take away or destroy the right of the original proprietor in such a case; which must therefore, be determined by "the general principles of equity or justice" under the fifth rule.

That the right of the proprietor in the case last put exists and is recognized by law in India, is established by at least two cases decided at this Board, and therefore binding on their Lordships, *viz.*, the case of *Mussamut Imam Bandi and another* v. *Hargavind Ghose*(1) and the recent case of *Lopez* v. *Madanmohan Thakur*,(2) decided on the 11th July, 1870.

(1) 2 B. L. R., P. C., 4; 4 Moo. I. A., 403.
(2) 5 B. L. R., 521; 13 Moo. I. A., 467.

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The former is a clear authority that the identity of the site may be established by maps and ancient documents; although by the long submergence of the land, all external marks and means of identification have been obliterated. It is not, however, very clear in that case whether the question between the parties was one of boundaries of the original estates; or of dispute between one party claiming the land as a reformation on his original land, and the other claiming it as an accretion under the first clause of the 4th section of the Regulation. The latter, however, was clearly the issue between the parties in the case of *Lopez* v. *Madanmohan Thakur*.(1) It may, however, be said that that case is distinguishable from the present by its peculiar circumstances, inasmuch as in the former the encroachment of the river had in the first instance swept away the surface of the plaintiffs' *Mouzah*, and made the defendant, who held lands behind those so swept away, for the first time a riparian proprietor; and because the plaintiff had, by the preparation of the *tanabundee* map and otherwise, taken peculiar precautions to preserve and protect his right in the soil against his neighbour as well as the Government.

It was, moreover, contended that some at least of the principles laid down in the case of *Lopez* v. *Madanmohan Thakur*(1) are in conflict with the previous decision of this Board in the case of *Eckowri Singh* v. *Hiralal Seal*.(2) That case had not been reported when that of *Lopez* v. *Madanmohan Thakur*(1) was decided, and does not appear to have been cited in the argument. Their Lordships cannot, however, perceive any inconsistency between the two judgments. The decision in the case of *Eckowri Singh* v. *Hiralal Seal*(2) seems to have proceeded on two grounds, namely, 1st, that it was not competent to the plaintiffs, who had alleged a title to the land as an accretion to their estate, to raise at the hearing of their appeal a different case, *viz.*, "one" simply of original ownership of the site of the lands reformed; and 2ndly, that had such a title been properly pleaded, the evidence failed to establish the identification of the site. The case of *Mussamut Imam Bandi* v. *Hargavind Ghose*(3) is cited in the judgment which throws no doubt upon the validity of such a title if properly pleaded and proved.

Again, the learned Counsel for the respondents, and in particular Mr. Pontifex, argued broadly that, by diluviation into a navigable river, land is permanently lost to the original proprietor, and becomes the property of the State; and in support of this proposition, they relied much on an American work, "Houk on Navigable Rivers," which they argued was the

(1) 5 B. L. R., 521; 13 Moo. I. A., 467.
(2) 12 Moo. I. A., 36.
(3) 2 B. L. R., P. C., 4; 4 Moo. I. A., 403.

more deserving of attention, by reason of the similarity which exists between the great rivers of America and those of India in their conditions and mode of action. This authority, however, does not appear to their Lordships to assist the respondents' case. The law of alluvion in America seems to be less favourable to riparian proprietors than that of India or of England. For Mr. Houk draws a distinction between estates consisting of a given quantity of land, and defined by a mathematical line, though by one on the margin of a river, and those of which the river is the nominal boundary. He holds that in the former case, alluvion, however small, and however gradually and imperceptibly formed, is the property of the State. And after dealing with this question, he says in s. 258 :—"Nevertheless, it is possible that, by the action of the sea, or a change of the channel of a river, the land so granted may be partly lost. No doubt in case afterwards the land should be washed up again, it would belong to the former owner of the estate originally purchased, and no further. While, however, the land is submerged in the river, the title is in the State." This is consistent with the Civil law, Dig. Lib. XLI, tit I., S. XXX, and with the law of England as declared in the passage cited in the case of *Lopez* v. *Madanmohan Thakur* (1) from Hale "De Jure Maris."

In India the point thus taken seems to be concluded by the authority of the decided cases. The learned Counsel did not contend for a distinction between a tidal river and a navigable river, which has ceased to be tidal. Their Lordships have no reason to suppose that, in India, there is any such distinction as regards the proprietorship of the bed of the river, though in respect of the mode of accretion, there must be some difference between the effects produced by the daily flux and reflux of the tide, and the changes which are mainly consequent on the annual floods. Now, if there is no such distinction, it is clear that the Ganges at Bhagalpore, as in the case of *Lopez* v. *Madanmohan Thakur*,(1) and at Patna, as in the case of *Mussamat Imam Bandi* v. *Hargavind Ghose*,(2) is a navigable, though no longer a tidal river; and, consequently, that these cases are direct authorities against Mr. Pontifex's proposition. Their Lordships accede to what is said in the case of *Lopez* v. *Madanmohan Thakur*,(1) to the effect that a proprietor may, in certain cases, be taken to have abandoned his rights in the diluviated soil. It is unnecessary to consider whether this might not be the result of a successful application for remission of revenue under Act IX of 1847, s. 5. For in the present case, there is nothing from which such abandonment can be inferred. If an

(1) 5 B. L. R., 521 ; 13 Moo. I. A., 467.
(2) 2 B. L. R., 4 ; 4 Moo. I. A., 403.

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application for remission of revenue was made, that application was refused.

The appellants having then established a *primâ facie* title to the land in dispute as a reformation, the question is whether the respondents have a superior title to it as an accretion to their settled *chur*. It is not easy to see upon what principle a title to alluvion by gradual accretion should prevail against the original ownership established by identification of site, unless it be that, where the accretion is so gradual as to be latent and imperceptible during its progress, the law, on grounds of convenience, presumes incontrovertibly that no other ownership can be shown to exist, and so bars inquiry.

In the present case it appears to their Lordships that such gradual and imperceptible accretion as the law contemplates is not proved, and that there are peculiar reasons why the title of the plaintiffs should be preferred to that of the defendants. The latter do not claim the land as an accretion to their original estate. They claim it as an accretion to the *chur* cast up by the river, and settled with them by Government. Let it be granted that the first effect of the retrocession of the river was to leave bare this *chur* in the midst of the stream, and that the land then cast up was beyond the confines of the plaintiffs' estate. The river continues to recede, more land appears and new land, though adherent to that first discovered, is really a deposit on the ancient site of the plaintiffs' land. Why should the ownership of that which is thus regained be altered by the fact that, from some accidental cause, land forming the outer edge of it first emerged as an island? The *Darogha's* map seems to show that this must have been the course of the river's action. Nor, as their Lordships have already observed, is there any trustworthy evidence which traces the history of the disputed land, or shows that, by gradual and imperceptible accretion, it became adherent to the *chur*, which upon the whole evidence must be taken to have now ceased to exist. Such a case as the present is very distinguishable from the ordinary case contemplated by the Regulation in which a river, gradually shifting its channel in one direction, continually eats into one bank, and leaves the other, never ceasing to flow between the competing estates.

Their Lordships are not insensible to the difficulties of identification, and to the danger of encouraging claims of this kind on insufficient evidence. They lay down no rule as to the strictness of proof which the Courts in India may require in such cases.

They also consider that a title founded on the original ownership and identification of site is to be confined *primâ facie* to the reformation on that site. And if, in the present case, it had appeared that some part of the land in dispute had been thrown up beyond the original boundaries of the appellants'

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estate, a question might fairly have arisen between the appellants and the respondents whether that was to be taken to be an accretion to the estate of the former, or to the settled *chur* of the latter. But upon the evidence they are satisfied that the whole of the land which continues to be the subject of the suit is a reformation within the limits of the appellants' original estate. This being so, their Lordships are of opinion that the Zilla Judge was right in decreeing the whole to the appellants. And they will humbly advise Her Majesty to allow the appeal; to reverse the decree of the High Court; and to order that, in lieu thereof, a decree be made dismissing the appeal to that Court, and affirming the decree of the Zilla Judge. The appellants must have from the respondents, the plaintiffs in the suit the costs of the litigation in India and those of this appeal. There will be no order as to the costs of Government on this appeal.

NOTE.—This case was followed by a Full Bench of the Calcutta High Court as authority for the proposition that land reformed on an old site cannot be treated as land gained by alluvion within the meaning of Reg. XI of 1825; *Fahamidannissa* v. *Secretary of State*, I. L. R., 14 Cal., 67, affirmed by the Judicial Committee in I. L. R., 17 Calc., 590, P. C. See also *Kanta Prasad* v. *Abdul Jamir*, 8 C. W. N., 676.

1876.

February 11.

SONET KOOER

v.

HIMMUT BAHADOOR.*

[*Reported in I. L. R.*, 1 *Calc.*, 391; 3 *I. A.*, 92.]

Their Lordships' judgment was delivered by

SIR J. W. COLVILE.—The question raised by this appeal, though short, is somewhat novel, and there appears to be little positive authority upon it.

It appears that Rajah Modenarain Singh, being a Hindu *Zemindar*, but having an illegitimate family by a Mahomedan lady domiciled in his house, granted the *mokurrari* in question in the name of one of the infant daughters of that family, Shurfoonnissa Begum. The grant was clearly intended to create an absolute and hereditary *mokurrari* tenure, inasmuch as it contains the essential words, "generation to generation," which in documents of that kind have always been considered to have that effect; and their Lordships do not find in the particular document any special terms which would distinguish it from a grant of an ordinary *mokurrari istemrari* tenure. It is clear on the evidence that Shurfoonnissa Begum died before her father, and not very long after the creation of the tenure; and further, that after her death, the father during his life, and afterwards his widows, who, by the Hindoo law, are his heirs, continued to receive the rent reserved from those in possession of the lands, the receipt for such rent being, with one exception, taken in the name of Shurfoonnissa, the original grantee, and in that exceptional case in the name Buratee Begum, her mother. One of the questions raised by Mr. Doyne is, what effect ought to be given to that reception of rent as a recognition of the tenure and an answer to the present claim to resume the lands included in it.

From this receipt of rent after the death of Shurfoonnissa, which must have been well known in the family, an inference may undoubtedly be drawn that the *Zemindar* either originally intended to make the grant for the benefit generally of his illegitimate family, or after the death of his daughter was willing that it should have that effect; and it is difficult to suppose that the widows were not for some time willing to act on some

* *Present*:—Sir J. W. COLVILE, Sir B. PEACOCK, Sir M. E. SMITH and Sir R. P. COLLIER.

such view of the transaction. It is impossible, therefore, to treat the parties in possession as mere trespassers. The recognition of their interest by the receipt of rent from them would constitute some kind of tenancy requiring to be determined by notice or otherwise. Their Lordships, however, are not prepared to say that this circumstance is of itself sufficient to defeat the claim of the plaintiff in this suit. They think that the ground upon which the decision of the High Court is to be supported, if supported at all, is that the plaintiff in the suit is not the person who, assuming the parties in possession to have no legal title, is entitled to recover the land by the destruction of the tenure. That, of course, raises the question which the High Court has dealt with; namely, whether, on the death of Shurfoonnissa without heirs, the right to the possession of the land reverted to the original grantor, or whether the tenure on such a failure of heirs should be taken to have escheated to the Crown.

The doctrine of escheat to the Crown in the case of a vacant inheritance was much considered by this Court in the case of *the Collector of Masulipatam* v. *Cavaly Vencata Narainapah*(1). In that case the property in question was a *Zemindari*. The last male *Zemindar* had died, leaving a widow, who took a widow's estate, and upon her death there were no heirs of her husband to inherit the *Zemindari*. The *Zemindar* was, however, a Brahmin; and the point raised in the suit was that on that ground the estate was not subject to the law of escheat. This contention was founded on the text of Menu, which says:—"The property of a Brahmin shall never be taken by the King: this is fixed law;" and also on a passage in Nareda, where it is said:—"If there be no heir of a Brahmin's wealth on his demise, it must be given to a Brahmin, otherwise the King is tainted with sin." It seems to have been admitted in that case that the British Government had at least the same rights that the ruling power would have had under the Hindoo law, the question being whether that limitation which the Hindoo law was said to impose on the right of the Hindoo Rajah or King was to prevail against or fetter the rights of the Crown. Lord Justice Knight Bruce, delivering the judgment of this Committee, said:—"It appears to their Lordships that, according to Hindoo law, the title of the King by escheat to the property of a Brahmin dying without heirs ought, as in any other case, to prevail against any claimant who cannot show a better title; and that the only question that arises upon the authorities is whether Brahminical property so taken is in the hands of the King subject to a trust in favour of Brahmins." And in a subsequent passage of the judgment he went on to say:—"Their Lordships, however, are not satisfied that the

(1) 8 Moo. I. A., 500.

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Sudder Court was not in error when it treated the appellant's claim as wholly and merely determinable by Hindoo law. They conceive that the title which he sets up may rest on grounds of general or universal law. The last owner of the property in question in this suit derived her title under an express grant from the Government to her husband, a Brahmin, whom she succeeded as heiress-at-law. If upon her death there had been any heirs of her husband, those heirs must have been ascertained by the principles of the Hindoo law; but by reason of the prevalence of a state of law in the mofussil, which renders the ascertainment of the heirs to take on the death of an owner of property a question substantially dependent on the *status* of that owner. Thus the property being originally, and remaining, alienable, might have passed by acts *inter vivos* in succession to British subject to foreign European owner, to Armenian, to Jew, to Hindoo, to Mahomedan, to Parsee, or to any other person whatever his race, religion, or country. According to the law administered by the Provincial Courts of British India, on the death of any owner being absolute owner, any question touching the inheritance from him of his property is determinable in a manner personal to the last owner. This system is made the rule for Hindoos and Mahomedans by positive Regulation: in other cases it rests upon the course of judicial decisions." And the final conclusion of the Committee was this:—"Their Lordships' opinion is in favour of the general right of the Crown to take by escheat the land of a Hindoo subject, though a Brahmin, dying without heirs; and they think that the claim of the appellant to the *Zemindari* in question (subject or not subject to a trust) ought to prevail, unless it has been absolutely, or to the extent of a valid and subsisting charge, defeated by the acts of the widow Lutchmedavamah in her lifetime. In the latter case the Government will of course be entitled to the property, subject to the charge." In a subsequent case relating to the same estate, *Cavaly Vencata Narainapah* v. *The Collector of Masulipatam*(1), the question was between the Collector, representing the Government, and a person claiming to have a valid and subsisting charge by an act of the widow—a charge which the widow was competent to create; and it was held that the Government took subject to the charge, and the suit was dismissed, but without prejudice to the right of the Collector, as representing the Crown, to redeem the charge and

(1) 11 Moo. I. A., 619.

It follows from this case that on the grant of a hereditary *mokurrari* of a tenure, no interest in the estate remains in the grantor, unless there is in the grant some valid clause of express reservation, except a charge to secure the due payment or rendering of the rent.

For the principle laid down in this case, see also *Nil Madhab* v *Naruttam*, I. L. R., 17 Calc., 826, and *Secretary of State* v. *Haibatrao*, I. L. R., 28 Bom., 276.

recover the estate. The property, no doubt, in this case was a *Zemindari*; but the decision seems to establish the principle, that where there is a failure of heirs, the Crown, by the general prerogative, will take the property by escheat, but will take it subject to any trusts or charges affecting it. There, therefore, seems to be nothing in the nature of the tenure which should prevent the Crown from so taking a *mokurrari*, subject to the payment of the rent reserved upon it.

It has been argued, however, that this *mokurrari*, not being an independent *Zemindari*, but being carved out of a *Zemindari*, stands upon a peculiar footing, and that, upon the failure of heirs, the *Zemindar* takes by right of reversion, or, if not strictly by right of reversion, that the tenure escheats to him as the superior lord rather than to the Crown. The *mokurrari* was clearly an absolute interest. It was also an alienable interest. It might have been seized and sold, as Mr. Doyne has shown, under Act X of 1859, even in a suit for rent. It could not have been forfeited for the non-payment of rent; for in such a case the *Zemindar* could only have caused it to be seized, put up for sale and sold to the highest bidder. It is, therefore, property which, like that in the case above cited, might have passed to any purchaser, whatever his nationality, or by whatever law he was to be governed. It cannot, their Lordships think, be successfully argued that, having so passed, the estate would have determined upon the death of Shurfoonnissa (supposing it had been sold in her lifetime) without heirs; for the grant contains no provision for the lessee of the estate created in such event. There seems, therefore, to be no ground for saying that the lands have reverted in the proper sense of the term to the *Zemindar*; and the only question is, whether, on the failure of heirs of the last possessor, he is entitled to take a tenure subordinate to and carved out of his *Zemindari* by escheat.

Their Lordships are of opinion that there is no authority upon which the power of taking by escheat can be attributed to the *Zemindar*. The principles of English feudal law are clearly inapplicable to a Hindoo *Zemindar*. On the other hand, it is clear that, if the *Zemindar* has not such a right, the general right of the Crown subsists, and must prevail.

On the whole, therefore, their Lordships think that the High Court have come to a correct conclusion in holding that, supposing the parties in possession have nothing but their possession to depend upon (a question on which their Lordships give no opinion), the superior title, under which alone they can be ousted from possession of the lands, is not in the *Zemindar* or his representatives, but in the Crown. They will, therefore, humbly advise Her Majesty to affirm the decree under appeal, and to dismiss this appeal with costs.

Appeal dismissed.

1890.

June 2.

RADHA PROSAD SINGH

v.

BAL KOWAR KOERI.*

[*Reported in I. L. R.*, 17 *Calc.*, 726 *F. B.*]

The opinions of the Court (PETHERAM, C. J., PRINSEP, PIGOT, O'KINEALY, and GHOSE, JJ.) were as follows :—

PETHERAM, C. J.—This was a second appeal which arose out of a suit brought by the plaintiff to recover a balance of rent at the rate of Rs. 22-2 per *annum*. The defendant by his pleader, on the settlement of issues, stated that he was tenant to the plaintiff of the land in question at a rental of Rs. 18-10-6, and the Munsif fixed as the first issue for trial—Is the defendant's rental Rs. 22-2 as alleged by the plaintiff, or Rs. 18-10-6 as alleged by the defendant? And the questions which arise in the second appeal and in this reference are upon that issue. Both the Munsif and the District Judge, before whom the case came on appeal in the first instance, have found upon this issue that the defendant's rental is Rs. 18-10-6. The case has been brought before the High Court on second appeal, and the plaintiff contends,—*first*, that there was no evidence on which the Munsif and the District Judge could come to such a finding; *second*, that even if there was some evidence, the Judge's judgment shows that he has so misunderstood the plaintiff's case, and has so misapplied the law, that his finding on the facts may be re-opened in this Court on second appeal; and, *thirdly*, that even if the rent is found to be Rs. 18-10-6 only, the plaintiff is still entitled to recover the larger sum of Rs. 22-2, the balance being made up of items which are neither uncertain nor arbitrary, and which the evidence shows the defendant agreed to pay as part of the consideration for his occupancy of the plaintiff's land.

To discover whether these contentions are well founded, it is necessary to see what was the evidence which was given in the case. The suit, both before the Munsif and the District Judge, was heard along with thirteen others relating to the same *mouzah*, and they are all governed by the same judgment.

The plaintiff, in order to prove that the defendant's rent was Rs. 22-2, called the defendant himself, and also required him

* *Present* :—Sir W. COMER PETHERAM, Kt., Chief Justice; Mr. Justice PRINSEP, Mr. Justice PIGOT, Mr. Justice O'KINEALY, and Mr. Justice GHOSE.

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to produce his receipts for rent for the years 1286 to 1292, inclusive. The defendant did not produce the receipts; and secondary evidence of their contents was given by the plaintiff, who produced the corresponding counterfoils which were in the following form :—

No. D. A. 1678.

Dumraon Raj.

"No. 2 .. .. .. Re. 1 (one rupee).

Date 25th Kuar 1286.

Mohit Koeri Kashtkar, inhabitant of Ramu Baria, through self, on account of rent as per details of Mouzah Ramu Baria, Pergunnah Bhojepore."

"Out of (the rent of) the year 1286 Re. 1 (one rupee).
Received one rupee.

(Sd.) ADINATH RAI,
Tehsildar.

By his own pen.
(Sd.) DEO NARAIN LAL, *Patwari.*"

These counterfoils showed that in several of the years from 1286 to 1292 the defendant had paid the exact sum of Rs. 22-2 and that the yearly payments had always been within a few pice of that sum.

The plaintiff also put in his *jamabundis* for those years, which were in the following form :—

Annual Jamabundi of Mouzah Ramu Baria for the year 1286.

Serial number.	Name of tenant.	*Nakli* land.	*Bhoeti* land.	Total quantity of land.	*Nakdi* rent.	*Bhoeti* rent.	Total rent.	*Sear.*	Total Rupees.	Road Cess and Public Works Cess	*Jama* (total) rent.	Arrears.	*Jama* (total) rupees.	Paid.	Balance.	Deduct amount sued for.	Balance.
"	"	B.C.D.	"	B.C.D.	Rs. A.	..	Rs. A.	..	Rs. A.	Rs. A.	Rs. A.	Rs. A.	Rs. A.	Rs. A.	Rs. A		Rs. A.
"	..	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"
23	Mohit Koeri	4 0 14	..	4 0 14	22 2		22 2	..	22 2	0 11	22 13	1 6	24 3	22 2	2 1	..	2 1

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The defendant in his evidence said:—

"I am defendant in suit No. 156. I know that *sarak*, *khuruch*, *chanda*, *neg*, *batta* are in the rental, because I have been paying them. *Batta* is included in my rental of Rs. 18-10-6. I do not object to this *batta*. I do not recollect if I have paid all the *abwabs* seperately from or with the rental-proper. I do not know if receipts were called for. Receipts are not preserved. I do not remember from whence *sarak*, *neg*, *khuruch* and *chanda* have been collected.

The plaintiff also put in the *sehas* for those years when it appeared that they were kept in the following form:—

DUMRAON RAJ.

Maharaja Radha Prosad Singh, Saheb Bahadur, proprietor, Pergunnah Bhojepore—Seha (account) of individual tenants in the tehsil (collection) of Adinath Rai, the tehsildar of Mouzahs Ramu Baria, &c., for the week commencing from the (a) 25th of the month of Kuar 1286 *and ending with the 25th of the month of Kuar* 1286 *Fasli.*

Date of Seha.	No. of Seha.	English letter and number entered in the receipt form	Name of cultivator with residence.	Name of mouzah wherein the holding for which rent is paid is situated.	Arrears for the current year.	For the Current Year.						Arrears with Specification of Years.					Grand Total.
						Land rent with *batta* and *sarak* (road fund cess), &c	*Mauzoon* (fee).	Road cess and Public Works cess.	*Jevar* money.	Interest.	Year.	Land rent with *batta* and *sarak* (road fund cess), &c.	*Mauzoon* (fee).	Road cess and Public Works cess.	*Jevar* money.	Interest.	
						Rs.											Rs.
*	*	*	*	*	*	*		*	*	*	*	*	*	*	*	*	*
*	2	1678	Mohit Koeri inhabitant of do.	Do. (Ramu Baria).	..			..	..	..	..	..		..	..	.	1

(a) Sic, in original.

The plaintiff called his *tehsildar* and *patwari*, the latter of whom said that in the *Zemindari* accounts of certain years *batta*, *sarak*, &c., were entered in separate columns. The

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defendant filed an authenticated copy of the plaintiff's *jamabundi* for 1279, which was in the following form :—

1279.

Mouzah Ramu Baria, Pergunnah Bhojepore, property of Maharaja Radha Prosad Singh Ji Bahadur—Annual jamabundi of individual tenants.

Name of Tenant.				Quantity of land.	Land rent.	Road cess.	*Batta.*	Patwari's nag (fee).	Usual charges.	BASD TOTAL.
Mohit Koeri.										
	Bgs. C. Dh.	Rs. A. P.	Rs. A. P.	Bgs. C. Dh.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P. (*a*)	Rs. A. P.
Kodar	2 12 0	5 0 0	14 4 0	4 10 14	18 10 6	0 3 0	1 10 0	0 14 6	0 5 3	21 7 0
Babarsi	1 18 14	2 8 0	4 6 6							
	4 10 14		18 10 6							

(*a*) Sic.

Upon this evidence the Munsif found as a fact that the defendant's rent was Rs. 18-10-6. He considered that the *jamabundis* filed by the plaintiff were fabricated; that the receipt filed by him merely showed the amount paid, and did not prove conclusively that the whole of the money paid by the defendant was on account of rent only, and that the *jamabundi* for 1286, together with the *sehas* showed that the difference between Rs. 18-10-6 and Rs. 22-2 was not rent at all, but was made up of various impositions and charges, and he accordingly found the first issue in favour of the defendant. When the matter came before the District Judge on appeal he affirmed this finding of the Munsif. And the first question which has been argued before us has been whether there is any evidence on the record to support this finding. I think there is. The defendant himself stated that his rent was Rs. 18-10-6; the *jamabundi* of 1286 indicated that at that time the rental was Rs. 18-10-6, and the *sehas* for the subsequent years indicated that even if it be assumed that the form of the *jamabundi* had been changed since that time, the fact still remained the same; that the sum of Rs. 22-2 claimed by the plaintiff was made up

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of the rent with other charges added to it, and whether they were evidence for the plaintiff or not the *sehas* were clearly evidence against him. The second question then arose and the plaintiff contended that if there is some evidence on the record that the rent was the smaller sum, it is apparent from his judgment that the District Judge has so entirely misunderstood the case that his finding of fact may be reconsidered on second appeal. In the fifth paragraph of his judgment he says :—

"The plaintiff will not tell us the exact date of the 'consolidation'; but at last gives us about 1286 F. These modern consolidations cannot, as this Court has often ruled, be made by the *malik* alone. He must secure the acquiescence of the tenants concerned. There has, therefore, been no 'consolidation,' as alleged."

And Mr. Woodroffe, on behalf of the plaintiff, says that it is apparent that the Judge thought that the plaintiff, in order to succeed, must prove a consolidation of the rent and other items by some particular agreement come to between the parties at some specified time; that with this in his mind he compelled the plaintiff's pleader to mention some time, and that when he mentioned "about 1286," assumed that the plaintiff's contention was that the consolidation was effected by the change of the form of the *jamabundi*, and that as that was the act of the landlord alone, it would not bind the tenant; whereas the plaintiff's case was that the form of the *jamabundis* and receipts prove that the rent has always been the larger sum, and that the other figures merely show the mode of calculation by which the rental was originally arrived at.

If this was the view of the Judge as to what the plaintiff's real case was, I cannot say that he was wrong. The *jamabundi* of 1286 shows that the Rs. 22-2 was made up of that sum and various other items, and the *sehas* for the subsequent years, which, as I have before said, are certainly evidence against the plaintiff, show to my mind that the Rs. 22-2 always contained something other than rent, though they do not show what it was. These documents, in my opinion, rebut the inference of fact which may no doubt be drawn from the receipts, that the rent since 1286 has been enhanced to the sum of Rs. 22-2, of which fact the receipts for three years are made evidence by section 29 of the Bengal Tenancy Act, and prove conclusively to my mind that the change in the *jamabundis* was one of form only, representing no fresh agreement between the parties and made by the landlord with the intention of consolidating the other items with the rent, which he could not do except by agreement with the tenant.

I agree, then, with the Munsif and the District Judge that the rental was Rs. 18-10-6, and that the difference between

that amount and Rs. 22-2 is made up of the items mentioned in the *jamabundi* of 1286, and upon this finding the third question arises, which is the question upon which the case of *Padma Nund Singh* v. *Baij Nath Singh*(1) appeared to the referring Bench to be in conflict with that of *Chultan Mahton* v. *Tilukdhari Singh*(2).

The case of *Chultan Mahton* v. *Tilukdhari Singh*(2) was decided in January, 1885, before the passing of the Bengal Tenancy Act. The suit was by *ticcadars* to recover from a ryot Rs. 1,105-1-2 as arrears of *nagdi* and *bhowli* rent for the years 1286 to 1288, together with certain customary *abwabs*. The nature of the *abwabs* appears in the report of the case to have been certain in this sense that the amount depended on the amount of the rent or of the produce of the land when the tenure was *bhowli*. It was found as a fact that according to the custom of the estate, of which the defendant's land formed a part, these items had been paid by the defendant and his ancestors for many years, so that it appeared that they were not uncertain or arbitrary, but were always paid, the amount of them each year being merely a matter of calculation. Mr. Justice Mitter, at page 183, says as to this :—

"It has been next contended that although the disputed items in the plaintiff's claim are described in the plaint as old usual *abwabs*, and in the *Zemindari* accounts also they are designated as *abwabs* separate and distinct from the specified rent, yet they are not *abwabs*, but part of the rent. This contention is mainly based upon the ground that anything which is certain and definite does not come under the class of *abwabs*, the imposition of which is prohibited by the Regulations. Although the Regulations did not clearly define what an *abwab* is, still I think it cannot be maintained that anything which is definite and certain is not an *abwab* under the Regulations, although the parties to the contract may call it so. It seems to me that the Regulations, without defining accurately what an *abwab* is, left this question for the determination by the Court in each case upon the evidence. I cannot find anywhere in the Regulations the precise definition of the word *abwab* which would justify me to treat the disputed items of claim as part of the specified rent, although the plaintiff claims them in the plaint and enters them in the *Zemindari* accounts as *abwabs*."

And the Full Bench held that nothing beyond the *nagdi* and *bhowli* rent could be recovered, any contract for the payment of the other items, whether express or implied, not being enforceable.

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(1) I. L. R., 15 Calc., 828. (2) I. L. R., 11 Calc., 175.

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This case came before the Privy Council on appeal(1). The judgment of the High Court was affirmed. Lord Macnaghten, in delivering judgment in speaking of the items in question, says :—

"Unquestionably they have been paid for a long period; how long does not appear. They are said to have been paid according to long-standing custom. Whether that means that they were payable at the time of the Permanent Settlement or not is not plain. If they were payable at the time of the Permanent Settlement, they ought to have been consolidated, with the rent under section 54 of Regulation VIII of 1793. Not being so consolidated, they cannot now be recovered under section 61 of that Regulation. If they were not payable at the time of the Permanent Settlement, they would come under the description of new *abwabs* in section 55, and they would be in that case illegal."

By this judgment I understand the Privy Council, while affirming that of the High Court, to go beyond it and to hold that under the Regulations nothing could be recovered for the occupation of land, except one sum which must include every thing which was payable for such occupation arrived at either by agreement or by some judicial determination between the parties, and that any contract, whether express or implied, to pay anything beyond that sum, under any name whatever, for or in respect of the occupation of the land, could not be enforced.

After the decision by the High Court of the case which I have now considered, but before the decision by the Privy Council, the present Bengal Tenancy Act (VIII of 1885) came into force. The sections of that Act which are material to consider are section 3, sub-section 5, by which rent is defined to be "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," and section 74 which enacts that all impositions upon tenants under the denomination of *abwab*, *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." After this Act had been passed, but before the decision of the Privy Council, the case of *Pudma Nund Singh* v. *Baij Nath Singh*(2) was decided by a Division Bench of the Court. In that case the plaintiffs sued to recover Rs. 2,830-13-3 for arrears of rent and for *tehwari* and *salami* due to them for the years 1290 to Baisakh 1293 in respect of a *mokurrari*-tenure held under them by the defendant. The basis of the suit was a *kabuliyat*, dated 25th December, 1869, by which the defendant agreed to pay a certain fixed

(1) I. L. R., 17 Calc., 131 ; L. R., 16 I. A., 152.
(2) I. L. R., 15 Calc., 828.

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rent, *plus* a small annual addition for items designated therein as *tehwari*, *dusara*, and *salami towzi*, in respect of which items the amounts declared to be payable were Rs. 9 and Rs. 2, respectively. The only question was whether the *tehwari* and *salami* could be recovered. The learned Judges held that as the items in dispute were not arbitrary and uncertain in their character, but were specific sums which the tenants had agreed to pay to their landlords, they were in fact part of the rent agreed to be paid and were not *abwabs* at all. They considered that what is or is not an *abwab* must depend on the circumstances of each particular case in which the question arises, and they allowed the plaintiff's claim. It is clear that this case may be reconciled by the judgment of the High Court in the other case, as Mr. Justice Mitter expressly says that the question whether the disputed item is an *abwab* must be decided by the Court in each case; but if I have correctly understood the judgment of the Privy Council in the same case, it is equally clear that it cannot be reconciled with that, as that decided that nothing can be recovered from the tenant except the one sum fixed as the rent of the land, and in this view, I think, we must hold the case of *Pudma Nund Singh* v. *Baij Nath Singh*(1) to be overruled by the decision of the Privy Council in that of *Chultan Mahton* v. *Tilukdhari Singh*(2), and that unless the law has been changed by the Bengal Tenancy Act in favour of the landlord, the items in dispute in this action cannot be recovered, as they have been proved to be something beyond the sum which had been agreed upon as rent. The definition of rent in section 3 of the Act does not, in my opinion, affect the question, as that would have been the correct definition of rent without the assistance of the Act, and consequently was so at the time of the decision of the Privy Council, and the only question is as to the meaning of section 74. I think that the effect of that section is to declare the law to be as it is laid down by the Privy Council in the judgment which I have cited, and to be that no imposition under any name whatever shall be recovered from the tenant for or in respect of the occupation or tenure of the land beyond the sum which has been fixed for rent, whether that sum has been fixed by agreement or by judicial determination between the landlord and the tenant.

In my opinion the portions of the claim which are objected to are illegal, and cannot be recovered as rent, and the second appeal should be dismissed with costs.

O'Kinealy, J.—In this case the plaintiff, a *Zemindar*, sued the defendant, his ryot, for arrears of rent due on account of the years 1290 to 1293. The plaintiff alleged that the rent was Rs. 22-2 per annum. The defendant, on the other hand, con-

(1) I. L. R., 17 Calc., 131; L. R., 16 I. A., 152.
(2) L. R., 2 I. A., at p. 6.

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tended that it was only Rs. 18-10-6 and that he had paid that sum. He also added that the difference between Rs. 18-10-6 and Rs. 22-2, claimed by the plaintiff, consisted of illegal cesses which has been incorporated with the original rent.

In the first Court the plaintiff examined his *patwari*, his *tehsildar*, and the defendant, in support of his case. The *jamabundis*, or collection papers from 1286 to 1292, were also produced as corroborative evidence.

The Munsif held that the *jamabundis* from 1286 to 1292 had been fabricated in order to support a false case. He has also held that the amount claimed as rent included *abwabs*, such as *sarak*, *khuruch*, *neg* and *batta*; he found that the proper rent was what the defendant alleged it to be, and on that basis he decreed the arrears found to be due.

The plaintiff appealed to the lower Appellate Court. He argued that the Munsif should have found whether the amounts claimed to be included in the *jama*, and disallowed by the lower Court, were legal cesses or not, and he urged that the *onus* of proving that illegal taxes were included in the rent claimed, lay on the defendant. He further asserted that the Munsif was wrong in saying that the *jamabundis* produced on the part of the plaintiff were not genuine, and asserted that the plaintiff's claim was proved by the statements of the defendant and the papers admitted by him. These contentions seem to have failed before the Judge in the lower Court. He came to the same conclusion in regard to the *jamabundis* as the Munsif, and he agreed with that Judge in thinking that the sum stated by the defendant was the *asul jama*, while the amount claimed by the plaintiff as the yearly rent was made up of the *jama* with other items, such as *sarak*, *khuruch*, *neg*, and *batta*.

This being the case, and the suit being a suit for rent, he refused to grant the items in excess of the annual rent, because, in his opinion, it was not rent, and the plaintiff ought not to succeed on a different title. He therefore dismissed the appeal.

From that decision a second appeal was preferred to this Court, and before the Division Bench it was contended on behalf of the plaintiff, that the defendant having for many years paid the sums claimed and taken receipts as if the amounts paid had been rent without any specification of the items *sarak*, *khuruch*, *neg*, and *batta*, he was bound to pay rent at that rate, and the Court below ought to have held that there had been not only a consolidation of these sums with the rent, but an implied agreement by the defendant to pay the whole amount as rent.

So far as I can see that is not a valid ground of second appeal. In the case of *Meer Mahomed Hossein* v. *Forbes*, their Lordships of the Privy Council say(1)

(1) L. R., 16 I. A., 233, at p. 238; I. L. R., 17 Calc., 291, at p. 298.

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"The case was before the High Court upon Special Appeal, and, therefore, in strictness, they had nothing to do with the evidence in the cause."

In the more recent case of *Pertap Chunder Ghose* v. *Mohendro Purkit*(1), decided by their Lordships on the 29th June, 1889, there is the following passage :—

"Their Lordships have doubted whether the Judges of the High Court, in hearing the appeals, had regard to the provision in the Code of Civil Procedure (Act XIV of 1882), section 584, as to appeals from appellate decrees, and thought they were at liberty to consider the propriety of the findings of the District Judge upon questions of fact. Certainly there are some passages in their judgment, particularly in the latter part, if not in the former, which suggest this. Their Lordships must observe that the limitation to the power of the Court by sections 584 and 585 in a second appeal ought to be attended to, and the Appellate Court ought not to be allowed to question the finding of the first Appellate Court upon a matter of fact."

In this case two Courts have come to the same conclusion on a matter of fact, which goes to the foundation of the case, namely, what was the rental of the defendant; and they have decided adversely to the appellant. This seems to me to conclude the case, and to render it impossible for us to decree the second appeal in favour of the appellant.

In this view of the case it would seem unnecessary that I should answer the question referred to this Court, namely, "whether the portions of the claim that are objected to as coming under the denomination *sarak*, *neg* and *khuruch*, are illegal cesses, or whether they are recoverable as rent by reason of their having been paid for a long time along with rent and without any specification in the rent receipts"; but as the Judge in the Court below has forwarded as part of his judgment a decision on the nature of *abwabs*, and a majority of the Judges composing the Full Bench think that it should be answered, I think it is better to give my opinion.

In order to determine what was the meaning of rent under the old Regulations, and what were the cesses and assessments that they were intended to prohibit, it is necessary to see what the law was before the time of the Permanent Settlement; what the evils were that the Legislature then intended to get rid of, and how they attempted to do it.

Before the acquisition of Behar by the East India Company, the distinction between rent and revenue can hardly be said to have existed. Both were looked upon as the dues of Government, rather in the form of a tax on land than as rent. Thus in Regulation XLIV of 1793(2), we find it declared that,

(1) Preamble.

(2) Fifth Report, Vol. I, p. 163.

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according to the established usages of the country—and these, according to 24 Geo. III., (1784), chapter 25, section 39, were to guide the Directors in fixing the income of Government from land—these dues consisted of a certain proportion of the annual produce of every *bigha* of land demandable, according to the local custom, either in money or kind. This right was a right peculiar to the state alone. So that as long as the Moghul Government was strong enough to govern the provincial rulers, taxation, so far as it fell upon land, may be said to have been substantially of a fixed nature. In Behar the *Zemindar* divided the produce of the lands with the cultivators in stated proportions; and in Bengal a settlement was made which the ryot upon a standard called the *asul*, or original rate, with the accumulation of taxes successively imposed upon it. These taxes were divided into *abwab* and *mahtut*, and in calculating the *Zemindary* demand, now called rent, the *Zemindars* levied the *asul* or ground-rent according to the *jamabundi*, or assessment, of each village, and the excess imposed, if *abwab*, according to the rate of the *pergunnah*, and if *mahtut*, according to the rate of each *chukla*. These two, namely, the *asul* and *abwab*, constituted the whole land revenue demand imposed on the ryot prior to and after the British rule. To illustrate this, I print from Mr. Shore's Minute the following abstract(1) of a ryot's account taken about the year 1781:—

	Rs.	As.	G.	K.
Rent of 7 bighas 12 cottahs 7 chittacks of land of various produce, calculated at a certain rate per bigha according to its produce ..	14	0	8	0

Abwab cesses.

	Rs.	As.	G.					
Chout at 3-16 per rupee ..	2	10	0					
Pulbundi, a half mo. demand or ½-4 of the *jama* ..	9	7	2					
Nuzzerana 1 mo. or ½ ..	1	2	15					
Mangan, 1 mo. or ½ ..	1	2	15					
Fouzdari 3-4 of 1 mo. amount or 1-16 ..	14	15	0					
Company's *nuzzerana*, 1¼ mo. ..	0	1	7					
Batta 1 anna per rupee ..	0	0	14					
				8	12	2	0	
Total ..				22	12	10	2	
Khelat 1½ anna per rupee ..				2	2	1	2	
Total *jama* ..				24	14	12	0	

(1) Fifth Report, Vol. I, p. 163.

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As I have stated above, the assessment of land revenue was the right of the Government alone, and as a fact the Government, when in full vigour, supervised the assessment year by year. *Abwabs* were in their nature unconstitutional; but from the beginning of the 18th century, when the *subahdars* were becoming more independent, they began to levy new perpetual imposts now called *subahdari abwabs*. These viceregal imposts were levied by the *subahdars* in a certain proportion to the *asul*, or standard, assessment, and the *Zemindars* who paid were authorized to collect them from the ryots in the proportion of their *asul*, or standard of assessment, and sometimes these cesses were incorporated with the original *asul*, so that the aggregate became a new *asul*, or standard of assessment, according to which the assessments on land were subsequently levied.

Besides being unconstitutional, there was another objection to these assessments, namely, that they confirmed the *Zemindars* within the *subah* in the exaction of their *abwabs* and in increasing their amount in an arbitrary manner not authorized by the *subahdar*. The result was that the incorporated *subahdari abwabs* in some instances amounted to 33 per cent. of the *asul*, while the *Zemindari abwabs* amounted to somewhere about 50 per cent.

Moreover, in some cases, the *abwabs* were increased in one estate to meet a deficiency in another, so that the incidence of the taxation varied in different estates, and often according to the caste and place of residence of the ryot.

They were also made a means of enhancing the rent, while it was one of the objects of Government to stop enhancements made in an arbitrary and indefinite manner.

The mode in which these *abwabs* grew up is well described by Mr. Shore in reference to the ryot's account printed above. He says, in 1789:—

"If the accounts of the same land were now examined, some additional impositions might appear. The *Zemindars* introduce them by degrees, at intervals of two, three, four or five years, and rarely attempt them for two or three years successively. Solicitation and influence are equally employed to effect the establishment of them, and a ryot, when the burden is not too heavy, will rather submit than resist or complain. Temporary extortion may be practised at any time, but a permanent exaction of this nature can rarely be established by force alone upon the ryots(1)."

It is, I think, in this sense that these cesses are said in the correspondence of that period to be arbitrary or indefinite. Thus we find them described by the officials of that period "as

(1) Colebrooke's Supplement, p. 190. Fifth Report, Vol. I, 4. Harington's Analysis, Vol. II, 12.

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arbitrary impositions, vicious in mode and principle, yet extremely moderate in amount," as "claimed by no measured rule, but arbitrary indefinite expediency," as "an oppressive exaction wholly unauthorized," and a "daring encroachment on the exclusive prerogative of the Sovereignty in levying from the subject what can only be legitimate in the form of a public supply of a necessary exigency of the State."

This too is, I think, the sense in which *abwabs* were considered as arbitrary or indefinite in the old Regulations—arbitrary, in the sense that they were unauthorised by law—indefinite, in the sense that, though levied in a certain proportion to and upon the original assessment or *asul* land tax, there was no definite rule guiding the *Zemindar* in fixing the proportion they bore to the produce of the land, nor any rule prescribed for limiting their amount.

They were not arbitrary in the sense that the parties had not contracted in regard to them, for at that time rent was paid, not under contract, but as a land tax, as the Government share, and according to the *pergunnah* rate, nor indefinite in amount, since every *abwab* was, as in the present suit, a determined sum, generally a certain defined share of the real land tax.

In 1772, the Hon'ble Court of Directors deprived Nawab Mahomed Reza Khan of his appointment of *Naib Dewan*, and determined to stand forth publicly themselves in the character of *Dewan*, and in the proclamation of the 14th of May of that year(1), they laid down rules for the settlement and collection of the revenue.

Rule 10 states :—

"That the farmer shall not receive larger rents from the ryots than the stipulated amount of the *pottahs* on any pretence whatsoever, and that for every instance of such extortion, the farmer, on conviction, shall be compelled to pay back the sum which he shall have so taken from the ryots, besides a penalty equal to the same amount to the Sircar ; and for a repetition, or a notorious instance of this oppression on his ryots, the farmer's lease shall be annulled."

Rule 12 states :—

"That no *mahtuts*, or assessment under the name of *mangan*, *baurie*, *gundee sood*, or any other *abwab* or tax, shall be imposed upon the ryots ; and that those articles of *abwab* which are of late establishment, shall be carefully scrutinized, at the discretion of the Committee abolished, if they are found in their nature to be oppressive and pernicious."

The rules were issued three days after the assumption of the *Dewani* and thus the prohibition of illegal assessments was

(1) Colebrooke's Supplement, p. 190. Fifth Report, Vol. I, 4. Harington's Analysis, Vol. II, 12.

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almost the first act of British Government when it assumed the revenue administration of Bengal.

The nature of them can be best understood from the terms in which they are described. Thus *mangan* in Behar, in which the land in connection with the present suit is situate, was a share of the crop given as a fee or perquisite to the headman of the village; and *sood* was an impost in order to meet the interest which the *Zemindars* were compelled to pay on arrears of revenue: but what the rules plainly point out is that whether it be treated as an assessment or a tax, nothing beyond the ordinary rent was to be allowed.

In 1787, the Regulation regarding the assessment of revenue in Bengal was revised by Regulation VIII passed on the 8th of June of that year.(1) Section 50 runs as follows:—

"That whereas notwithstanding the orders of Government in the year 1772, prohibiting the imposition of *mahtut* or assessment, under the names of *mangan*, *hauldauri*, *moracha*, *bazee jama*, or *sood*, or any other new articles of taxation, various taxes have been since imposed, the Collector is strictly enjoined to enforce this article and prevent the imposition of any new taxes upon the ryots, and if hereafter any new tax should be imposed, the Collector, on proof of such extortion, is to decree double the amount thereof as costs of suit."

In this section it will be seen that the Legislature describes these impositions as assessments or taxes, and it gives a few examples of those impositions which were not mentioned in the Regulation of 1772.

This brings us down to the Regulation relative to the Decennial Settlement which was subsequently re-enacted in 1793 when the Permanent Settlement was sanctioned. By section 57 of Regulation VIII of 1793 it was enacted that:—

"The rents to be paid by the ryots, by whatever rule or custom they may be regulated, shall be *specifically stated* in the *pottah*, which, in every possible case, shall contain the exact sum to be paid by them."

By section 6 of Regulation IV of 1794, it was declared—

"If a dispute shall arise between the ryots and the persons from whom they may be entitled to demand pottahs, regarding the rates of the pottahs (whether the rent be payable in money or kind), it shall be determined by the Dewani Adawlut of the Zilla in which the lands may be situated, according to the rate established in the pergunnah for lands of the same descriptions and quality as those respecting which the dispute may arise."

So that what the Permanent Settlement and the Regulation of 1794 describe as rent, is the original ground rent assessed according to the *pergunnah* or customary rate per *bigha*; and it

(1) Colebrooke's Supplement, pp. 253—260. Fifth Report, Vol. I, 15. Harington's Analysis, Vol. II, 53.

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is at once distinguishable from the other assessments or taxes which have no relation to the customary rate or to the extent or produce of the lands by the fact that the imposition of them was not caused, nor was it pretended to be attributed to, or claimable by reason of, any change in the customary rates or in the extent or the amount of produce of the lands. Bearing this in mind, we can now understand the meaning of sections 54, 55, and 56 of the Permanent Settlement.

Section 54 of Regulation VIII of 1793 declares :—

"The imposition upon the ryots under the denomination of *abwab*, *mahtut*, and other appellations, from their number and uncertainty, having become intricate to adjust, and a source of oppression to the ryots, all proprietors of land and dependent talukdars shall revise the same in concert with the ryots, and consolidate the whole with the *asul* into *one* specific sum."

Section 55 of the same Regulation enacts—

"No actual proprietor of land or dependent talukdar or farmer of land, of whatever description, shall impose any new *abwab* or *mahtut* upon the ryots, under any pretence whatever."

Now the effect of this enactment seems to be that, at the time of the Permanent Settlement, there was, or there was believed to be, a customary assessment per *bigha* for the land, which was described in the Regulations themselves as the *asul*, and that in addition to that there were added certain assessments or taxes or cesses of various kinds which the Legislature wanted to prohibit for the future, and that they proposed to bring about this result by compelling each *Zemindar* to revise the assessments or taxes then existing in concert with his ryots, and consolidate them into one specific sum which would form a new *asul*, and to absolutely prohibit any new assessment, imposition or tax in addition to the *asul* for the future—*Ramkant Dutt* v. *Gholam Nubby Chowdhry*(1). A certain time was given for this consolidation, and if not carried out, it was declared that any action for the realization of the *abwabs* beyond the *asul* or ground-rent should be non-suited.

We can now easily understand the meaning of the *jamabundi* of 1279 which was relied upon by the defendant in the present case.

Names of tenants.	Land.	*Lagan.*	*Sarak.*	*Batta.*	Putwari's *neg.*	Ordinary expenses.	TOTAL.

(1) 2 Sel. Rep., 58.

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After the name of the tenant, comes "land." Then the ground-rent called "*lagan.*" Then comes "*sarak,*" a cess in connection with roads. Then "*batta,*" a tax imposed to make up any deficiency in the currency, which has always been considered an *abwab*—*Chukan Sahoo* v. *Roop Chand*(1); Regulation LI of 1795, section 3, clause 6. No question as to *batta* arises in this case. Then "putwari's *neg,*" a cess imposed for the payment of the putwari and declared to be an *abwab* by the decision of the Full Bench in case of *Chultan Mahton* v. *Tilukdari Singh*(2). Lastly the column "Ordinary expenses," a cess to cover ordinary *Zemindary* expenditure.

In accordance with the common law, and in pursuance of section 83, Regulation VIII of 1793, the *lagan* was determined by the average produce of the lands in common years. But there is no law justifying the imposition of any of the other items at all; they are in name cesses, and have no connection with the produce of the land beyond that they are calculated upon the ground-rent. There is no means known to the law for determining the proportion they must bear to the rent.

According to the view which I take of the Regulations, every item in this account, except that of "*lagan*" or ground-rent, is a *mahtut* or *abwab* within the meaning of the Permanent Settlement Regulation, and the realization of any of it was punishable thereunder with a penalty of three times the amount.

The form of *pottah* issued to the ryots at the time of the Permanent Settlement was subject to control. By section 58 of Regulation VIII of 1293, no *pottah* was valid unless it had been approved of by the Collector and registered in the Civil Court of the district. These restrictions as to form were partially removed by Regulation IV of 1794.

Towards 1812 the futility of this legislation was pressed on the Government; and as the objections to the then existing legislation cannot be better put than they are by Mr. Colebrook, I put them in his own words. He said:—

"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 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 ryots arbitrary cesses termed *abwabs;* being either authorized so to do by the reservations in the *pottahs*, to subject the *ryots* to such *abwabs* as might be imposed on the pergunnah generally, or else assuming that

(1) S. D. A., 1848, p. 680. (2) I. L. R., 11 Calc., 175.

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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 *abwab* should be imposed on any pretence, under penalty of three times the amount; that the landholders, in concert with their tenants, should revise the *abwabs* and consolidate them with the land rents; that they should give or tender to their *ryots pottahs* prepared according to a form previously approved by the Collector and registered in the Adawlut. These rules are enforced by a provsion that *pottahs* of any other form are to be held invalid. Notwithstanding this penalty, which was expected to enforce universal compliance, by rendering the written 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 *abwab* or *mahtut*, or under any other denomination whatsoever, or binding the *pottah*-holder to pay any impost or addition whatsoever beyond the rent however regulated, in money or in kind, which the *pottah* 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 specifically stipulated and agreed for by the *pottah* 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 *abwabs*, 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."

For these reasons Regulation V of 1812 was enacted, and of it sections 2 and 3 ran as follows :—

"SECTION 2.—Section 2, Regulation XLIV, 1793, section 2, Regulation L, 1795, and clause second, section 2, Regulation XLVII, 1803, by which the proprietors of land paying revenue to Government are precluded from granting leases for a period exceeding ten years, are hereby rescinded, and proprietors of lands are declared competent to grant leases for any period which they may deem most convenient to themselves and tenants and most conducive to the improvement of their estates.

"SECTION 3.—Such parts of Regulation VIII of 1793 and of Regulation IV of 1794 as require that the proprietors of land shall prepare *forms* of *pottahs*, and that such *forms* shall be revised by the Collectors, and which declare that *engagements for rent* contracted in any other than that prescribed by the Regulations in question shall be deemed invalid, are hereby rescinded; and the proprietors of land shall henceforward be considered competent to grant leases to their dependent taluqdars, underfarmers and ryots, and to receive corresponding *engagements for the payment of rent* from each of those classes, or any other classes of tenants, according to such form as the contracting parties may deem most convenient and most conducive to their respective interests; provided, however, that nothing herein contained shall be construed to sanction or legalise the imposition of arbitrary or indefinite cesses, whether under the denomination of *abwab*, *mahtut* or any other denomination. All stipulations or reservations of that nature shall be adjudged by the Courts of Judicature to be null and void; but the Court shall notwithstanding maintain and give effect to the definite clauses of the *engagements contracted* between the parties, or, in other words enforce payment of such sums as may have been specifically agreed upon between them."

Apparently some doubt arose as to the meaning of section 2, and this was explained in Regulation XVIII of the same year. Section 2 of this enactment declared the true meaning was that proprietors of land were "competent to grant leases for any period even to perpetuality *and at any rent* which they might deem conducive to their interest," provided that a person holding a restricted interest could not grant a lease extending beyond the term of his own interest.

This was the law in regard to rent and *abwabs* which remained in force until the passing of Act X of 1859. The avowed object in passing Regulation V of 1812 was to get rid of the necessity of having the forms of leases supervised by the Collector, but at the same time to re-state the prohibition already existing in Regulation VIII of 1793 against the landholders imposing or realizing any new *abwabs*, not to repeal them. The time for consolidating the *abwabs* existing at the

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time of the Permanent Settlement had passed, and they could not be re-assessed as *abwabs*, but only as rent, and in those cases in which they had been consolidated with the *asul*. This it was considered would leave the ryot in the same position as he was after the passing of Regulation VIII of 1793. By section 2 of Regulation XVIII of 1812, the proprietors were empowered to grant leases of any form for *rent*, and by section 3 of Regulation V of 1812 they were empowered to receive from the tenants "corresponding engagements for the payment of rent," and it only. No further power was given. And as if to mark the distinction between cesses and rent, the former are referred to as paid under stipulations or reservations, the latter under engagements and it was the engagements for the payment of rent, and not the stipulations for cesses, that were to be enforced. It was not the intention of the framers of this Regulation to allow the parties to contract for any thing in money or in kind not then known as rent, and when they describe *abwabs* and *mahtuts* as arbitrary or indefinite, they were only using words applied to these assessments from 1772. Bearing this in mind, a comparison of the latter portion of this section with sections 54 and 57 of Regulation VIII of 1793 shows that the words "specifically agreed" in Regulation V of 1812 are the same as "specifically stated" in section 57, and refer to the *one* specific sum of section 54 in the Permanent Settlement. They have no reference to cesses. This is the view taken by the Full Bench, in *Chultun Mahton's case*(1), where it is said that the last four lines of section 3 of Regulation V of 1812 refer to the ground-rent in the Permanent Settlement. That being so, I take it that every assessment of any kind beyond that entered in the second column of the *jamabundi*, which I have given above, was an arbitrary or indefinite cess within the Regulation and prohibited by it.

These sections are partially repealed by Act X of 1859 and Act VIII of 1869, and are now wholly repealed by the Bengal Tenancy Act of 1885, but partly re-enacted by section 74 of that Act, which declares :—

"All impositions upon tenants under the denomination of *abwab*, *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."

It seems, therefore, that all additions to the actual rent, under the denomination of *abwabs*, are now, as they were in 1793, illegal, and any agreement to pay them is void. This seems to me the conclusion arrived at by the Full Bench in the above case, which was subsequently affirmed by their Lordships of the Privy Council.

(1) I. L. R., 11 Calc., 175.

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It has been argued that a different interpretation has been put upon that decision by a Division Bench of this Court in the case of *Pudma Nund Singh* v. *Baij Nath Singh*(1). In that case the plaintiff sued for rent, and two items denominated *tehwari* and *salami*, and in the plaint the claims for the different items were set out as follows:—

1. That your petitioners, the plaintiffs, are the proprietors and Zemindars of purganas Sahrai, &c., mehal Kharagpur. The defendant is the mokuraridar of mouzah Gora, &c., purgana Purbutpatra, the Zemindary of your petitioners, the plaintiffs, and pays an annual *jama* of Rs. 1,999 8 annas, besides road-cess, public works cess, *tehwari*, &c.

2. That the sum of Rs. 2,830 13 annas 3 pies on account of rent, road-cess, public works cess, *tehwari*, interest, *salami*, &c., from the year 1290 to Bysak instalment of the year 1893 Fusli * * * is due from the defendant.

For the year 1290.

	Rs.	As.	P.
Rent	1,999	8	0
Road and public works cesses	345	0	0
Tehwari	7	3	0
Dakbehri	40	0	0
Salami	1	9	6
Interest	82	2	0
	2,475	6	6

The Judge in the lower Appellate Court dismissed the claim. He found that *salami* was a tax levied on the occasion of a *punna*, or religious festival, and *tehwari* another tax imposed on the occurrence of the *Doorga Pooja*, when it is customary for *Zemindars* to expend money in certain ceremonies. So that he held in so many words, that both in denomination and essence, these items were cesses. He further found that the *kabuliat* divided the amount payable into *mâl*, *tehwari* and *salami*, and we know that in several parts of the Regulations the word *mâl* is used in the sense of rent, as opposed to any excess which was styled an *abwab*. Thus in Regulation LI of 1795, section 2, clause 1, we find the words *mâl* and *abwab* used in this sense. In short, the Judge found they were cesses, independent of the *mâl* or rent, and only usually payable when certain ceremonies were performed. In appeal to this Court, the Division Bench decided that the items, called *tehwari*, and *salami* did form part of the rent and were recoverable because they were entered in the *kabuliat* under which the defendant held, were not arbitrary and uncertain, but specific sums which the tenant agreed to pay; and they decided that the Full Bench decision above referred

(1) I. L. R., 17 Calc., 131; L. R., 16 I. A., 152.

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to did not lay down as law that anything recoverable in 1812 could not be recovered at the present day. I agree in thinking that the Full Bench did not lay down any such doctrine, but I think that the Full Bench did lay down that these amounts were not recoverable under Regulation V of 1812. In that case the Full Bench held that in the last four lines of section 3 of Regulation V of 1812, the words "sum specified" refer to the amount of the rent specified. And it follows from the Regulation itself that all stipulations or reservations for *abwabs* or *mahtut* above the rent or *asul jama* were, after the time of the Permanent Settlement, null and void. In the case of *Pudma Nund Singh* v. *Baij Nath Singh*(1), the sums named *tehwari* and *salami* were in name cesses, and were found to be such by the lower Court, and this finding, so far as it depended on evidence, could not be interfered with in special appeal. Moreover, when we consider that so far back as 1772, long before the Permanent Settlement, *salami* was looked upon as an *abwab*, there can be little doubt of their nature. They were by name and nature distinct from the rent, were apparently so stated in the lease, and they were received by the landlord, not as rent, but as cesses. This distinction was marked in the plaint where they were set out by name after the rent and in sharp contrast with it. And yet the sums were decreed as rent.

The Judges said :—

"In the case before the Full Bench that Regulation did not support the plaintiffs. On the contrary, it was directly opposed to their claim. In the present case the Regulation does support the plaintiff's case because the items in dispute are not arbitrary and uncertain in their character, but they are specific sums which the tenant agreed to pay to the landlords; and from the terms of their *kabuliat* it seems to us that the payments of these items, no less than the payment of the *jama* itself, formed part of the consideration upon which the tenancy was created. Therefore the plaintiffs were entitled, by virtue of Regulation V of 1812, to demand and recover these items, they being in fact part of the rent agreed to be paid, although not so described. In the definition contained in the new Tenancy Act, '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 by the tenant.' There is nothing new in this, but it expresses concisely what has always been understood by the word "rent." What is or is not an *abwab*, must depend upon the circumstances of each particular case in which the question arises. The Full Bench case, upon which the District Judge relies, does not, as we have said, bar the plaintiff's claim."

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(1) I. L. R., 15 Calc., 828.

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I must respectfully dissent from this judgment, and since I do so, I think it is only due to the Judges that I should give my reasons for my dissent. In the Full Bench, as in this, case, the sums were definite: in that case the sums were admitted and held to be *abwabs*; in this case the sums were entered among the cesses and declared to be cesses. I do not see clearly how the Regulation is opposed to the one claim more than the other. Nor does the Regulation require that the sums in dispute should be arbitrary *and* uncertain. The words are "arbitrary *or* indefinite"; and to find that the sums are specific is not sufficient to satisfy the requirements of the law: indeed, it is opposed to two propositions laid down in the Full Bench case,—that it cannot be maintained that anything which is definite and certain is not an *abwab*, and that the last four lines of the Regulation invoked in support of this decision only refer to rent, and do not refer to *abwabs*. Nor can I bring myself to acquiesce in the proposition which, I think, is involved in the decision, that rent as defined in the Rent Act, means the consideration upon which a tenancy is created—a mere contract rent and that only. The obligation to pay rent arising out of contract is not found more often than the obligation to pay arising from law. All the tenants, whether ryots or tenure-holders, whose rents have been enhanced, and all tenants in the estates settled under chapter X of the Rent Act, are bound, not by contract, but by law, to pay. In India the rights of landlord and tenant, as this very Act shows, are not wholly based on contract. They depend partly on contract, partly on law, partly on custom and usage. Moreover, assuming that the rent in the case I am now discussing depended on contract, I cannot agree with the view taken in the decision. In regard to the sums sued for in addition to that called rent, the plaintiff sued for rent by name, and additional sums which the lower Court found were in denomination and essence *abwabs*. This Court gave them as rent. It is declared by section 74 that all impositions upon tenants under the denomination of *abwab* or *mahtut* or other like appellations in addition to the actual rent, are illegal, and the stipulations and reservations for their payments are void. So that these sums do not fall within the words, "what is lawfully payable," in the definition of rent. Lastly, I am unable to assent to the proposition that the definition of rent in the Rent Act includes every specific sum which the ryot has agreed to pay. That proposition seems in conflict with the decision of the Full Bench. That certainly was not the meaning of the word rent in the old law. It certainly was not the opinion of Mr. Shore, who says:—

"With respect to land and land revenue there are two material distinctions: *first*, the lands of the country were anciently distinguished by the denomination of *Khalsa*, and

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Jahiri; the former may be translated exchequer lands; the latter, which are appropriated for the maintenance of *Munsubdars*, or the officers of the State, may be denoted assigned lands. The aggregate of the two constitutes the whole of the lands paying revenue to the State. *Secondly*, the distinction with respect to land revenue is that of *asul* or original, understood to be the standard assessment, in contradiction to *abwab* or taxes subsequently imposed upon it."

In other words, before the Permanent Settlement, the *asul*, or ground rent, was only one portion of the amount payable by, and agreed to be paid by, a ryot; other portion was *abwab*.

This distinction, as I have pointed out above, runs not only through Regulation VIII of 1793, but also through other Regulations.

Regulation II of 1795, section 3, clause 2, runs as follows :—

"*Second*.—In the *pottahs* for *nukdi* land (land paying a specific money rent per *bigha*), the name and length of the measuring rod was directed to be mentioned, and as, since the year 1781, sundry new articles of *abwab* and charges had been introduced, the *pottah* provided that all new *abwabs* and charges introduced since the Fusli year 1187 should, from the year 1196 of the same era, be considered as prohibited and relinquished, and the *mál* or original rent and *abwab* or cesses which existed in that year, *viz.*, 1187 Fusli, being incorporated with the *mâl* so as to form only *one* aggregate sum, this sum or specific rate should constitute what the ryots or cultivators of the *nukdi* lands were to pay per bigha."

Again, take the preamble of Regulation XXX of 1803 regarding the settlement of the ceded provinces, where it is said that in the proclamation regarding the settlement of these provinces, and in Regulation XXVII of 1803(1), it was declared that "all persons who may enter into engagements with Government for the public revenue, shall bind themselves to grant *pottahs* to their under-renters and *ryots*," in which "all authorized *abwabs* shall be consolidated with *the land rent* (*or asul jama*) *in a gross sum*" : that counter-engagements shall be executed by the *ryots* and under-renters of a similar tenor; and nothing but what is therein expressed shall be collected from the *ryots* or under-renters of whatever description.

The same view is set forth in Regulation VII of 1822, section 9, and it comes to this, that up to the time of making a settlement, the whole amount paid by the *ryots* consisted of two portions, ground-rent plus *abwabs*; and that such of the *abwabs* as were allowed by the settlement were consolidated with the *asul* and called land rent, representing a share of the produce in contradistinction to *abwabs* or cesses. In illustration of this

(1) Section 53 (11), (12).

proposition, I set forth the lease granted under the Regulation to the *ryots* of Benares, the province next to Behar. It is the only form mentioned in the Regulations :—

"A *pottah* or engagement and stipulation in the name of——according to the *zeyl without abwabs* or *serf*. The *fota* or rent for the entire year of the cultivation shall be *bilmokta* or according to one rate ; and exclusive of that neither a *daam* or dhirm will be taken.

"Zeyl or annexed specification of rent."

Nukdi or money rent.

1*st Mootry*, 12 bighas (either of 3 dera ilahi or purgana bighas, or dherawat or estimated bighas) at 8 rupees 2 annas per bigha—Rs. 37-8-0.

2*nd*. Kuyraur, &c. (being for the more valuable articles of cultivation), 13 bighas (whether of 3 dera ilahi or purgana measurement or dherawet), *viz.*,—

	Rs.	As.	P.
Sugarcane, 10 bighas, at 5 rupees 1 anna per bigha ..	50	10	0
Tobacco, 2 bighas, at 6 rupees per bigha ..	12	0	0
Moolee or vegetables, 1 bigha, at 2 rupees 1 anna per bigha	2	1	0
	64	11	0

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In this lease rent is used in the sense of ground-rent only, and it is on this supposition that all the elaborate rules for enhancement of rent in Act VIII of 1885 are based.

Nor do I think the express words of the Regulations, as to the consolidation of *asul* and *abwabs* into one sum, weakened by the argument that because the last four lines of Regulation V of 1812, section 3, use the words in the plural, namely, "clauses" and "engagements," the rent must consist of more than one lump sum. It is a general clause and describes every person and every thing in the plural, except rent. It must be borne in mind that the leases contain a specification of rates, and that the land could be let for a term, and there might be clauses in regard to these matters as in the lease set out above. Moreover, we know that in some Regulations, before Regulation V of 1812, when rent was consolidated into one lump sum, the engagements between *ryots* and land-holders are referred to in similar terms. Examples of this are found in Regulation XIV of 1793, section 6, and in Regulation VII of 1799, section 15, clause 8, where the words bear a strong resemblance to those in Regulation V of 1812, although they refer to Regulation VIII of 1793.

The Judges held in the case decided by the Full Bench that

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there was no definition of *abwabs* in the Regulations, and hence that it must be decided in each case whether any sum is or is not an *abwab*. It is true that there is no express definition of *abwab* in the Regulation. Yet, as the whole demand on a tenant is frequently declared to be the ground-rent and *abwab*, the latter must be that portion of the demand not included in the ground-rent. This too was the meaning attached to it in 1813, one year after the passing of Regulation V of 1812. In this year a glossary of legal terms was compiled in the East India House in London for the assistance of English readers of the Fifth Report, and in it *abwab* is defined as follows :

"This term is particularly used to distinguish the taxes imposed subsequently to the establishment of the *asul*, or original standard rent, in the nature of the addition thereto. In many places they had been consolidated with the *asul*, and a new standard assumed as the basis of succeeding impositions."

This is, I think, an accurate definition of the term *abwab* as found in the Regulations, and it should serve as a guide to us in deciding cases ; and certainly, if it be correct as I think it is, the cesses in this case and in the case under discussion were *abwabs*.

It is for these reasons I respectfully dissent from the decision in *Pudma Nund Singh* v. *Baij Nath Singh*(1). It seems to me to be in direct conflict with the decision of the Full Bench, and that both judgments cannot co-exist as an exposition of the same law. I think the sums of *tehwari* and *salami* stipulated to be paid were *abwabs*, and the stipulation to pay them was void.

I may add in support of the view of the Full Bench decision the case referred to by the Judges of the Full Bench, *viz.*, the case of *Radha Mohun Surma Chowdhry* v. *Gunga Pershad Chuckerbutty*(2). There the *Zemindar* sued the farmers for Rs. 7,542-13-4 under the head of *Zabita batta*, *i.e.*, an excess of a half anna in each rupee on the amount of the farming *jama* under their *Kabuliat*, dated 22nd Bysack, 1231. That suit was dismissed. Three Judges of the Sudder Dewani Adawlut in giving judgment held as follows :—

"The *Kabuliat* provides that the farmers should pay such sums, over and above the stipulated *jama* as are realized in the mofussil under the head of *Zabita batta*. Section 3, Regulation V, 1812, provides that the imposition of arbitrary or indefinite cesses, whether under the denomination of *abwab*, *mahtut*, or other denomination, is illegal, and that all stipulations of that nature should be judged by the Courts to be null and void."

This case, in my opinion, bears a strong analogy to the case of *Pudma Nund Singh* v. *Baij nath Singh*(1), and it affirms the

(1) I. L. R., 15 Calc., 828. (2) 7 Sel. Rep., N. S., 166.

principle that all agreements of the nature referred to in that case are null and void. The answer to the question referred to the Full Bench must, I conceive, be that the amounts sued for under the head of *sarak*, *neg*, and *khuruch* are *abwabs*, and are not therefore, recoverable, and the appeals should be dismissed.

Prinsep, J.—I am of the same opinion.

Pigot, J.—I entirely agree.

Ghose, J.—This was a suit for a rent for the years 1290 to 1293 at the rate of Rs. 22 2 annas per year. The defence was that the yearly rent was not Rs. 22 2 annas, but Rs. 18-10-6; and that the difference between Rs. 22 2 annas and Rs. 18-10-6 was made up of certain illegal cesses such as *sarak*, *batta*, *neg*, and *khuruch*, which could not be legally recovered.

The suit was instituted after the Bengal Tenancy Act came into operation.

The main question upon which the parties went to trial in the Courts below was whether the rent was Rs. 22 2 annas or Rs. 18-10-6; and upon this question both the Courts below found in favour of the defendant. They were of opinion that the "actual rent" was Rs. 18-10-6, and that although the defendant had for many years paid very nearly at the rate of Rs. 22 2 annas, still that sum was made up of the rent and illegal cesses; that these cesses had not been consolidated with the rent in accordance with the provision of Regulation VIII of 1793, and that therefore they could not be recovered as rent. The learned Judge has, however, held that *batta* is not an illegal cess, and it can therefore be recovered; and he has reserved to the plaintiff the liberty of bringing a separate suit for *neg*.

The plaintiff appealed to this Court and the Division Bench, before whom the case came on for hearing, has referred the following question to a Full Bench, *viz.*:—

"Whether the portions of the claim that are objected to as coming under the denominations *sarak*, *neg*, and *khuruch* are illegal cesses, or whether they are recoverable as rent by reason of their having been paid for a long time along with rent without any specification in the rent receipts."

It appears to me that upon the finding of fact arrived at by both the Courts below, the appeal ought to fail; and the question as to the legality or otherwise of the items of *sarak*, *neg*, and *khuruch* hardly arises in this second appeal. The question between the parties was, what was the *rent* of the tenure held by the defendant; and it has been found that it was Rs. 18-10-6, and not Rs. 22 2 annas, and that the difference between these two figures was no part of the rent of the tenure, though paid along with it, and could not therefore be recovered as such.

But as the majority of the Judges who compose the Full Bench think that the question should be answered, I briefly state my views.

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Section 74 of the Bengal Tenancy Act provides as follows :—

"All impositions upon tenants under the denomination of *abwab*, *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."

And "rent" is defined in section 3 (5) to mean "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." This definiton, as I understand it, expresses in different words what has always been understood by the word "rent," *viz.*, the consideration to be paid for the occupation of land by a tenant.

In this case the actual rent is found to be Rs. 18-10-6 only ; and the other items claimed are what had been levied in previous years, under the denomination of *sarak*, *khuruch*, *&c.*, in addition to the rent.

There is nothing to show that those items ever formed any part of the consideration for which the land was leased to the defendant ; for if they did, they would, I think, be really *rent*, though described in the *Zemindari* papers under other denominations. They were apparently *abwabs* imposed subsequent to the rent being fixed at Rs. 18-10-6 ; and it is not proved that the *ryot* at any time agreed to pay an enhanced rent including the said items as part of the rent.

The word *abwab* is not defined either in the Bengal Tenancy Act, or in the Regulations which have been repealed by that Act. When the East India Company obtained the *Dewani* of Bengal, they found that a variety of taxes, called *abwabs*, *mahtuts*, *&c.*, had been indiscriminately levied in addition to the *asul* or original ground-rent by the Government from the *Zemindars*, as also by the "Zemindars" from the ryots. And from the reports that were submitted by the officers of the Company, after investigation into the Revenue System, it would appear that in the time of the Emperor Akbar, a *tumar jama* or standard assessment was fixed upon the principle of division of the gross proceeds between the sovereign and the ryots in certain proportions. This standard assessment was from time to time augmented. But notwithstanding this standard assessment, various taxes were subsequently imposed upon the *ryots* by the farmers of the land revenue (*Zemindars*), as also by the *subahdars* (Viceroys) upon these farmers. And these taxes were called *abwab jama* in contradistinction to the *asul jama*, or original rent, at which the land was supposed to have been rated in the time of Akbar or an ancient rent fixed at some later period. The *subahdary abwabs* were, it is said, generally levied upon the standard assessment in certain proportions from the *Zemindars*, and the latter were authorized to collect them from the ryots in same proportions ; but, as a matter of fact, the *Zemindars* were left to their own discretion and arbitrary will to make any new

demands as they pleased, and there was no fixed rule or principle in levying these impositions. (See Harington's Analysis, Vol. II, pages 19, 69, and the 5th Report to the House of Commons, Vol. I, pages 103, 105 to 108, 275, 292, 300 and 391.)

In the year 1772 (14th May) a Regulation (1) was passed, whereby it was declared that a settlement should be made for five years; that the farmers should not receive larger rents from the ryots than the stipulated amount of the *pottahs*; that the payments made by the farmers to Government should, in like manner, be ascertained and established; and that no *mahtuts* or assessment under the denomination of *mangan*, *sood*, &c., or any other *abwab* should be imposed upon the *ryots*, and those articles of *abwab* which were of recent establishment should be scrutinized, and such as might be found to be oppressive and pernicious should be abolished, and that all *nuzzurs* and *salamis* be totally discontinued (Arts. 10 to 13).

In the same year, the Committee of Circuit, while making a settlement for five years in some parts of Bengal, found it necessary "to form an entire new *hustabud* or explanation of the diverse and complex articles which were to compose the collections," these consisting of the *asul* or original ground-rent and the *abwabs*. Such *abwabs* which appeared to be most oppressive were abolished, and the rest were retained, they being considered part of the "neat rents." And in order to prevent the farmer from eluding the restriction imposed, the Committee prepared forms of *pottahs* which the farmers were to give to the *ryots*, specifying the conditions of the lease and the "separate heads or articles of the rent." (See Harington's Analysis, Vol. II, pages 19 and 20.)

Subsequently in the year 1787 (8th June), another Regulation (2) was passed, by the 50th article of which it was declared that, whereas, notwithstanding the orders of Government in 1772 prohibiting the imposition of *mahtut* or assessment, various taxes had since been imposed, the Collector should be enjoined to enforce that article, and that if any new taxes be imposed, he was to decree to the party injured double the amount extorted.

We then find that Lord Cornwallis, while recommending a Permanent Settlement of Revenue in Bengal, stated in his Minute, referring to Mr. Shores Minutes on the subject, that—"the rents of the *ryots*, by whatever rule or custom they may be demanded, shall be specific as to their amount; that the landlords shall be obliged to grant *pottahs*, in which this amount

(1) Colebrooke's Supplement, 190, Fifth Report, Vol. I, 4; Harington's Analysis, Vol. II, 13.

(2) Colebrooke's Supplement, 253-266. Fifth Report, Vol. I, 15. Harington's Analysis, Vol. II, 53.

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shall be inserted, and that no *ryot* shall be liable to pay more than the sum actually specified in the *pottah*. (1)

And—

"every *abwab* or tax imposed over and above that sum is not only a breach of that agreement, but a direct violation of the established laws of the country." (2)

Further on he says:—

"the Zemindar may sell the land, and the cultivator must pay to the purchaser. Neither is prohibiting the landholder to impose new *abwabs* or taxes on the lands in cultivation tantamount to saying to him that he shall not raise the rents of his estate. The rents of an estate are not to be raised by the imposition of new abwabs * *." (3)

The policy of the Government then was, as I gather from what has been already noticed, that whatever may be payable as rent should be specified in the *pottah* to be granted by the landlord, and that no *new abwabs* should be imposed.

We then find that in section 54 of Regulation VIII of 1793, it was laid down that—

"the impositions upon the *ryots* under the denomination of *abwab*, *mahtut* and other appellations, from their number and uncertainty, have become intricate to adjust, and a source of oppression to the *ryots*; all proprietors of land and dependent *talukdars* shall revise the same in concert with the *ryots* and consolidate the whole with the *asul* into one specific sum."

The next section 55 provides that—

"no actual proprietor or dependent *talukdar*, or farmer of land, shall impose any new *abwab* or *mahtut* upon the *ryots*. * *"

Section 57 lays down that—

"the rents to be paid by the *ryots*, by whatever rule or custom they may be regulated, shall be specifically stated in the *pottah*, which in every possible case shall contain the exact sum to be paid."

Section 58 provides that the proprietor of the land or dependent *talukdar* shall prepare the form of *pottahs* to be given to the *ryots*, and obtain the approbation of the Collector. Section 61 says that in the event of any claims being preferred by any proprietor or *talukdar* on engagements wherein the consolidation of the *asul*, *abwab*, &c., shall appear not to have been made within the time limited by section 54, they are to be non-suited.

This was the law until the year 1812. The object that the Legislature had in view in 1793 was to put down the imposition of *new abwabs*, and to make it compulsory upon the landlords

(1) Harington's Analysis, Vol. II, 183. Fifth Report, Vol. I, 614.
(2) Harington's Analysis, Vol. II, 184. Fifth Report, Vol. I, 615.
(3) Harington's Analysis, Vol. II, 184. Fifth Report, Vol. I, 615.

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to consolidate the then existing *abwabs* with the rent. And probably, they intended also that there should be but one sum, including all the items of payment, fixed and specified in the *pottah* as the rent. But then section 3, Regulation V of 1812, in the first place rescinds so much of the Regulations of 1793, which provided that the proprietors and *talukdars* should prepare forms of *pottahs*, and obtain the sanction of the Collector thereto, and authorizes them to grant *pottahs* in such forms as the contracting parties might agree to, and it then lays down as follows :—

" Provided, however, that nothing herein contained shall be construed to sanction or legalize the imposition of arbitary or indefinite cesses, whether under the denomination of *abwab*, *mahtut*, or any other denomination. All stipulations or reservations of that nature shall be adjuged by the Courts of Judicature to be null and void ; but the Courts shall notwithstanding maintain and give effect to the definite clauses of the engagements contracted between the parties or, in other words, enforce payment of such sums as may have been specially agreed upon between them.

It will be observed that the section prohibits the *imposition* of *arbitrary* and *indefinite* cesses, and says that any reservation or stipulation of *that* nature shall be null and void. And the words which follow are to my mind very significant as showing what they really intended to lay down. I think their intention was to provide that if the parties agree to any specific and definite sum or sums as consideration for the lease, such agreement shall be enforced. The expression " such sums as may have been specifically agreed upon " should be read as it were in contradistinction to the words " imposition of arbitrary or indefinite cesses." As I have already stated, when the East India Company assumed the *Dewany*, they found after enquiry that a variety of taxes under the denomination of *abwab*, *mahtut*, &c., were being indiscriminately levied by the *Zemindars* according to their own will and discretion, without any fixed rule or principle. And it was the policy of the Government to put a stop to such arbitrary and indefinite impositions, and to prohibit the levying of *new abwabs*. If the construction I have put be not correct, I fail to see with what object the last portion of the section beginning with the words " but the Courts shall notwithstanding, &c.," was put in ; for accepting the opposite view to be correct, these words would, I think, be superfluous.

In the case of *Chultan Mahton* (1), decided by the Full Bench of this Court, Mr. Justice Mitter (and his judgment was concurred in by Tottenham and Pigot, JJ.) observed as follows :—" Although the Regulations did not clearly define what

(1) I. L. R., 11 Calc., 175.

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an *abwab* is, still I think that it cannot be maintained that any thing which is definite and certain is not an *abwab* under the Regulations, although the parties to the contract call it so. It seems to me that the Regulations, without defining clearly what an *abwab* is, left this question to the determination by the Court in each case upon the evidence. I cannot find anywhere in the Regulation the precise definition of the word *abwab*, which would justify me to treat the disputed items of claim as part of the specified rent, although the plaintiffs claim them in the plaint and entered them in the *Zemindary* accounts as *abwabs*."

In that case the plaintiff claimed to recover a certain amount as rent, as also certain other items as "customary *abwabs*" as having been prevalent in the village from time immemorial. It was contended that these *abwabs* had existed from before the Permanent Settlement, and were therefore recoverable, notwithstanding the provisions of section 54, Regulation VIII of 1793, and further that they were not *abwabs*, although claimed as such in the plaint, but part of the rent. The Full Bench negatived both these contentions, and Mr. Justice Mitter held, as already mentioned, that what was an *abwab* must be left to the determination by the Court in each case upon the evidence; but that in the case before them he could not hold that the disputed items were part of the rent. No doubt that learned Judge in a subsequent passage, while referring to the last four lines of section 3, Regulation V of 1812 *viz.*, "but the Courts shall notwithstanding maintain and give effect to the definite clauses in the engagements contracted between the parties, or, in other words, enforce payment of such sums as may have been specifically agreed upon between them," says that "the words 'sum specified' refer to the amount of the rent specified." But this passage must be read with what had preceded, and which I have already referred to.

The Judicial Committee in affirming that decision observed as follows:—

"The first question seems to be this: Are these payments over and above rent, properly so called, *abwabs* within the meaning of the word as used in the Regulation VIII of 1793?

"They are described in the plaint as '*old usual abwabs*,' and they are described as *abwabs* in the *Zemindary* accounts. It appears to their Lordships that the High Court were perfectly right in treating them as *abwabs* and not as part of the rent. Unquestionably they have been paid for a long time—how long does not appear. They are said to have been paid according to long standing custom; whether that means that they were payable at the time of the Permanent Settlement or not is not plain. If they were payable at the time of the Permanent Settlement, they ought to have been consolidated with the rent under section 54, Regulation VIII of 1793. Not being so con-

solidated they cannot now be recovered under section 61 of that Regulation. If they were not payable at the time of the Permanent Settlement, they would come under the description of new *abwabs* in section 55; and they would be in that case illegal. * * * "

What the Judicial Committee say is simply this: plaintiff expressly claims these items as *abwabs*; if they existed at the time of the Permanent Settlement, they should have been consolidated with the rent under section 51, Regulation VIII of 1793; if they were not payable at that time, they are *new abwabs*, and therefore illegal under section 55. And they further say that the High Court were right in treating them as *abwabs* and not as part of the *rent*.

I do not understand that they intended to go any way beyond what Mr. Justice Mitter said in his judgment, and to lay down, as it is said they did lay down, that nothing, save and except *one* sum, including every item of payment, could be recovered as payable for the occupation of land; and that an agreement to pay anything beyond *that* sum, athough it might be a lawful consideration for the lease, could not be enforced.

It appears to me that if in any given case the Court finds that any particular sum specified in the lease or agreed to be paid, is a lawful consideration for the use and occupation of any land, that is to say, if it is really part of the rent, although not described as such, it would be justified in holding that it is not *abwab*, and is recoverable by the landlord.

And it is somewhat from this point of view that the case of *Padma Nund Singh*(1) was decided. That was a case of permanent *mokurari* lease executed before the Bengal Tenancy Act, and under which the defendant agreed to pay a certain amount as rent, and two other items of Rs. 9 and 2, respectively designated as *tehwari* and *salami towzi*. The Division Bench (Tottenham and Ghose, JJ.), before which the case came on for hearing, proceeding upon the provisions of section 3, Regulation V of 1812, held that the items objected to, *viz.*, *tehwari* and *salami*, were recoverable, because they were not arbitrary and uncertain in their character, but specific sums which the tenant had agreed to pay; and because these sums formed part of the consideration for the lease, and were in fact part of the rent agreed to be paid, though not described as such. The case was decided upon the terms of section 3, Regulation V of 1812, and not with reference to section 74 of the Bengal Tenancy Act, the lease having been executed before that Act was passed. The judgment in the case was delivered by Tottenham, J., who was one of the Judges who formed the Full Bench in case of

(1) I. L. R., 15 Calc., 828.

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Chultan Mahton(1). And I may here observe that it was not intended thereby to hold that anything that is not arbitrary and indefinite is recoverable, although it may not be part of the *rent*. In that case, both the elements were supposed to be present, *viz.*, that the items in question were not of an arbitrary or indefinite character; and, secondly, they formed part of the rent agreed to be paid. I am, however, bound to say that having since more carefully considered the subject, I have come to the opinion that we were not right in holding that the items of *tehwari* and *salami* were part of the *rent* stipulated to be paid under the lease. They were, I now think, *abwabs*.

As regards the items of *sarak* and *khuruch* claimed in the case now before us, it seems to me that, although they had been realized in previous years at certain rates, still the amounts are not definite, and they may vary according to circumstances; and if the rent is not permanent, they would be augmented with the increase of rent—*Radha Mohun Surma Chowdhry* v. *Gunga Pershad Chuckerbutty*(2). But however that may be the question is whether under the Bengal Tenancy Act (section 74) they may be recovered. The Judge of the Court below has found, as a matter of fact, that they are no part of the "actual rent," and it follows therefore that they are not recoverable.

As regards *neg*, I should also think that it cannot be recovered in this case, because it is no part of the rent.

Appeal dismissed.

NOTE.—Also see *Radha Charan* v. *Goloke Chandra*, I. L. R., 31 Calc., 834.

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(1) I. L. R., 11 Calc., 175. (2) 7 Sel. Rep. N. S., 166.

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ANANDA HARI BASAK AND OTHERS

v.

SECRETARY OF STATE FOR INDIA IN COUNCIL*

1906.

January 8.

[*Reported in* 3 *C. L. J.*, 319.]

The JUDGMENT OF THE COURT was delivered by—

MOOKERJEE, J.—The subject-matter of the litigation, which has given rise to these two appeals, comprises 5,929 bighas of alluvial land formed by the action of the river Padma about the year 1891, within the jurisdiction of the Court of the Subordinate Judge at Faridpur. The Secretary of State for India who was the plaintiff in the Court below is the respondent in these appeals claims these lands as a re-formation *in situ* of *char* Bhadrasan Part I which is an estate belonging to Government and also as an accretion thereto. The defendants on the other hand claim the lands in dispute as a re-formation on the old site of their estate Joarbander Jhowkanda *alias chur* Nababgunge and as a contiguous accretion to it. The learned Subordinate Judge in the Court below has made a decree in favour of the plaintiff for the major portion of the lands in suit, namely, 4,310 bighas as depicted on the map of the Civil Court Amin on the basis of a map of 1868 prepared by Mohesh Chandra Sarkar. The defendants have preferred separate appeals to this Court and on their behalf the decision of the Court below has been challenged on five grounds, namely, first, that there is reliable evidence to prove that the *char* which was in existence in 1868 as also the lands now in dispute which appeared in the year 1891 occupies the site of the permanently settled estate of the defendants known as Nababgunge; secondly, that there is satisfactory evidence to show that the *char* which was in existence in 1858 has appeared before 1847, had been re-leased to the predecessor of the appellants and had been in their occupation from 1847-1861; thirdly, that there is no reliable evidence to prove that when the lands formed in 1891, they accreted to *char* Bhadrasan Part I; fourthly, that there is satisfactory evidence to show that at the time of the formation in 1891, the land accreted to Nababgunge, the estate of the defendants; and, fifthly, that regarding the lands in dispute as a re-formation on the site of the *char* which was in existence in 1868, Government can claim no title thereto, inasmuch as it had acquired no indefeasible right to that *char* either by adverse possession or as an accretion to *char* Bhadrasan Part I. Before examining

* *Present* :—MR. JUSTICE RAMPINI and MR. JUSTICE MOOKERJEE.

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the validity of these arguments it is necessary to state the previous history of *char* Bhadrasan Part I as also of the lands now in dispute so far as it appears on the evidence.

* * * * * * * * * *

We must next turn to the second branch of the contention of the appellants, namely, that Government had not acquired such an indefeasible title to the island of 1858 as an accretion to *char* Bhadrasan Part I as to entitle it to claim the lands now in dispute as a re-formation upon the site of that island. This raises an important question of law, and before we examine it, it is desirable to recapitulate the facts which may be taken to have been established by the evidence.

1. The bed of the river Padma in 1859 was not part of the permanently settled estate of the defendants.

2. The island *char* shown on the Thak and Survey Maps of 1858-1859 formed about that time and is not shown to have been in existence at any earlier period.

3. That this island *char* during the dry season of its first year of formation became an accession to estate Bhadrasan and estate Ramnagar.

4. The *char* varied in extent from time to time attaining its maximum size about 1868 and from 1861-1868, the revenue authorities purported to deal with the whole of it on the assumption that Government was exclusively entitled to it as an island *char* thrown up in the bed of a public navigable river, not the property of a private individual and as not having accreted to the estate of any riparian owner.

5. In 1868, Government re-leased the southern portion to the proprietors of Ramnagar as an accession to their estate and continued to deal with the northern portion as an accession to the Government estate Bhadrasan till the disappearance of the *char* during 1875-1879.

Upon these facts the learned vakil for the appellants argues that Government has no title to the lands in dispute, first, because Government, as a riparian owner, is not entitled to claim title by accession, and, secondly, because assuming Government to have acquired title by accession in 1859 such title was destroyed when the *char* was diluviated ; in other words, that upon submergence of the *char*, that portion of the bed of the river again became part of the public domain and Government could not claim title by re-formation *in situ* in 1891. As regards the first of these reasons, the question turns upon the construction of sec. 4, clause (3), of Reg. XI of 1825. That clause provides that if a *char* or island is thrown up in a large or navigable river, the bed of which is not the property of an individual and if the channel between the island and the shore be fordable at any season of the year, it shall be considered an accession to the land, tenure or

tenures of the person or persons, whose estate or estates may be most contiguous to it. If Government happens to be the owner of land to which such an island becomes an accession, there appears to be no principle why Government as such riparian proprietor should not have precisely the same rights in the accession as a private owner would undoubtedly acquire. We are unable to accept the narrow construction of the clause suggested by the appellants. It is conceded that if the island becomes an accession to the land of two private individuals A and B, each of them would be entitled to a portion of the property, but it is argued that if A happens to be the Government, B would be exclusively entitled to it. We have not been referred to any authority or any intelligible principle in support of a position so obviously unsound. We must, therefore, hold that when the island became an accession in 1858-59 to estates of Bhadrasan and Ramnagar, Government became entitled to it along with the proprietors of Ramnagar. As regards the second reason, it raises the question whether when an island has been thrown up in the bed of a public navigable river which is not the property of a private individual and the island has been taken possession of by Government under sec. 4, clause (3), Reg. XI of 1825 or has become an accession to an estate belonging to Government as a riparian owner, if the island is subsequently diluviated and re-formed, can Government claim the re-formation? The learned vakil for the appellants contends that as soon as the island is diluviated, it becomes a part of the bed of the river and lapses back into the public domain with the result that if the island subsequently re-appears, Government would be entitled to claim it only upon proof that the re-formed *char* is an island or is an accretion to some estate belonging to Government. The question is not free from difficulty and is apparently one of first impression. If a similar question arose between two private individuals, there can be no doubt that the persons who acquired a title to the *char* by accretion in the first instance, would be entitled to claim it when it re-appeared after diluvion, on the ground of re-formation on the site of what had previously been his property. This appears to be settled by the decision of the Judicial Committee in *Hursuhai Singh* v. *Syud Lootf Ali Khan*(1), which is an authority for the proposition that where land which has been submerged re-forms and is identified as having formed part even by accretion of a particular estate, the owner of that estate is entitled to it. In that case the plaintiffs, who were proprietors of an estate, called Muteor, sued to recover possession of a large quantity of land which had been submerged by the river Ganges and subsequently re-appeared. It was found that although, at the time of the

(1) L. R., 2 I. A., 28; 14 B. L. R., 268.

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re-appearance, the lands adhered to and adjoined the estate to Ramnagar and formed *primâ facie* an accretion to that estate, the site had been occupied, previously to submergence, partially by lands comprised in Muteor, the estate of the plaintiffs, and partially by accretions to that estate. Their Lordships of the Judicial Committee in holding that the plaintiffs were entitled to the whole of the lands as re-formation on the site of what before submergence had been their property, observed that there was no distinction in this respect between the permanently settled lands of Muteor and what had been in themselves an accretion thereto held under a temporary settlement. As we understand this decision, it is founded on the principle that when it is determined that a separate parcel of land is accretion or alluvion, it becomes the property of the owner of the bank to which it adheres as though it had always existed there; and for the purposes of the determination of the question of title in the case of re-appearance after submergence, the accreted land is regarded, as part of the original estate. The only question, therefore, which arrises is, whether this doctrine which is applicable to lands belonging to private individuals which have been submerged, holds good when the land before submergence belonged to Government. It is argued on behalf of appellants that the principle is not applicable because when under cl. (3), section 4, Reg. XI of 1825, a *char* or island comes to be at the disposal of Government because it is surrounded on all sides by an unfordable channel or because it has become an accession to land held by Government, Government must be treated as a trustee for the public, with the result that if such island or *char* is subsequently diluviated, the site reverts to the public territory and upon the re-appearance of the *char* or island, Government cannot rightly claim any title by re-formation as against a private individual to whose land upon re-appearance it may have become an accession. After a careful examination of this argument we are unable to uphold it as well-founded. In our opinion it is not correct to say that when Government acquires property under cl. (3), section 4, Reg. XI of 1825, either as an island surrounded by an unfordable channel or as an accession to lands held by Government, Government becomes a trustee for the public. Government is entitled to deal with the property in the same way as any other part of the territory of the State at its disposal. If Government permanently or temporarily settles the estate to which it has thus acquired title, the holder of the settlement is upon the authority of the decision of the Judicial Committee in *Hursuhai Singh* v. *Syud Lootf Ali Khan* (1) clearly entitled to the benefit of the principle of re-formation. But if the question arises not as between the lessee of

(1) L. R., 2 I. A., 28. 14 B. L. R., 268.

Government and a private individual, but as between Government itself and a neighbouring riparian owner, we are unable to see why Government should be placed in a worse position than a person who has derived title from it. No doubt section 4, cl. (3) of the Regulation places Government in this position of disadvantage that even though the bed of a public navigable river may be public territory, Government does not acquire any title to an island or *char* formed on such bed, if it happens to accrete to the land of a riparian owner. But we are not prepared to carry the disability further and to hold that even though Government may have acquired title to an island surrounded by an unfordable channel or to a *char* which has become an accession to land in the possession of Government, Government is precluded from claiming the land upon submergence and after re-appearance. The principles upon which the doctrine of re-formation rests, as explained by their Lordships of the Judicial Committee in the cases of *Lopez* v. *Muddun Mohun Thakoor* (1), and *Nagendra Chunder Ghose* v. *Mahomed Esof* (2), appear to us to be applicable quite as much to the land in the occupation of Government at the time of submergence as to land in the occupation of a private individual; whoever was the owner before the land was washed away would remain owner while it was covered with water and would continue to be so after it became dry. It was suggested that the application of this principle might lead to practical difficulties because as was observed in *Lopez* v. *Muddun Mohun Thakoor* (1), it cannot be said that property absorbed by a sea or river is under all circumstances and after any lapse of time to be recovered by the old owner, inasmuch as it may have been so completely abandoned as to merge again like any other derelict land into the public domain, as part of the sea or river of the State and so liable to the written law as to accretion and annexation. It was contended on behalf of the appellants that as Government does not pay revenue for land in its occupation to anybody, it would be impossible to say whether Government abandoned submerged lands; but although payment of revenue or rent may be good evidence of an intention on the part of the owner of submerged lands not to abandon his right therein, this cannot be regarded as the sole test, because there may well be the submergence of *lakheraj* lands in respect of which no rent or revenue is paid. In our opinion no inflexible rule can be laid down as to the manner in which an intention not to abandon submerged lands may be proved, but it would depend upon the circumstance of each particular case. In many cases there may well be a presumption that the original

(1) 13 M. I. A., 467; 5 B. L. R., 521.
(2) 10 B. L. R., 406.

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owner intended to retain his right to the soil unless indeed some overt act was shown indicating an intention to abandon or unless the re-formation happened after a considerable lapse of time. No abandonment however, can be justly presumed in the case now before us. It is abundantly proved by the evidence that Government continued in possession through its lessees down to the period of submergence, even though after 1874, large tracts were steadily swept away and only small fragments remained above water. Immediately upon re-appearance, after a lapse of about eleven years (that is, after submergence in 1879 and re-appearance in 1891), Government at once attempted to take possession and to settle the lands with tenants; but the defendants with the help of their officer Kali Nath Sarkar, who has been examined as a witness in this case, succeeded in forcibly taking possession of the lands. Under these circumstances it is impossible to hold that there was any intention in fact on the part of Government to abandon its claim to the submerged lands; and as we have already held that mere submergence of lands in the possession of Government does not operate in law as an abandonment on its part and a reversion thereof to the public territory, we must hold that when the lands now decreed to Government by the Court below re-appeared in 1891, they belonged to Government as re-formation on the site of a *char* to which Government had title before submergence under section 4, cl. 1, Reg. XI of 1825.

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RAJA SRINATH ROY

v.

DINABANDHU SEN.*

[*Reported in* 18 C. W. N., 1217.]

Their LORDSHIPS' JUDGMENT was delivered by—

LORD SUMNER.—In this action the Plaintiffs claimed, as proprietors of a several fishery in certain tidal navigable waters in Eastern Bengal, a decree, for possession of an exclusive fishery in a portion of a river-channel, of which the principal Defendants own both the bed and the banks. They succeeded before the Additional Subordinate Judge of Faridpur and failed on appeal to the High Court at Calcutta. Hence this appeal to their Lordships' Board.

There is a section of the river system of the Lower Ganges, between Dacca on the left bank and Faridpur on the right, where the great stream divides and for many miles runs in two channels roughly parallel with one another. The general course is to the south-east. The northern of the two channels is much the larger, but the southern, the smaller of the two, is itself wide. Both channels are tidal and navigable.

The streams in the Gangetic delta are capricious and powerful. In the course of ages the land itself has been deposited by the river, which always carries a prodigious quantity of mud in suspension. The river comes down in flood with resistless force, and throughout its various branches is constantly eroding its banks and building them up again. It crawls or races through a shifting network of streams. Sometimes its course changes by imperceptible degrees ; sometimes a broad channel will shift or a new one open in a single night. Slowly or fast it raises islands of a substantial height standing above high water level and many square miles in extent. Lands so thrown up are called "*chars*," and it is by *char*-lands formed at some unknown though probably not remote date that the northern and southern channels in question are at present divided.

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* *Present* :—LORD MOULTON, LORD SUMNER, LORD PARMOOR, SIR JOHN EDGE, MR. AMEER ALI.

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In the year 1897 a channel was broken through the Defendants' *char*-land in question. Though relatively small, even this stream was of considerable size; it is navigable for small craft, and is certainly within the ebb and flow of the tide. This new branch probably followed a line of depressions already existing, one end of which was actually an arm running up from the northern river.

The Plaintiffs claim the exclusive fishery in this new navigable channel as falling within the up-stream and down-stream limits of their several fishery, and allege that the Defendants are trespassers when they fish in it. The Defendants justify their claim to fish in a portion of this channel as part of the rights of owners of the subjacent soil and of persons claiming under them.

That the Plaintiffs are entitled to some fishery right in the river waters generally, not far distant from the site in question, never was much disputed, and was admitted by the Respondents before their Lordships' Board, but they dispute its origin and its extent. They say that this branch is of origin so recent that no title by prescription or adverse possession arises as against themselves; that they are not affected by evidence of prescription against third parties; that even a several fishery, duly created in the main stream by the Government of India in right of the Crown, would not extend to this new branch, still less would rights acquired in the main stream by prescription against other riparian proprietors be exercisable in it; that the evidence neither establishes such bounds for the alleged exclusive fishery up-stream and down-stream as would bring this branch between them, nor shows that in fact any *jalkar* right was ever created by Government at all. In substance the Trial Judge found for an actual Government creation of the Plaintiffs' right, as well as for the boundaries claimed by them. The High Court concluded against the Plaintiffs on the question of the extent of their *jalkar* rights without determining their origin.

The evidence of the origin of the Plaintiffs' rights is documentary, and does not depend on the credibility of witnesses. *Char* Mukundia is the name of Plaintiffs' pargana. They produced among many other documents (i) an *Ekjai Hastbud* in respect of it for the year 1790, which showed that it then included a mahal *jalkar*; (ii) a *hakikat chauhaddi-bandi* of the lands and *jamas* of that pargana for the year 1795, which showed that the name of the *jalkar* mahal was River Balabanta and Bil Baor with specified boundaries, of which the Kole Churi of Alipur alone can now be traced by name, (iii) *dowl* kabuliyats of 1793 and 1799, specifying the amount of the *dowl-jama* of the *jalkar*, and (iv) an *Issumnavisi Mouzawari* of 1821 mentioning the *jalkar* in the River Balabanta as a mauza of pargana *char* Mukundia. They put in (v) a *robokari* of the Court of the Collector of Faridpur

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dated 11th January 1861, by which the Government recognised that this *jalkar* had been included as a mahal in the zamindari pargana *char* Mukundia (formerly Tauzi No. 180 in the Dacca Collectorate and now No. 4000 in that of Faridpur), since before the Decennial Settlement. It named the up-stream and down-stream limits, and stated that the Balabanta river, in which it was enjoyed, was the same as that known in 1861 as the Padma, that is the larger and more northerly of the two branches of the Ganges above described. The more southerly has been known for some fifty years as the Bhubaneswar.

Some evidence, not very distinct, was given at the trial, apparently for the purpose of showing that no grant from the Government was any larger to be found among the papers belonging to the Plaintiffs' zamindari, but no point seems to have been made then or since that the proper searches had not been made. Although, on the other hand, when Government has created a separate estate of *jalkar* at the period in question, it is usual to find some entry of it in the Decennial Settlement papers, no evidence was forthcoming to show that *jalkar* grants made prior to the Decennial Settlement or that settlements with zamindars made at the time of it must necessarily have taken the form of pattas or some other muniments which should now be in the zamindar's possession, or be recorded in the Government archives still in existence. In practice such original grants are but rarely forthcoming now, and resort must be had to secondary evidence of them, or to the inference of a legal origin to be drawn from long user [Garth, C. J., in *Hori Das Mal* v. *Mahomed Jaki*(1)]. The Trial Judge was satisfied that the Plaintiffs had proved a Government grant or settlement about the end of the eighteenth century. He was overruled by the High Court, not on the ground that no such grant was proved, but that it was not shown to have been a grant of a several fishery of wide extent. The High Court thought that in reality it was only appurtenant to the Plaintiffs' actual pargana and was limited by its riverine bounds.

Their Lordships accept the rule laid down in the case of *Hori Das Mal* v. *Mahomed Jaki*(1) [following the English rule in *Fitzwalter's* case(2)] that the evidence of a Government grant of an exclusive fishery in navigable waters ought to be conclusive and clear, but they are of opinion that, in so far as such evidence can now be expected to be forthcoming as to particular grants more than a century old, the evidence in the present case was sufficient to show that the competent authority—the Government of India in right of the Crown—did actually grant to the Plaintiffs' predecessors-in-title, or settle with them so as in effect to

(1) I. L. R., 11 Cal., 434 (1885). (2) 3 Keble, 242 (1686).

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grant a *jalkar* right of several fishery in certain of the waters of the portion of the Ganges system in question.

The next point is one of metes and bounds. This depended partly on the above-named documents, partly on the records of certain litigation with the neighbouring zamindars of pargana Bikrampur and persons holding under them in 1816 and 1843, put in as part of the history of the fishery and of the claims made to it, partly on the testimony of living *patnidars*, *ijaradars*, fishermen, and so on, and the local investigations of an amin deputed by order of the Court. The amin's reports and maps were accepted in both Courts, and by both parties on the present appeal. The Plaintiffs' case depended on fixing by means of the above materials supplemented by a series of maps from 1760 onwards, four points roughly forming a parallelogram, within which their alleged *jalkar* rights lay, the western or up-stream boundary and the eastern or down-stream boundary in each case extending from points north of the northern or larger channel, the Padma, to points south of the southern or smaller channel, the Bhubaneswar, and the *locus in quo* of the dispute falling between them. The Defendants contended, that in so far as any certain points were proved at all, the materials relied upon only showed that the fishery did not extend into any part of the Padma, but was limited by the right or southern bank of the main stream and thus excluded it. They pointed out that the Faridpur Collectorate was bounded by the right bank of the Padma, the whole breadth of the main stream being in the Collectorate of Dacca, and they argued that the *robokari* of 1861, which was the strength of the Plaintiffs' case, proved at most a recognition of a fishery right, which stopped short of those waters in which it was now essential to the Plaintiffs to make good their claim.

A sufficient answer is made by the Plaintiffs. They obtain early evidence of the actual position of the points forming their boundaries north of the main stream from proceedings in suits decided in their favour between themselves or their predecessors-in-title and the owners of the Bikrampur zamindari, who claimed some *jalkar* rights in the main Padma also, and by means of such proceedings in 1797, 1816 and 1843, by means of other similar proceedings in litigation with some of the present Defendants in 1894, 1896 and 1897, and also by a long succession of *ijara* kabuliyats and pattas, which they put in evidence, they prove *de facto* possession, as under their *jalkar* rights, of the whole fishery in both streams between their upper and their lower limits. It is an intricate task to trace the various spots mentioned from map to map, because of the periodic diluviation of trees and houses, though these are the least transient of the landmarks available. Matters are also complicated by variations in the names of the rivers, Bhubaneswar, Krishnapur, Narina, Padma and Balabanta or Balbanta. The result, however,

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is sufficiently clear. Further, the decision recorded in the *robokari* of 1861 was appealed to the Commissioner of the Division at Dacca, who at that date exercised appellate jurisdiction in such matters over the Collectorate of Faridpur, and he affirmed the decision below. As this decision proceeded on the footing that the *jalkar* claimed extended over the waters of the Padma, and was a valid *jalkar* included in the Permanent Settlement, it may be reasonably inferred that the Commissioner of Dacca took note that the parties entitled to the *jalkar* claimed rights within his Collectorate, and finding nothing in the Dacca records to the contrary, affirmed the decision below for Dacca as well as for Faridpur.

The Trial Judge, following a long and considerable body of decisions in Bengal, held that, if the Plaintiffs' rights in this stream or streams out of which the new branch opened were once established, they would extend to the waters of the new branch as soon as it was formed, a principle which is conveniently called "the right to follow the river." It does not appear that this current of authority was challenged or doubted either before the Trial Judge or the High Court; certainly its authority was binding upon both. The Defendants' case simply was that in fact neither the Plaintiffs nor their predecessors-in-title could be shown ever to have enjoyed or to have been entitled to any *jalkar* right except that lying within the boundaries of their zamindari and appertaining thereto. The High Court appears to have arrived at a conclusion in favour of the Defendants' argument mainly in consequence of the view taken of the true meaning of the judgment of 1816, and of the significance of the Thakbast map of 1862, and a marginal note upon it. It is not necessary to examine the language of the judgment of 1816 in detail, but their Lordships are unable to hold that it excluded the main or northern stream from the Plaintiffs' fishery, either expressly or by implication. The language is obscure, but, as their Lordships read it, the Plaintiffs' construction of it was right. The Thak map was pressed beyond its legitimate effect. It was concerned only with that portion of the fishery which fell within pargana Bikrampur, and was inconclusive.

The question of the effect of deltaic changes in a river's course upon the exclusive right of fishing in it appears in Indian decisions as long ago as the beginning of the last century. It was laid down in 1807 that if a river changes its bed the owner of *jalkar* rights in the old channel continues to enjoy them in the new one [*Ishurchund Rai* v. *Ramchund Mokhurja* (1)]. The converse case occurred in the following year. A land-owner sued the owner of *jalkar* rights in a tidal river for taking possession of a *jheel* formed on his land by the overflow of the river.

(1) 1 S. D. A. Rep., 221; 1 Morley's Digest, p. 561 (1807).

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The channel of the river had not altered, the *jheel* formed no part of it, and was only connected with it at the river's highest stage. Accordingly, it was held that the owner of the fishery, having no right over the Plaintiffs' land, had no right to the fishery in waters thus formed upon his land. [*Gopeenath Roy* v. *Ramchunder Turkalunkar*(1)]. This assumed some right of following the river and placed a particular limit upon it. It will be observed so far that whatever may have been the basis for the right of *jalkar* in the river, the right of fishing in the *jheels* was treated as belonging to the owner of the subjacent soil, a right which was shortly after, in 1813, held to be severable from the ownership of the soil, so that the bare grant by the land-owner of the right of fishing in *jheel* did not in itself convey any property in the soil [*Lukhee Dassee* v. *Khatima Beebee* (2)]. Why the owner of *jalkar* right in the river has or may have an enjoyment of that right co-extensive with the waters of the river which permanently form part of it, though they have changed their course, is not stated. Not improbably it rested on local custom, for the Bengal Alluvion and Diluvion Regulation (No. XI of 1825) is careful in a cognate matter to keep local custom alive. At any rate the principle was well established as early as 1808 that a right of fishery follows the river whatever course it may take, for the ground on which in *Gopeenath's* case(3) the High Court allowed the appeal from the Court below, which had acted on this principle, is simply that in point of fact the *jheel* in question, though formed by the river's overflow, was no longer so connected with it as to form part of the river. This was long considered to have been the effect of these decisions. Mr. Sevester's note upon them in Vol. 2, p. 467, of his Reports is, "A general right of fishery in a river, when not otherwise defined, is restricted to the channel of the river and water considered to form part of it, not extending to adjacent lakes or other pieces of water occasionally supplied by overflowings of the river but not actually connected with the channel of it." The rule was so applied in [(1856) *Nubkishen Roy* v. *Uchchootanund Gosain*(4) ; and in (1863) *Ramanath Thakoor* v. *Eshan Chunder Banerjee*(5)]. In the former it was held that the right of *jalkar* in the river was confined to the river and streams flowing into or from it, exclusive of *jheels* not connected with the channel but extending to water-courses which though not immediately within the great channel of the river adjoin or flow into it or are supplied therefrom ; "their right consists of the flowing stream and the adjuncts flowing from or into it." In the latter the limitation of the river's

(1) 1 Mac. Sel. Rep., 228 ; 2 Sev. Rep., 467n (1808).
(2) 2 S. D. A. Rep., 51 (1813).
(3) 1 Mac. Sel. Rep., 228 ; 2 Sev. Rep., 467n. (1808).
(4) 2 Sev., 465n (1856).
(5) 2 Sev., 463 (1863).

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adjuncts flowing from or into it was held not to extend to adjacent sheets of water with which the river communicates only when in flood. "We think," says the Court, "the grant of *jalkar* must be construed as *primâ facie* confined to the rivers and sheets of water communicating therewith to which the Plaintiff might get access without trespassing on the land." It is true that these two decisions do not specifically deal with the case of the changed channel of a deltaic stream, but they do clearly lay down rules for defining the area of the waters in which the *jalkar* right is to be enjoyed, which carry it beyond the limits of actual navigability though confining it to water which are adjuncts of the navigable stream. They make the right depend on the identity of the river in which it is enjoyed and do not confine it to such waters of that river as are superimposed on the very land once owned by the grantor of the right. The current of decision was not unruffled by doubts. The Court observes in 1859 in *Gureeb Hossein Chowdhree* v. *Lamb*(1): "the part of the country through which the Megna flows is intersected with innumerable creeks into which the tide from the main river flows. The right of fishing in these tidal creeks belongs of right to the owner of the property into which they flow," but this case is explained by the fact that the part of the river in question was almost if not quite an arm of the sea. An opinion was indicated in 1864, though not absolutely necessary to the decision, in *Maharanee Sibessury Dabee* v. *Lukhy Dabee*(2) that the extension of rights of fishery, in consequence of an expansion of the river in which they were enjoyed, ought to depend, as questions of alluvion would, upon the rapidity of the expansion. If sudden, it would work no change in the ownership of the submerged soil, and so cause no extension of the *jalkar* right; it would be both if it took place by gradual and imperceptible advances. The Court here inclined to connect the right of fishing indissolubly with the right to the soil subjacent to the waters in which the fishery right was enjoyed. In 1866 came the somewhat contradictory decisions. The Court in *Nobinchunder Roy Chowdry* v. *Radha Pearee Dabia*(3) scouted as "preposterous" a claim to follow the diverted waters in which the Plaintiff had the fishery, but this was without discussion of the authorities, and the claim was alleged not against the owner of the soil over which the diverted waters flowed, but against the owner of the fishery in the waters of another river into which the Plaintiff's river had burst and discharged itself. In the second case, *Gobind Chunder Shaha* v. *Khaja Abdul Gunnie*(4), the Plaintiff and Defendant, joint

(1) S. D. A., Vol. XX (1859), pp. 1357, 1361.
(2) 1 Suth. W. R., 88 (1864).
(3) 6 Suth. W. R., 17 (1866).
(4) 8 Suth. W. R., 41 (1866).

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owners of land of a fishery had made a partition of the land but not of the fishery, and the Plaintiff sought to oust the Defendant from fishing over the land, which now belonged exclusively to him but had been overflowed by a change in the course of the waters. Sir Barnes Peacock in dismissing the suit observes: "still the fishery existed in that part of the river out of which the fish was taken, although by a change in the course of the river it ran over the portion of the land which was allotted to the Plaintiff under the *butwara* partition." Again in 1873 [*Krishnendro Roy Chowdhry* v. *Maharanee Surno Moyee*(1)] the Court somewhat reluctantly followed the rule, which it deemed to be settled, that the owner of the fishery where the river's channel has changed has "a right to follow the current," that he "may not only follow the river to any channel which it may from time to time cut for itself, but may continue to enjoy together with the open channel all closing or closed channels abandoned by the river right up to the time when the channel became finally closed at both ends." Upon the facts of that case it is the latter part of this proposition that it directly involved in the decision. The whole question was learnedly reviewed by Mr. Lal Mohun Doss in 1891 in his Tagore Lectures on the Law of Riparian Rights, who (pages 372, *et seq.*) while admitting a settled current of authority in India to the contrary, urges the very arguments and conclusions of the now Respondents and relies on the same authorities. Nevertheless after this discussion had brought the question again before the Courts and the profession the High Court in a critical decision affirmed the long-standing rule. This was in 1890 in the case of *Tarini Churn Sinha* v. *Watson & Co.*(2). The questions were directly raised: "Can a right of *jalkar* in a public navigable river exist apart from the right to the bed of the river, or must it necessarily follow that right?" "Do the Defendants lose their vested right by a change in the river's course, though the river still is navigable and subject to public right?" This case raised the very question which has been in the debate before their Lordships, for the change in the river's course was a sudden one taking place in the course of a single year and not by imperceptible or slow encroachment. The answer given by the Court was in favour of the owner of the right of fishing in the river. It purported to follow a converse decision in *Grey* v. *Anund Mohun Moitra*(3), and decided that "so long as the river retains its navigable character, it is subject to the rights of the public, and the fishery remains in the person who was grantee from the Government." In *Grey's* case(3) a change of channel had left an old bed either dry or containing only pools disconnected with the river and it was held that what

(1) 21 Suth. W. R., 27 (1873). (2) I. L. R. 17 Cal., 963 (1890).
(3) W. R. [1864], 108.

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the river had abandoned albeit part dry land and part *jheels*, became private property. Thenceforth it belonged to the riparian owners who could claim settlement of it from Government, and the reason given is that "the right of the Defendant" (the owner of the fishery), "being granted out of and part of the Government's right to the river, no longer exists when the Government's right is itself gone." Thus it will be observed that in *Tarini's* case(1) the Court conceived itself to the reducing the subject to symmetry by deciding that while on the one hand the owner of the fishery rights in the river lost them where there was permanent recession of the river, he increased them where there was permanent advance of the river. In the latter case the Court disregarded the conception of Government right to the river as being an incident of Government right to the subjacent soil, and treated the Government right and the right of its grantee in respect of the fishery as subsisting in the river wherever that river might flow, and not as subsisting in flowing water only where and so long as it flowed over soil vested in the Government. This view has since been treated as established. That the *jalkar* right in the river extends over a piece of water formed originally by the river, but so far dried up as to be disconnected from it, except in the rains, during and just after floods, was decided in 1905 in *Jogendra Narayan Roy* v. *Crawford*(2). The ground of the decision is that such water is still part of the river system, and when that is so in fact the right of fishing persists in respect of it. This is the case of retrocession. So too in the case of *Bhaba Prasad* v. *Jagadindra Nath Rai*(3) in the same year the principle is thus expressed: "The *jalkar* rights were settled with the Plaintiffs' predecessor many years ago. The Plaintiffs by virtue of the settlement conferred 'upon them are entitled to exercise the right of fishery in the said river wherever it flows within the limits prescribed in the settlement itself.' Both these cases purport to follow *Tarini's* case(1), which was a case of an advance of the river into a newly formed channel, and the rest of a long line of settled authorities. It must now be taken as decided in Bengal that the Government's grantee can follow the shifting river for the enjoyment of his exclusive fishery so long as the waters form part of the river system within the up-stream and down-stream limits of his grant, whether the Government owns the soil subjacent to such waters as being the long established bed, or whether the soil is still in a reparian proprietor as being the site of the river's recent encroachment.

Their Lordships were strongly and ably pressed to disregard, or at least to qualify, these decisions. The points made were

(1) I. L. R., 17 Cal., 963 (1890). (2) I. L. R., 32 Cal., 1141 (1905).
(3) I. L. R., 33 Cal., 15 (1905).

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(*a*) that in principle the right to grant a several fishery in tidal navigable waters is so essentially connected with the right to the soil and the bed of the channel, that no fishery right can exist where the grantor of the several fishery never has owned the subjacent soil; (*b*) that in any case the acquisition of fresh waters can go no further and can proceed no otherwise than the acquisition of fresh soil by alluvion, and therefore that an expansion of waters within which a *jalkar* right exists can only carry with it an extension of the *jalkar* right if it has taken place by imperceptible encroachments upon the land, and not by sudden irruption; and (*c*) that it would be grossly unjust to hold that the natural misfortune which swamps a landowner's soil by a river's encroachment should be accompanied by a legal ouster from such enjoyment as the natural disaster has left him. In extension of the last point it was argued that the disputed site in fact covered the sites of former enclosed *jheels* which belonged to and had been enjoyed by the Defendants, and that no trespass could be committed as against the Paintiffs in any view by fishing where the Defendants had formerly been accustomed and entitled to fish in waters overlying their own land. This question of fact, which seems not to have been passed upon by the Courts below, was not sufficiently made out, but even if it were, it appears to be covered by the general argument.

For these contentions reliance was placed on the *Mayer of Carlisle* v. *Graham*(1), where Kelly, C. B., says: "We are called upon to decide the question which now arises for the first time: Is the several fishery of a subject in a tidal river, the waters of which permanently recede from a portion of its course and flow into and through another course, where the soil and the land on both sides of the new channel thus formed belong to another subject, transferred from the old to the new channel, and so a several fishery created in and throughout such new channel, or in some, and if any, in what part of it? In the case of *Murphy* v. *Ryan*(2), O'Hagan, J., in delivering the judgment of the Court, says, 'but whilst the right of fishing in fresh-water rivers in which the soil belongs to the riparian owner is thus exclusive, the right of fishing in the sea, its arms and estuaries, and in its tidal waters, wherever it ebbs and flows, is held by the common law to be *publici juris* and so to belong to all the subjects of the Crown, the soil of the sea and its arms and estuaries and tidal waters being vested in the Sovereign as a trustee for the public. The exclusive right of fishing in the one case, and the public right of fishing in the other, depend upon the existence of a proprietorship in the soil of the private river by the private owner and by the Sovereign in a public river respectively.' And

(1) L. R., 4 Exch., 361, at pp. 367-368 (1869).
(2) 2 Ir. Rep. C. L., 143, at p. 149 (1868).

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this is the true principle of the law touching a several fishery in a tidal river. If therefore the right of the Crown to grant a several fishery in a tidal river to a subject is derived from the ownership of the soil, which is in the Crown by the common law, a several fishery cannot be acquired even in a tidal river if the soil belong not to the Crown but to a subject. And all the authorities, ancient and modern, are uniform to the effect that if by the irruption of the waters of a tidal river a new channel is formed in the land of a subject, although the right of the Crown and of the public may come into existence, and be exercised in what has thus become a portion of a tidal river or of an arm of the sea, the right to the soil remains in the owner, so that if at any time thereafter the waters shall recede and the river again change its course, leaving the new channel dry, the soil becomes again the exclusive property of the owner, free from all right whatsoever in the Crown or in the public."

With this case has to be considered also *Foster* v. *Wright*(1). There the proprietor of a right of fishing in the Lune, at that part neither tidal nor navigable, was held entitled to "follow his river "when the river had so far shifted its course as to flow over another's land, and the person, to whom the land which came to form its new bed had previously belonged, was held to be a trespasser when he fished in its new channel. The change of bed had been gradual, perceptible and measurable over considerable periods of time, but from week to week imperceptible. It was held that the imperceptible changes had had the effect of producing an accretion to the land of the owner of the fishery, and that "the river had never lost its identity nor its bed, its legal owner." (P. 446): "he has day by day, week by week become the owner of that which has gradually and imperceptibly become its present bed, and the title so gradually and imperceptibly acquired cannot be defeated by proof that a portion of the bed now capable of identification was formerly land belonging to the Defendant or his predecessors-in-title." The *Mayor of Carlisle* v. *Graham*(2) was distinguished on the ground that in that case the river-bed was a new bed, not formed by the gradual shifting of the old one but totally new, the old bed remaining recognisable in its old site but deserted. The Eden became a river with two beds: the Lune was at all times a river with only one though an ambulatory one. As counsel in *Foster* v. *Wright*(1) boldly argued for the right to "follow the river" in its Indian sense saying (p. 440), "even a sudden and violent change in its course would not have taken away" the Plaintiff's right, and as the adoption of that *à fortiori* view would have made all consideration of gradual accretion

(1) 4 C. P. D., 438 (1878).
(2) L. R., 4 Exch., 361, at pp. 367-368 (1869).

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immaterial, the decision must be regarded as one which negatives the contention of the Respondents in the present case. As with the river Lune, so the part of the river Eden which was in question in the *Mayor of Carlisle* v. *Graham*(1) is one which does not appear to be subject to frequent change. How the law might be if conditions similar to those of Bengal could occur in England is another matter. The above cases would have been more directly in point had the river in question been one which often and swiftly changes its course, as for instance the tidal Severn, of which Hale writes (Hargrave's Law Tracts, p. 16), "that river which is a wild unruly river, and many times shifts its channel, especially in that flat between Shinberge and Aure is the common boundary between the manors on either side, *viz.*, the *filum aquæ* or middle of the stream, and this is the custom of the manors contiguous to that river from Gloucester down to Aure." There is in this part of the Severn an ancient several fishery, enjoyed by the Lords of Berkeley under Charters of Henry I, Richard I, and John, which must be much more analogous to the *jalkar* in the present case than cases in the river Eden or Lune. A somewhat similar instance in Scotland is mentioned by Lord Abinger in *In re Hulland Selby Railway Company*(2), but the question of the right to follow the river does not appear to have arisen for decision in these cases.

It was admitted that the common law of England as such does not apply in the Mofussil of Bengal, but the argument was that principles established under and for English conditions afford a sound guide to the rules which should be enforced in India. Their Lordships have given these arguments careful consideration, though they would in any case be slow to disturb decisions by which rules have been established for Bengal governing extensive and important rights such as rights of *jalkar*, and unless they could be shown to be manifestly unjust or flagrantly inexpedient, their Lordships would not supersede them. The Indian Courts have in many respects followed the English law of waters. Sometimes their rules are the same; sometimes only similar. *Jalkar* may exist not only as a right attaching to riparian ownership but also "as an incorporeal hereditament, a right to be exercised in the tenement of another [*Forbes* v. *Meer Mahomed Hossein*(3)], as a *profit à prendre in alieno solo* [*Lukhee Dassee* v. *Khatima Beebee*(4)]. In navigable waters such rights are granted by the Government of India or, what is equivalent to a grant, settled with the grantee under the Revenue

(1) L. R., 4 Exch., 361, at pp. 367-368 (1869).
(2) 5 M. & W., 327 (1839).
(3) 12 B. L. R., at p. 216 (1873).
(4) 2 S. D. A. Rep., 51 (1813).

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Settlement by the Government, and are thus derived from the Crown [*Prosunno Coomar Sircar* v. *Ram Coomar Parooey*(1)]. The freehold of the bed of navigable waters was deemed to be in the East Indian Company as representing the Crown and now is vested in the Government of India in right of the Crown [*Doe dem Seeb Kristo* v. *E. I. Co.*(2); *Nogender Chunder Ghose* v. *Mahomed Esof*(3)]. Where the bed thus forms part of the public domain, the public at large is *primâ facie* entitled to fish. Thus the English analogy has been closely followed. Again the sudden invasion of a private owner's land by the waters of a navigable river does not divest the property in the soil. If the change in the course of the navigable river results in the water in the new course being in fact navigable [that is, capable of being traversed by a boat at all seasons, *Chundar Jaleah* v. *Ram Churn Mookerjee*(4); *Mohiny Mohun Dass* v. *Khaja Assanoollah*(5)], the flooded land-owner must submit to have his land traversed by the vessels of the public in the course of navigation and cannot in right of his ownership erect works on his flooded soil to the obstruction of the navigation. None the less he remains the owner, and should the waters permanently retire, his full rights as owner revive unless lapse of time or circumstances, or both, suffice to prove an abandonment of his rights of ownership for his part.

Still, there is one step which the Indian law has never taken, far as it has gone in the adoption of English rules. Often as the opportunity for so doing has arisen, it has never been held that the capacity of the Government of India to grant to or settle with a private owner the exclusive right of fishing in tidal navigable waters is so indissolubly bound up with its ownership of the soil subjacent to those waters that no matter how those waters may subsequently change their course, while still remaining part of the same river system within the up-stream and down-stream limits of the grant, the enjoyment of the right so granted cannot extend beyond the limits of the Government's ownership of the soil lying perpendicularly underneath them, as it may vest from time to time. It is one thing to presume the soil of the bed of a tidal navigable river to be vested in the Crown and to hold that the Government of India in right of the Crown can grant the fishery in the superincumbent waters in severalty, and quite another to hold that the several fishery when once thus created is for ever enjoyable only in waters that continue to flow precisely over ground which was in the Crown at the date of the

(1) I. L. R. Cal., 53 (1878).
(2) 6 Moo. I. A., 267; 10 Moo. P. C. C., 140 (1856).
(3) 10 B. L. R., 406; 18 Suth. W. R., 113 (1872).
(4) 15 Suth. W. R., 212 (1871).
(5) 17 Suth. W. R., 73 (1872).

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grant. "Whether the actual proprietary right in the soil of British India," says Garth, C. J., in the case of *Hori Das Mal* v. *Mahomed Jaki* (1) already cited, "is vested in the Crown or not (a point upon which there seems some diversity of opinion) I take it to be clear that the Crown has the power of making settlements and grants for the purposes of revenue of all unsettled and unappropriated lands, and I can see no good reason why they should not have the same power of making settlements of *jalkar* rights and of lands covered by water as of land not covered by water. In either case the settlement is made for the purpose of revenue and for the benefit of the public." Again, the rights of the Crown are thus stated in *The Collector of Maldah* v. *Syed Sudordoodueen* (2):—"The right to resume land is one based on the right of the Government to a portion of the produce of every *bigha* of the soil as revenue, whereas the claim to possession of the *jalkars* of rivers not forming portions of settled estates is founded upon a supposed right in Government as trustees of the waterways of the country to possess and to assign the exclusve possession of them to any individual it chooses on the payment of revenue for them in the shape of a fishery rent." [*Hurreehur Mookerjea* v. *Chundeechurn Dutt* (3), *Collector of Rungpore* v. *Ramjadub Sein* (4). See too, *Radha Mohun Mundal* v. *Neel Mudhab Mundul* (5) and *Satcowri Ghosh Mondal* v. *Secretary of State for India* (6) where the cases are collected and discussed.]

In truth the rule which in the United Kingdom thus connects the subject's right to an exclusive fishery in tidal navigable waters with the limits of the Crown's ownership of the subjacent soil is itself the result of conditions partly historical and partly geographical which have no counterpart in Lower Bengal. In Bracton's time this rule would seem to have been unknown, at any rate he ignores it, and treats the right of fishing in rivers, as did the Roman Law, as a right *publici juris*. Whether in his time this was at common law orthodox or heterodox or whether he supplemented the defects of our insular system by a reversion to that of Rome, need not now be considered. What is clear is that during the many years between his time and Hale's, the generality of the right of river-fishing, if it ever had been the doctrine of the common law, was such no longer. According to Hale (*De jure maris*, p. 1, Chap. 4; Hargrave's Law Tracts, p. 11), "the right of fishing in the sea and the creeks and arms thereof is originally lodged in the Crown as the right of depasturing is originally lodged in the owner of the wastes

(1) I. L. R., 11 Cal., 434 (1885).
(2) 1 Suth. W. R., 116 (1864).
(3) 17 S. D. A. Rep., 641 (*sic*).
(4) 2 Sev., 373 (1863).
(5) 24 W. R., 200 (1875).
(6) I. L. R., 722 Cal., 252 (1894).

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whereof he is lord, or as the right of fishing belongs to him, that is the owner of a private or inland river. . . . The King is the owner of this great waste, and as a consequent of his propriety hath the primary right of fishing in the sea or creeks or arms thereof." Be it observed that this doctrine may be called essentially insular, and that the proofs of it which Hale adduces are purely English, namely, Close Rolls, Parliament Rolls, and Rolls of the King's Bench mainly in Plantagenet times, and that he places on Bracton's Roman doctrine an interpretation, confining it to rivers which are arms of the sea, which is itself a dissent from that doctrine. The question how far a rule established in this country can be usefully applied in another, whose circumstances, historical, geographical, and social, are widely different, is well illustrated by the case of navigability, as understood in the law of the different States of the United States of America. Navigability affects both rights in the waters of a river, whether of passing or repassing or of fishing, and the rights of riparian owners, whether as entitled to make structures on their soil which affect the river's flow, or as suffering in respect of their soil *quasi* servitudes of towing, anchoring, or landing in favour of the common people. The Courts of the different States, minded alike to follow the common law where they could, found themselves in the latter part of the eighteenth and the early part of the nineteenth centuries constrained by physical and geographical conditions to treat it differently. In Massachusetts, Connecticut, New Hampshire, and Vermont, where the rivers approximated in size and type to the rivers of this country, the English common law rule was followed, that tidality decided the point at which the ownership of the bed and the right to fish should be public on the one side and private on the other. Other States, though possibly for other reasons since they possessed rivers very different in character from those of England, namely, Virginia, Ohio, Illinois, and Indiana followed the same rule. But in Pennsylvania, North Carolina, Iowa, Missouri, Tennessee, and Alabama, this rule was disregarded, and the test adopted was that of navigability in fact, the Courts thus approximating to the practice of Western Europe (*see* Kent's Commentaries, iii, 525). The reasoning has been put pointedly in Pennsylvania. Chief Justice Tilghman says in 1810, in *Carson* v. *Blazer*(1), "the common law principle concerning rivers" (*viz.*, that rivers, where the tide does not ebb and flow, belong to the owners of adjoining lands on either side), "even it extended to America, would not apply to such a river as the Susquehanna, which is a mile wide and runs several hundred miles through a rich country, and which is navigable

(1) 2 Binney, at p. 477 (1810).

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and is actually navigated by large boats. If such a river had existed in England, no such law would ever have been applied to it." (*See* too *Shrunk* v. *Schuylkill Navigation Co.* 1826, 14 ; *Sergeant* v. *Rawle*, at p. 78.) Thirty years later in *Zimmerman* v. *Union Canal Co.*(1), President Porter observes, the rules of the common law of England in regard to the rivers and the rights of riparian owners do not extend to this commonwealth, for the plain reason that rules applicable to such streams as they have in England above the flow of the tide, scarcely one of which approximate to the size of the Swatara, would be inapplicable to such streams as the Susquehanna, the Allegheny, the Monongahela," and sundry other " rivers of Damascus." A similar deviation, equally grounded in good sense, from the strict pattern of the English law of waters lies at the bottom of the current of Indian cases previously referred to, and forms its justification.

In proposing to apply the juristic rules of a distant time or country to the conditions of a particular place at the present day, regard must be had to the physical, social and historical conditions to which that rule is to be adapted. In England the rights of the Crown and other rights derived from them have long been established by authority, even though their historical origin is imperfectly known or conjectural. The result may be that the law is quite certain and yet is based on considerations of history and precedent which are quite the reverse. In Bengal a special history, a special theory of rights, tenures and obligations condition the rules applicable to such an incorporeal hereditament as that now in question. In England we go back before Magna Charta for the commencement of several fisheries in tidal navigable waters and know little of their actual origin. In Bengal it is sufficient to say that at the time of the Decennial or the Permanent Settlement, or since such rights, though possibly descending from remote antiquity, were settled with the Government of India, whose special position, originating on 12th August 1765, when the East India Company became Receiver-General in perpetuity of the revenues of Bengal, Orissa and Bihar, is historically well-known. English tenures and Bengal zamindari rights, unduly assimilated at one time, have never fully corresponded to one another. Above all the difference, indeed the contrast of physical conditions is capital. In England the bed of a stream is for the most part unchanging during generations, and alters, if it alters at all, gradually and by slow processes. In the deltaic area of Lower Bengal change is almost normal in the river systems, and changes occur rarely by slow degrees, and often with an almost cataclysmal suddenness. If English cases were applied to Bengal, so that the area of enjoyment of a several fishery

(1) 1 Watts and Sergeant, 351.

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in tidal navigable waters should be limited to the area within which the Crown, the assumed grantor of the fishery, had owned the subjacent soil at the time of its grant, who could say from time to time what the bounds of that enjoyment are, and where the ownership of the soil is to be delimited? The course of the waters has been in flux for ages: at what date is this ownership to be taken? As Lord Abinger says of the rule of gradual accretion of soil in *In re Hull and Selby Railway*(1) the theoretic basis of which has been variously stated from the time of Blackstone to the present day (*see* the different theories collected by Farwell, L. J., in *Mercer* v. *Denne*(2), "the principle is founded on the necessity which exists for some such rule of law for the permanent protection and adjustment of property." Take which date you will, the evershifting river does not run now where it ran then, and if the ownership of the soil remains as it was, it is sheer guess-work to say in which part of the present waters the grantee of *jalkar* rights shall enjoy his several fishery under his grantor's title, and in which parts he must abstain, since the waters flow over the soil of private owners? Any given section of the river system is in all probability a shifting and irregular patchwork of water flowing over soil which belonged to the Sovereign at the selected date and of water flowing over soil then belonging to other owners and since encroached upon, with the background of a probability that before the date in question, and yet within historic times, no water may have run there at all. By what analogy can rules applicable to the Eden and the Lune be profitably applied to such physical conditions?

It was urged that the established rule with regard to alluvion should be applied to rights of *jalkar*; that since the right to accretions and the liability to derelictions of soil attached only to gradual accretions or to erosions taking place by imperceptible degrees, so too the right of the owner of the fishery to "follow the river" ought to be limited to cases where the river's encroachments were gradual, and ought not to be extended to an irruption as sudden, and accomplished as rapidly, as was the formation of the channel in question in the Defendant's lands. It is to be observed that here too Indian law, doubtless guided by local physical conditions, has adopted a rule varying somewhat from the rule established in this country. Where under English conditions the rule applies to "imperceptible" alterations, Reg. XI of 1825, Arts. 1 and 4, speak of "gradual accession." The analogy of the English rule can hardly be prayed in aid when Indian legislation has thus an established and different rule on the same subject. Further, as the Indian rule is established now beyond question, it may perhaps be said without offence, of the Indian as of the English rule, that it

(1) 5 M. and W., 327 (1839). (2) [1904] 2 Ch., 534, at p. 568.

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represents rather a compromise of convenience than an ideal of justice, for that which is a man's own does not become another's any more agreeably to ideal justice by being filched from him gradually instead of being swallowed whole. In any case the analogy is not in *pari materiâ*. Property in the soil is one thing; enjoyment of a profit *à prendre* in flowing water may in some respects be another. True, the profit *à prendre* is to be enjoyed *in alieno solo*; such is its nature. True too that at the time of the grant, the grantor has no power to create this incorporeal hereditament where his ownership of the soil does not extend; but when the power to grant arises from Sovereignty, and has never been decided to be limited to the bounds of the grantor's proprietorship as it may continue to exist from time to time, the mere fact that the *jalkar* right is classified in the language of the English law of real property as a *profit à prendre in alieno solo* does not prevent its poprietor from being entitled to follow the river in its natural change. The fish follow the river and the fisherman follows the fish; this may be right or wrong, but the question is not settled by asking under what circumstances of natural physical change the proprietor of an acre of dry land which has vanished from sight can claim to have still vested in him an equal area of river-bed on the same site, or another acre of dry land transferred by the river and attached by accretions to another proprietor's land.

Lastly, it is said to be unjust that a land-owner should not only lose the use of his land when the river overflows it, but also the right to fish over his own acres and in his own waters, in order that another may unmeritoriously fish in his place. There is some begging of the question here; the waters are not his waters, nor is the change confined to the flooding of his fields. It is river that has made his land its own; the waters are the tidal navigable waters of the great stream. In physical fact the land-owner enjoys his land by the precarious grace of the river, whose identity is so persistent, and whose character is so predominating, as almost to amount to personality; and is it fundamentally unjust that in law too he should lose what he has lost in fact, and be precluded from taking in substitution for his lost land an incorporeal right which has been granted not to him but to another? The sovereign power lawfully invests its grantee with *jalkar* rights in part of the river; is it unjust that when that river shifts its course, changing in locality but not in function, the owner of those rights should still enjoy them in that self-same river, instead of being despoiled of them by the course of nature, which he could neither foresee nor control? There must be some rule and there must be some hardship. To say the least there is no such proof that one rule is better than the other as would even approach the conclusion that the rule established should now be set aside.

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Their Lordships are of opinion that no reason sufficiently cogent has been found to warrant them in disregarding the settled Indian authorities, and being further of opinon that the Plaintiffs established their claim at the trial, they will humbly advise His Majesty that the appeal should be allowed with costs here and below, and that the judgment appealed from should be set aside and the judgment of the Trial Judge restored.

Solicitors : *Messrs. Watkins and Hunter* for the Appellants.

Solicitors : *Messrs. Theodore Bell & Co.* for the Respondents.

Appeal allowed with costs.

APPENDIX II.

Lord Cornwallis's Minute.

18th September, 1789.

The great ability displayed in Mr. Shore's Minute, which introduced the propositions for the settlement, the uncommon knowledge which he has manifested of every part of the revenue system of this country, the liberality and fairness of his arguments, and clearness of his style, give me an opportunity, which my personal esteem and regard for him, and the obligation I owe him as a public man, for his powerful assistance in every branch of the business of this Government, must ever render peculiarly gratifying to me, of recording my highest respect for his talents, my warmest sense of his public-spirited principles, which, in an impaired state of health, could alone have supported him in executing a work of such extraordinary labour; and lastly, my general approbation of the greatest part of his plan.

I am confident, however, that Mr. Shore, from his natural candour, as well as the public at large, will readily admit, that deeply interested as I must feel myself, in the future prosperity of this country, it would be unjustifiable in me to take any step of real importance, upon the suggestion even of the most capable adviser, without seriously weighing it in my own mind, and endeavouring to reconcile the propriety of it to my own conviction.

Impressed with these sentiments, I am called upon by a sense of indispensable duty to declare, that I cannot bring myself to agree with Mr. Shore, in the alteration which he now proposes to make in the 2nd Resolution, of leaving out the notification to the land-holders, that if the settlements shall be approved by the Court of Directors, it will become permanent and no further alteration of the jumma take place at the expiration of the ten years.

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When the Court of Directors determined to retain in their own hands the right of confirming or annulling the settlement at the expiration of a given term, they undoubtedly acted with becoming wisdom and caution.

The power of making a perpetual and irrevocable settlement of a great empire, without being subject to the revision of the controlling authority at home, would, in my opinion, have been too great to delegate to any distant Government. I cannot, however, believe that they would have held out the flattering hopes of a *permanent* settlement, which alone, in my judgment, can make the country flourish, and secure happiness to the body of inhabitants, unless they had been predetermined to confirm the perpetuity, if they found that their servants here had not failed in their duty, or betrayed the important trust that had been reposed in them. Nothing, I am persuaded, but our expressing doubts and fears can make them hesitate; and as I have a clear conviction in my own mind of the utility of the system, I shall think it a duty I owe to them, to my country, and to humanity, to recommend it most earnestly to the Court of Directors to lose no time in declaring the permanency of the settlement, provided they discover no material objection or error; and not to postpone for ten years the commencement of the prosperity and solid improvement of the country.

Mr. Shore has most ably, and, in my opinion, most successfully, in his Minute delivered in June last, argued in favour of the rights of the zemindars to the property of the soil. But if the value of permanency is to be withdrawn from the settlement now in agitation, of what avail will the power of his arguments be to the zemindars, for whose rights he has contended? they are now to have their property in farm for a lease of ten years, provided they will pay as good rent for it and this property is then to be again assessed, at whatever rent the Government of this country may, at that time, think proper to impose. In any part of the world, where the value of property is known, would not such a concession of a right of property in the soil, be called a cruel mockery?

In a country where the landlord has a permanent property in the soil, it will be worth his while to encourage his tenants who hold his farm in lease, to improve that property; at any

rate, he will make such an agreement with them, as will prevent their destroying it. But when the lord of the soil himself, the rightful owner of the land, is only to become the farmer for a lease of ten years, and if he is then to be exposed to the demand of a new rent, which may perhaps be dictated by ignorance or rapacity, what hopes can there be,—I will not say of improvement, but of preventing desolation; will it not be his interest during the early part of that term, to extract from the estate every possible advantage for himself; and if any future hopes of a permanent settlement are then held out, to exhibit his lands at the end of it in a state of ruin?

Although, however, I am not only of opinion that the zemindars have the best right, but from being persuaded that nothing could be so ruinous to the public interest, as that the land should be retained as the property of Government; I am also convinced, that failing the claim of right of the zemindars it would be necessary for the public good, to grant a right of property in the soil to them, or to persons of other descriptions. I think it unnecessary to enter into any discussion of the grounds upon which their right appears to be founded.

It is the most effectual mode for promoting the general improvement of the country, which I look upon as the important object for our present consideration.

I may safely assert, that one-third of the Company's territory in Hindostan, is now a jungle inhabited only by wild beasts. Will a ten years' lease induce any proprietor to clear away that jungle, and encourage the ryots to come and cultivate his lands; when, at the end of that lease, he must either submit to be taxed, *ad libitum*, for their newly cultivated lands, or lose all hopes of deriving any benefit from his labour, for which perhaps by that time, he will hardly be repaid?

I must own, that it is clear to my mind, that a much more advantageous tenure will be necessary to incite the inhabitants of this country to make those exertions which can alone effect any substantial improvement.

The habit which the zemindars have fallen into, of subsisting by annual expedients, has originated, not in any constitutional imperfection in the people themselves, but in the fluctuating measures of Government; and I cannot therefore admit

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that a period of ten years will be considered by the generality of people, as a term nearly equal in estimate to perpetuity.

By the prudent land-holders it will not, whatever it may be by proprietors of a contrary description. It would be unwise therefore to deny the former the benefit of a permanent system because the mismanagement of the latter will not allow them to derive the same advantage from it.

It is for the interest of the State, that the landed property should fall into the hands of the most frugal and thrifty class of people, who will improve their lands and protect the ryots, and thereby promote the general prosperity of the country.

If there are men who will not follow this line of conduct when an opportunity is afforded them, by the enaction of good laws, it surely is not inconsistent with justice, policy, or humanity, to say, that the sooner their bad management obliges them to part with their property to the more industrious, the better for the State.

It is immaterial to Government what individual possesses the land, provided he cultivates it, protects the ryots, and pays the public revenue.

The short-sighted policy of having recourse to annual expedients, can only be corrected by allowing those who adopt it, to suffer the consequences of it; leaving to them at the same time the power of obviating them, by pursuing the opposite line of conduct.

Mr. Shore has stated but two positive objections to the latter part of the 2nd Resolution:—The first is, that if after the notification that the settlement if approved by the Court of Directors will be declared permanent, the Court of Directors should not declare the permanency, the confidence of the natives in general will be shaken, and that those who relied on the confirmation, will be disappointed, and conclude that it was meant to deceive them.

I can only say, in answer to this objection, that I cannot believe any people to be so unreasonable as to accuse Government of a breach of faith, and an intention to deceive them, for not doing what Government in express terms assure them,

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it is not in their power to promise to do, as it must depend upon the approbation of their superiors.

The only effect of the notification will, in my opinion, be to encourage the land-holder to offer—all that Government asks, or wishes for,—a fair rent, lest by endeavouring to withhold what he knows he ought in justice to pay, he should forget that greatest of all blessings, a real property; and to stimulate him to more exertion in his cultivation.

But supposing even for a moment, that the declaration would be received in the sense apprehended; and that the zemindars were to act under a conviction that it was well founded, let us examine the nature of these acts, and whether the consequences of them would be such as to shake the confidence of the natives; or to operate otherwise, in any respect, but advantageously to themselves. The acts alluded to, must of course be such as are calculated to promote the improvement of the country; as, the assisting the ryots with money, the refraining from exactions, and the foregoing small temporary advantages for future permanent profits: such acts must ultimately redound to the benefit of the zemindars, and ought to be performed by them, were the settlement intended to be concluded for ten years only, or even to be made annually.

But this provident conduct cannot be expected from them so long as they have any grounds for apprehending that their land, when improved, may be committed to the management of the officers of Government, or made over to a farmer.

Should the zemindars, therefore, misconstrue the meaning of the declaration, and act in consequence of that misapprehension, they would find themselves enriched by the error; and this result, instead of tending to shake their confidence in Government, might teach them an useful lesson, from which they would profit under any system of management. I shall further observe on this argument, that it is founded on a supposition, that when the zemindars are convinced that the demand of Government on their lands is fixed, they will adopt measures for the improvement of them, which they will not have recourse to, so long as that demand is liable to occasional variation, and, consequently, strongly points out the expediency of a permanent settlement, and declaring to the land-holders as soon as possible,

that the conclusion of a permanent settlement with them, is the object of the legislature in England as soon as it can be effected upon fair and equitable terms.

The second objection is, the doubt of its being expedient that the permanency should be declared.

Mr. Shore says, we cannot pronounce absolutely upon the success of our measures, without experience. I must ask, what are these measures, on the success of which there can be no doubt? or, what is the experience that is wanting; and what, by delaying a permanent settlement for a few years, would probably be improved?

There is nothing new in this plan, except the great advantages which are given to the zemindars, talookdars, and ryots, on one side; and the additional security which the Company has against losses by balances from the value of the land, which is to be sold to make them good, being greatly increased on the other. By what probable, I may even say possible, means is such a plan to fail?

I understood the word permanency to extend to the jumma only, and not to the details of the settlement; for many regulations will certainly be hereafter necessary, for the further security of the ryots in particular, and even of those talookdars, who, to my concern, must still remain in some degree of dependence on the zemindars; but these can only be made by Government occasionally, as abuses occur; and I will venture to assert that either now, or ten years hence, or at any given period, it is impossible for human wisdom and foresight to form any plan that will not require such attention and regulation; and I must add, that if such a thing was possible, I do not believe that it will be easy to find a man more capable of doing it than Mr. Shore.

I cannot, however, admit that such regulations can in any degree affect the rights which it is now proposed to confirm to the zemindars, for I never will allow, that in any country, Government can be said to invade the rights of a subject, when they only require, for the benefit of the State, that he shall accept of a reasonable equivalent for the surrender of a real or supposed right, which in his hands is detrimental to the general

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interest of the public ; or when they prevent his committing cruel oppressions upon his neighbours, or upon his own dependents.

The Court of Directors have given us a general idea of the amount of the land-revenue from Bengal and Behar, with which they will be satisfied, if we honestly and faithfully make a settlement equal, and even beyond their expectations in point of revenue, and at the same time calculated in its outlines to promote the prosperity, happiness, and wealth of their subjects, what reason can we have to apprehend that they will not declare its permanency ?

From the constitution of our establishments in this country it almost amounts to an impossibility, that at any period, the same Government, the same Boards, or the same Collectors should continue for near the space of ten years ; upon what grounds then are the Court of Directors to look for more knowledge and useful experience at the expiration of that term, and under all contingencies that may be reasonably expected to occur ? I cannot avoid declaring my firmest conviction that if those provinces are let upon lease for that period only, they will find, at the end of it, a ruined and impoverished country, and that more difficulties will be experienced than even this Government have had to encounter.

In regard to the 4th resolution respecting gunges, bazars, &c., &c., as Mr. Shore has proposed, that for the present they shall be placed under the management of the Collectors, I will not at this time enter at large upon that question, for I feel very sensible how important it is that the orders for the Behar settlement should be transmitted to the Collectors of that District, without losing a minute's time unnecessarily ; and I shall soon have an opportunity of delivering my sentiments fully upon it, when the Bengal settlement comes under our consideration.

I must, however, observe, that of the six references which are proposed to be made to the Collectors, I cannot see the smallest use in any of them, except the last, which goes to the expediency of the measure.

As to the question of right, I cannot conceive that any Government in their senses would ever have delegated an authorized right to any of their subjects, to impose arbitrary taxes on the internal commerce of the country. It certainly has been

an abuse that has crept in, either through the negligence of the Mogul Governors, who were careless and ignorant of all matters of trade; or, what is more probable, connivance of the Mussulman Aumil, who tolerated the extortion of the zemindar, that he might again plunder him in his turn.

But be that as it may, the right has been too long established, or tolerated, to allow a just Government to take it away, without indemnifying the proprietor from any loss. And I never heard that, in the most free state, if an individual possessed a right that was incompatible with the public welfare, the legislature made any scruple of taking it from him provided they gave him a fair equivalent. The case of the late Duke of Athol, who, a few years ago, parted very unwillingly with the sovereignty of the Isle of Man, appears to me to be exactly in point.

I agree with Mr. Shore, that there would be a degree of absurdity in Government's taking into their own hands the gunges, &c., which are annexed to zemindary rights, and leaving the same abuses existing in those which belong to jaghire and altumgha possessions; but instead of leaving the former on that account, I should most undoubtedly take away the latter, securing to the proprietors a liberal and ample equivalent for all such duties as were not raised, in absolute and direct violation of the orders of Government.

There are, however, several articles, in what are called the sayer collections, with which Government has no occasion to interfere, and which may very well be left in the hands of the proprietors.

Lord Cornwallis's Minute.

10th February 1790.

I have considered Mr. Shore's Minutes on the proposed Settlement of the Revenue, which were recorded on the proceedings of the 18th September, and 21st December last, with all the attention which the importance of the subject deserves, and which is due to the opinions of a man, who is so distinguished for his knowledge of the revenue system of this country, and for whose public-spirited principles, and general character, I have the highest esteem.

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After having experienced so much advantage from the able and almost uniform support that I have received from Mr. Shore, during a period of near three years, it would have been particularly gratifying to me, if we could have avoided to record different opinions, at the moment of our separation; but a regard to the due discharge of public duty, must supersede all other considerations; and I have at least the satisfaction to be certain that no private motives have influence with either of us; and, that a sense of our duty alone, has occasioned the few exceptions that have arisen to that general concurrence, which there will appear to have been in our sentiments, on almost all important point relating to the public business.

The interests of the Nation, as well as the Company, and the happiness and prosperity of our subjects in this country, are deeply concerned in the points on which we differ; and as the public good is our only object, I am persuaded, that it is equally our wish, that the final decision may be such, as will most effectually promote it.

Mr. Shore, in his propositions for making the Behar settlement, objected to our notifying to the land-holders the intention of the Court of Directors, to declare the decennial settlement permanent and unalterable, provided that it meets with their approbation; and, in his two last Minutes, he goes further, and endeavours to prove that a permanent assessment of the lands of these provinces, would at any time, be unadvisable:— He also contends, that the taking into the hands of Government, the collection of all internal duties on commerce, and allowing the zemindars and others, by whom these duties have been hitherto levied, a deduction equal to the amount which they now realise from them, will not be productive of the expected advantages to the public at large; and that it is moreover an unjustifiable invasion of private property.

Had I entertained a doubt of the expediency of fixing the demand of Government upon the lands, I should certainly have thought it my duty to withhold the notification of the intention of the Court of Directors which I recommended; but after the most mature and deliberate consideration of Mr. Shore's reasoning, being still firmly persuaded that a fixed and unalterable assessment of the land-rents, was best calculated to pro-

mote the substantial interests of the Company, and of the British nation, as well as the happiness and prosperity of the inhabitants of our Indian territories; and being also convinced that such a notification would render the proprietors of land anxious to have the management of their own estates, and in many instances induce them to come forward with more fair and liberal offers, at the period of making the new settlement; and, at the same time, that even a disappointment of their expectations would be the cause of no real injury to them, or place them in a worse situation than they were before such hopes were held out to them, it became my indispensable duty to propose that the intentions of the Court of Directors should be published.

The notification has been accordingly made in the several Collectorships of Behar, and in the Collectorship of Midnapore in Orissa, the final orders for the settlement of which have been issued; and the same reasons will induce me to recommend its being published throughout Bengal.

I now come to the remaining points on which I have differed with Mr. Shore, and the final decision regarding which must rest with the Honourable Court of Directors; *viz.*, the expediency of declaring the decennial settlement permanent, and appointing officers on the part of Government, to collect the internal duties on commerce.

The following appears to me to be Mr. Shore's principal objections to a permanent assessment:—that we do not possess a sufficient knowledge of the actual collections made from the several districts, to enable us to distribute the assessment upon them, with the requisite equality:—that the demands of the zemindars upon the talookdars and ryots, are undefined; and even if we did possess a competent knowledge of the above points, there are peculiar circumstances attending this country, which must ever render it bad policy in the Government, to fix their demand upon the lands.

I shall now offer such remarks as occur to me on the facts and arguments adduced by Mr. Shore, in support of the above objections:—

Mr. Shore observes, that we profess to take from the zemindars nine-tenths of their receipts; and, under these circumstances, allowing for the common variations in the state of

society, in the improvement, and in the decline of agriculture, and admitting the probable alterations in the value of silver, it is certain that the constancy of the assessment may be of great inconvenience, and even ruinous to many of the contributors: and, in this case, that there will be a necessity of some future alteration, which must always take place to the disadvantage of Government, if the assessment be now declared fixed for ever.

Were there any grounds for supporting that a system which secures to the land-holder the possession of his lands, and the profits arising from the improvement of them, will occasion a decline in agriculture, then might we apprehend that a permanent assessment would, in progress of time, bear hard upon the contributors: but reason and experience justify the contrary supposition: in which case a fixed assessment must be favourable to the contributors, because their resources will gradually increase, whereas the demand of Government will continue the same.

Equally favourable to the contributors, is the probable alteration in the value of silver; for there is little doubt, but that it will continue to fall, as it has done for centuries past, in proportion as the quantity drawn from the mines, and thrown into the general circulation, increases. If this be admitted, the assessment will become gradually lighter, because, as the value of silver diminishes, the land-holder will be able, upon an average, to procure the quantity which he may engage to pay annually to Government, with a proportionably smaller part of the produce of his lands, than he can at present.

The circumstance of the country being occasionally liable to drought and inundation, which Mr. Shore adduces as an argument against a permanent assessment, appears to me strongly in favour of it. The losses arising from drought and inundation are partial and temporary; the crops only are damaged or destroyed; the land is neither swept away by inundation nor rendered barren by drought, but, in the ensuing year, produces crops as plentiful as those which it would have yielded, had it not been visited by those calamities.

Now, if Mr. Shore's calculation of the proportions which the zemindars in general receive of the prooduce of these lands be

accurate it is obvious that every temporary loss must fall upon Government; for so long as we profess to leave the zemindars no more than that proportion, and claim a right to appropriate the excess to the public use, from what funds are they to make these losses good? But when the demand of Government is fixed, an opportunity is afforded to the land-holder of increasing his profits, by the improvement of his lands; and we may reasonably expect that he will provide for occasional losses from the profits of favourable seasons.

The necessity, therefore, of granting remissions to the land-holders, for temporary losses, will diminish in proportion as the produce of the lands increases, and exceeds the demand of Government.

But let us suppose that hereafter it should be found necessary to grant remissions in districts which may suffer from drought or inundation, this is no argument against a permanent assessment; for, under the present system of variable assessments, we are frequently obliged to grant considerable deductions on these accounts, and there is no prospect of our being able to discontinue them, so long as the country is assessed at its full value, and no more is left to the land-holder than is barely sufficient for his subsistence, and for defraying the charges of collecting the rents from his lands.

There is this further advantage to be expected from a fixed assessment, in a country subject to drought and inundation, that it affords a strong inducement to the land-holder to exert himself to repair as speedily as possible the damages which his lands may have sustained from these calamities; for it is to be expected that when the public demand upon his lands is limited to a specific sum, he will employ every means in his power to render them capable of again paying that sum and as large a surplus as possible, for his own use. His ability to raise money to make these exertions, will be proportionably increased by the additional value which the limitation of the public demand will stamp upon his landed property; the reverse of this is to be expected, when the public assessment is subject to ulimited increase.

I am of opinion, therefore, that there is no reason to apprehend a greater deficiency in the public revenue, from drought

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and inundation, when the assessment is fixed, than we have hitherto sustained, under the system of variable assessments; on the contrary, that we have very sufficient grounds for supposing that the necessity for granting remissions on these accounts will become gradually less. It further appears to me that the practice of heaping up the public revenue, by charging occasionally the improved estate of one land-holder with deficiencies in the public revenue assessed upon the lands of his neighbour, is both unjust and impolitic; and that until this practice is discontinued, both the land-holders and their under-tenants and ryots, will in general remain in a state of impoverishment, and that landed property will continue at its present depreciated value.

Mr. Shore observes, that the zemindars are ignorant of their true interests, and of all that relates to their estates:—that the detail of business with their tenants is irregular and confused, exhibiting an intricate scene of collusion, opposed to exaction, and of unlicensed demand substituted for methodised claims:—that the rules by which the rents are demanded from the ryots, are numerous; arbitrary, and indefinite:—that the officers of Government possessing local control, are imperfectly acquainted with them, whilst their superiors, further removed from the detail, have still less information:—that the rights of the talookdars dependent on the zemindars, as well as of the ryots, are imperfectly understood and defined:—that in common cases, we often want sufficient data and experience to enable us to decide, with justice and policy, upon claims to exemption from taxes; and that a decision erroneously made, may be followed by one or other of these consequences,—a diminution of the revenues of Government or a confirmation of oppressive exaction:—that no one is so sanguine as to expect, that the perpetration of the zemindary assessment, will at once provide a remedy for these evils; that time must be allowed for the growth of confidence, and the acquisition of knowledge:—that we know from experience what the zemindars are, and that he is not inclined in opposition to that experience, to suppose that they will at once assume new principles of action, and become economical landlords and prudent trustees of the public interests.

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With regard to the ignorance and incapacity of the zemindars, admitting these defects to exist in that class of people to the extent supposed, I have already given it as my opinion that they are to be attributed greatly to the system of collecting the public revenue from their lands, which so long prevailed in this country: to keep them in a state of tutelage, and to prohibit them from borrowing money, or disposing of their lands, without the knowledge of Government, as we do at present, with a view to prevent them suffering the consequences of their profligacy and incapacity, will perpetuate these defects. If laws are enacted which secure to them the fruits of industry and economy, and at the same time, leave them to experience the consequence of idleness and extravagance; they must either render themselves capable of transacting their own business, or their necessities will oblige them to dispose of their lands to others, who will cultivate and improve them. This I conceive to be the only effectual mode which this or any other Government could adopt to render the proprietors of the lands economical landlords, and prudent trustees of the public interests.

I must here observe, however, that the charge of incapacity can be applied only to the proprietors of the larger zemindaries. The proprietors of the smaller zemindaries, and talooks in general, conduct their own business; and I make no doubt would improve their lands, were they exempted from the authority of the zemindars, and allowed to pay their revenue immediately to the public treasuries of the Collectors.

Admitting the detail of business between the zemindars and their under-tenants and ryots, to be in the intricate state described by Mr. Shore, does it not prove that the various attempts hitherto made by successive administrations to simplify this intricacy, have been defective in principle, and consequently establish the necessity of having recourse to other measures for that purpose? We have found that the numerous prohibitory orders against the levying of new taxes, accompanied with threats of fine and punishment for the disobedience of them, have proved ineffectual; and, indeed, how could it be expected, that whilst the Government were increasing their demands upon the zemindars, that they in their turn would not oppress the ryots; or that a farmer, whose interest extended little

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further than to the crops upon the ground, would not endeavour to exact, by every means in his power, as large a sum as possible, over and above the amount of his engagements with the public.

If the officers of Government possessing local control, are imperfectly acquainted with the rules by which the rents are demanded from the ryots, and their superiors further removed from the detail, have still less information of them, at what period are we to hope that Government and its officers, will obtain a more perfect knowledge of them? The Collectors have now been three years acting under positive instructions, to obtain the necessary information for concluding a permanent settlement. They have transmitted their reports; and if the information contained in them, and the numerous discussions on the same points, recorded on the proceedings of former administrations, are insufficient for us to act upon; at what period, and from whom, are we to expect to procure more perfect material? Most of the Collectors who have furnished the last reports, are now upon the spot, and are the persons best qualified for carrying into execution the system which we may adopt. It is to be supposed that they have communicated all the information which they possessed; and no further lights are therefore to be expected from them. Shall we act upon this information, or shall we wait for other Collectors and fresh reports; or shall we calmly sit down discouraged by the difficulties which are supposed to exist, and leave the revenue affairs of this country, in the singular state of confusion in which they are represented to be by Mr. Shore?

In order to simplify the demand of the land-holder upon the ryots, or cultivator of the soil, we must begin with fixing the demand of Government upon the former; this done, I have little doubt but that the land-holders will without difficulty be made to grant Pottahs to the ryots upon the principles proposed by Mr. Shore in his propositions for the Bengal settlement. The value of the produce of the land is well known to the proprietor or his officers, and to the ryot who cultivates it; and is a standard which can always be reverted to by both parties, for fixing equitable rates.

Mr. Shore, in his Minute prefixed to his propositions for the Bengal settlement, has furnised the most satisfactory argu-

ments, to prove the incompetency of the officers of Government to enter into this detail, with any prospect of success. He observes, "That it would be endless to attempt the subordinate variations, in the tenures or conditions of the ryots: that it is evident, in a country where discretion has so long been the measure of exaction, where the qualities of the soil and the nature of the produce, suggest the rates of the rents; where the standard of measuring the land varies, and where endless and often contradictory customs exist, in the same district and village; the task must be nearly impossible; that the Collector of Rajeshahy observes upon the subject, that the infinite varieties of soil, and the further variations of value, from local circumstances, are absolutely beyond the investigation, or almost comprehension, not merely of a Collector, but of any man who has not made it the business of his life."

It is evident, therefore, that the only mode of remedying these evils, which is likely to be attended with success, is to establish such rules as shall oblige the proprietors of the soil, and their ryots, who alone possess the requisite information for this purpose, to come to a fair adjustment of the rates to be paid for the different kinds of lands or produce in their respective districts. Mr. Shore's proposition, that the rents of the ryots by whatever rule or custom they may be demanded, shall be specific as to their amount,—that the land-holders shall be obliged, within a certain time, to grant Pottahs or writings to their ryots, in which this amount shall be inserted, and that no ryot shall be liable to pay more than the sum actually specified in his Pottah, if duly enforced by the Collectors,—will soon obviate the objection to a fixed assessment, founded upon the undefined state of the demands of the land-holders upon the ryots.

When the spirit of improvement is diffused throughout the country, the ryots will find a further security in the competition of the land-holders, to add to the number of their tenants.

It is no objection to the perpetuation of the zemindary assessment, that will not at once provide a remedy for those evils: it is sufficient if it operates progressively to that end.

Mr. Shore observes, that we have experience of what the zemindars are; but the experience of what they are, or have

been, under one system, is by no means the proper criterion; to determine what they would be under the influence of another, founded upon very different principles. We have no experience of what the zemindars would be under the system which I recommend to be adopted.

I agree with Mr. Shore, that some interference on the part of Government, is undoubtedly necessary for effecting an adjustment of the demands of the zemindars upon the ryots; nor do I conceive that the former will take alarm, at the reservation of this right of interference, when convinced that Government can have no interest in exercising it but for the purposes of public justice. Were the Government itself to be a party in the cause, they might have some grounds for apprehending the results of its decisions.

Mr. Shore observes, that this interference is inconsistent with proprietary right; that it is an encroachment upon it, to prohibit a landlord from imposing taxes upon his tenant; for it is saying to him, that he shall not raise the rents of his estates and that if the land is the zemindar's it will only be partially his property, whilst we prescribe the quantum which he is to collect, or the mode by which the adjustment is to take place between the parties concerned.

If Mr. Shore means, that after having declared the zemindar proprietor of the soil, in order to be consistent, we have no right to prevent his imposing new abwabs, or taxes, on the lands in cultivation, I must differ with him in opinion, unless we suppose the ryots to be absolute slaves of the zemindars: every bigha of land possessed by them, must have been cultivated under an express or implied agreement, that a certain sum should be paid for each bigha of produce, and no more. Every abwab, or tax, imposed by the zemindar over and above that sum, is not only a breach of that agreement, but a direct violation of the established laws of the country. The cultivator, therefore, has in such case, an undoubted right to apply to Government for the protection of his property; and Government is at all times bound to afford him redress. I do not hesitate therefore to give it as my opinion, that the zemindars neither now nor ever, could possess a right to impose taxes or abwabs upon the ryots; and if from the confusions which prevailed

towards the close of the Mogul Government, or neglect, or want of information, since we have had the possession of the country, new abwabs have been imposed by the zemindars or farmers; that Government has an undoubted right to abolish such as are oppressive, and have never been confirmed by a competent authority; and to establish such regulations as may prevent the practice of like abuses in future.

Neither is the privilege which the ryots in many parts of Bengal enjoy, of holding possession of the spots of land which they cultivate, so long as they pay the revenue assessed upon them, by any means incompatible with the proprietary rights of the zemindars. Whoever cultivates the land, the zemindars can receive no more than the established rent, which in most places is fully equal to what the cultivator can afford to pay. To permit him to dispossess one cultivator, for the sole purpose of giving the land to another, would be vesting him with a power to commit a wanton act of oppression, from which he could derive no benefit. The practice that prevailed under the Mogul Government, of uniting many districts into one zemindary, and thereby subjecting a large body of people to the control of one principal zemindar, rendered some restriction of this nature absolutely necessary. The zemindar, however, may sell the land; and the cultivators must pay the rent to the purchaser.

Neither is prohibiting the land-holder to impose new abwabs or taxes on the land in cultivation, tantamount to saying to him, that he shall not raise the rents of his estates. The rents of an estate are not to be raised by the imposition of new abwabs or taxes on every bigha of land in cultivation; on the contrary, they will in the end, be lowered by such impositions: for when the rate of assessment becomes so oppressive as not to leave the ryot a sufficient share of the produce for the maintenance of his family, and the expenses of cultivation, he must at length desert the land. No zemindar claims a right to impose new taxes on the land in cultivation; although it is obvious that they have clandestinely levied them, when pressed to answer demands upon themselves, and that these taxes have, from various causes, been perpetuated to the ultimate detriment of the proprietor who imposed them.

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The rents of an estate can only be raised, by inducing the ryots to cultivate the more valuable articles of produce, and to clear the extensive tracts of waste land, which are to be found in almost every zemindary in Bengal. It requires no local knowledge of the revenues of this country, to decide, whether fixing the assessment, or leaving it liable to future increase, at the discretion of Government or its officers, will afford the greatest encouragement to the land-holder to have recourse to these means for the improvement of his estate.

In support of the opinion which I expressed upon a former occasion, respecting the large proportion of waste land in the Company's territories, I have annexed some extracts from the correspondence of the Collector in the Dacca Province, &c.; and whoever will take the trouble to consult the public proceedings, will find there are many districts, both in Bengal and Behar, which are not better cultivated than those alluded to in letters of the above-mentioned Collectors.

It does not appear to me that the regulations for the new settlement, confirm all existing taxes, if, upon enquiry, they shall appear to be unauthorized, and of recent imposition; nor that the zemindars will be entitled to deductions, upon the abolition of them.

With regard to the rates at which landed property transferred by public sale, in liquidation of arrears, and it may be added, by private sale or gift, are to be assessed; I conceive that the new proprietor has a right to collect no more than what his predecessor was legally entitled to, for the act of transfer certainly gives no sanction to illegal impositions. I trust, however, that the due enforcement of the regulation for obliging the zemindars to grant Pottahs to their ryots, as proposed by Mr. Shore, will soon remove this objection to a permanent settlement. For whoever becomes a proprietor of land after these Pottahs have been issued, will succeed to the tenure under the condition, and with the knowledge, that these Pottahs are to be the rules by which the rents are to be collected from the ryots.

With respect to the talookdars, I could have wished that they had been separated entirely from the authority of the zemindars, and that they had been allowed to remit the public

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revenue assessed upon their lands immediately to the officers of Government, instead of paying it through the zemindar, to whose jurisdiction they are subjected. The last clause in the 16th Article of Mr. Shore's propositions, which directs that the lands of the talookdars shall be separated from the authority of the zemindars, and their rents be paid immediately to Government, in the event of the zemindars being convicted of demanding more from them than they ought to pay, will afford them some security from oppression.

When the demand of Government upon the zemindars is fixed, they can have no plea for levying an increase upon the talookdars, for I conceive the talookdars in general to have the same property in the soil as the zemindars, and that the former are to be considered as proprietors of lesser portions of land; paying their revenues to Government, through the medium of a larger proprietor, instead of remitting them immediately to the public treasury. The pernicious consequences which must result from affording to one individual, an opportunity of raising the public revenue assessed, upon the lands of another, at his own discretion and for his own advantage, are evident; and on this account, I was desirous that all proprietors of land, whether zemindars, talookdars or choudries, should pay their rent immediately to the European Collector of the district, or other officer of Government, and be subject to the same general laws.

The number of names upon the rent-roll will add little to the business of the Collector of a district, provided that the sum to be paid by each proprietor of land is fixed.

In support of this opinion, I have annexed some Extracts from the Proceedings of the Committee of Circuit; the members of which must have been well acquainted with the customs and practices of the Mogul Government.

These Extracts afford convincing proofs of the proprietary rights of the inferior zemindars and talookdars; and that they being made to pay their rent through the superior zemindars of the district, was solely for the convenience of the Government which found it less difficult to collect the rents from one principal zemindar than from a number of petty proprietors.

They further prove, that the zemindars who sold their lands to raise money for the liquidation of the public balances,

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disposed of all the rights which they possessed in them, as individuals; and that whatever authority they might exercise over them, after the sale, must have been virtually delegated to them by the Government, and not derived from themselves; and consequently that, in separating such talookdars from the jurisdiction of the zemindars, we should not have infringed the rights of the latter, but only deviated from a practice of the Mogul Government, from which that administration itself, frequently departed; and whose conduct, in cases of this nature, should not, I conceive, be made the rule of ours, when found to be inconsistent with the good of the community.

The temporary reduction of the tribute of the Rajah of Benares, adduced by Mr. Shore to prove that the internal arrangements which we may find it necessary to make, after fixing the jumma payable by each zemindar, may hereafter oblige us to grant remissions, and thereby diminish the public revenues, does not appear to me a case in point.

The revenue received from Benares, was at once raised from 22 to 40 lacs of rupees. The Rajah being incapable of transacting his own affairs, the management of them was vested in a naib or deputy, whose rapacity and mal-administration, together with that of his officers, occasioned a general decline in the cultivation of the country, and consequently diminished its resources. The late reform of the customs, and internal duties, gave rise to a further temporary diminution of them.

The above are the principal causes which have occasioned the reduction in the revenues in Benares; but as it is obvious that simlar causes will not exist either in Bengal or Behar, no arguments against fixing the assessment in these provinces, can be founded upon this temporary deficiency in the revenues of Benares.

Still less can any just conclusions be drawn against fixing the demand of Government upon the lands, from the instance of the settlement made last year in Midnapore, by the present Collectors. Mr. Shore observes, that if this assessment, formed upon documents of the greatest probable authenticity, had been declared permanent, the collection of it, if enforced, would have reduced many of the talookdars to distress, and, some to ruin.— That, are we not as likely, or more so, to err,

in the distribution of the assessment upon Collectorships, as upon the subdivisions of a particular district?

How far this reasoning is applicable to the settlement which we are about to conclude in the districts of Bengal, will appear from a reference to our Proceedings regarding Midnapore.

The canongoe of that district delivered in accounts, in which the gross produce of the country was estimated, to be nearly double the amount of the revenue collected from it, on the account of Government. The supposed profits of the landholders, after making allowance for their charges in collecting the rents, were thought larger than what they were entitled to; and measures were taken to appropriate a part of them to the public use.

A considerable increase was accordingly imposed on the country, and the canongoe, through whom the accounts of the produce were obtained, pledged himself to become responsible, should the produce of any district fall short of his estimates.

It appears from the Collector's report, referred to in Mr. Shore's Minute of the 25th November last, that the collection of this settlement was made with much difficulty, and that it was attended with great distress, entailing indigence on the renters of Mineehourah, Kookulpour, and Boccamootah; and that in the two last districts, after the mofussil assets had been completely collected, there remained a balance due from those mehals, which, it was pretty well known, was discharged by the sale of effects, and the mortgaging of rent-free lands.

The Collector further represented, that the canongoe's estimates had, in many places, proved fallacious, that the assessment was too high, and that there was an absolute necessity for lowering it, in the ensuing year; he was accordingly directed to repair to Calcutta; and after the accounts which he brought with him, were carefully examined we judged it expedient to grant him a general authority to propose such remissions in the assessment, as might appear to him necessary.

I confess, my expectations were never sanguine, that this settlement would be realized without distress to the numerous

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zemindars and talookdars, who are proprietors of the lands in Midnapore; and it is my opinion, that every attempt of this nature, to appropriate to the use of Government the profits of the land-holders, allowing them only what, upon an arbitrary average estimate, is deemed sufficient for their maintenance and defraying the necessary charges of collecting the rents of their estates, will end in disappointment to Government, ruin to the proprietors of the soil, and in the establishment of mutual distrust.

The history of this settlement, may be traced upon the public proceedings: and, I trust, that the state to which it has reduced many of the land-holders, will suggest to the Court of Directors very strong arguments in favour of a permanent assessment, and prove to them the justness of Mr. Shore's own observation: "That the mere admission of the rights of the zemindars, unless followed by the measures that will give value to it, will operate but little towards the improvement of the country; that the demands of a foreign dominion, like ours, ought certainly to be more moderate, than the impositions of the native rulers, and that to render the value of what we possess permanent, our demands ought to be fixed: that, removed from the control of our own Government, the distance of half the globe, every practicable restriction should be imposed upon the administration in India, without circumscribing its necessary power; and the property of the inhabitants be secured against the fluctuations of caprice, or the license of unrestrained control."

The principles which influenced the conclusion of this settlement, I am happy to say, have not found admission among those which are to regulate the formation of the future settlement of the districts in Bengal; and consequently, I trust that we shall not be subjected to the same disappointment which we have experienced in Midnapore.

Mr. Shore admits the general principle of the inexpediency of the total of the public assessment being increased at any future settlement; but the adoption of his proposition to correct periodically the inequalities that may appear in the proportions which are paid by the individual land-holders, would, in my opinion, be attended with almost every discouragement and

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mischievous effect that the annual farming system could be supposed to produce.

No previous assurances, however solemn, could convince the zemindars, that Government would, at the expiration of their leases, be contented with less than the highest rent that could be exacted from their lands; and even if experience should prove to them, that the intention of laying an additional assessment upon the most wealthy, went no further than to indemnify the public treasury for the losses that had been sustained by deficiencies in the rents of others, it would be vain to expect them to admit the justice of the principle, that the industrious man should be taxed in proportion to the idleness and mismangement of his neighbours; or, if they admitted it, to persuade them that the shares of those deficiencies had been fairly and impartially distributed; and I must confess, that I do not think that a Government, or a set of Collectors, will never exist in this country, that would be qualified, at the end of a ten years' lease, to discriminate the acquisitions of fortune, which had arisen from advantageous agreements, from those that had been produced, by the superior economy and industry of other proprietors; and consequently that to proportion a general assessment upon that principle would be absolutely impracticable.

Although the zemindars and other land-holders in this country, are in general extremely improvident, and from their having been hitherto harassed with annual assessments, would no doubt receive a ten years' settlement with much satisfaction; yet short-sighted as they are, I cannot by any means admit, that they would not clearly see a wide difference between a tenure of short duration and a perpetuity. But should it even happen, in the first moments of their joy, that they could lay aside all apprehensions of meeting with vexations in future settlements, they would infallibly recollect themselves, when their leases approached within three or four years of a conclusion; and as the same pernicious effects would then follow, that are now experienced annually, they would endeavour to give themselves an appearance of poverty, by concealing the wealth that they might have acquired, and to depreciate the value of their lands, by neglecting their cultivation, in hopes

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of obtaining by those means, more advantageous terms, at an ensuing settlement; and these consequences, by withdrawing the application of certain portions of stock and industry, must operate for a time, to the general detriment of the State.

I trust, however, that it cannot be imagined that I would recommend that the proposed settlements should be made with a blind precipitation; or without our having obtained all the useful information that, in my opinion, can be expected of the real state and value of the different districts.

Twenty years have been employed in collecting information.—In 1769, Supervisors were appointed;—in 1770, provincial Councils were established;—in 1772, a Committee of Circuit was deputed to make the settlement, armed with all the powers of the Presidency;—in 1776, Aumeens were appointed to make a hustabood of the country;—in 1781, the provincial Council of revenue were abolished, and Collectors were sent into the several districts, and the general Council and management of the revenues, was lodged in a Committee of revenue at Calcutta, under the immediate inspection of Government. Like our predecessors, we set out with seeking for new information; and we have now been three years in collecting it. Voluminous reports have been transmitted by the several Collectors on every point which was deemed of importance. The object of these various arrangements has been, to obtain an accurate knowledge of the value of the lands, and of the rules by which the zemindars collect the rents from the ryots.

The Collectors in Behar, not even excepting the two to whom Mr. Shore alludes as having declared it impracticable to make the proposed settlement, have already, with great appearance of benefit to the Company, and of advantage to the Natives, made considerable progress in executing the instructions that they have received for making the ten years' settlement, conformable to the orders of the Court of Directors; and in every instance where it has been stated, that further time was necessary to acquire a minute knowledge of the resources of any particular district, the Board has readily acquiesced, in allowing a partial delay.

I shall certainly be no less inclined to recommend the observation of the same rule, during the progress of the settle-

ment in Bengal and Orissa; and in those districts that, from long mismanagement, are evidently in a state of decline and disorder, I shall not only willingly agree to postpone the settlement for a twelve month longer, but also assent to any modifications in it that may appear to be applicable to their present conditions. But after having adopted those and such other measures as may appear necessary, from the reports and explanations which may be laid before us by the different Collectors, whilst they are engaged in the execution of our instructions, I must declare, that I am clearly of opinion, that this Government will never be better qualified, at any given period whatever, to make an equitable settlement of the land-revenue of these provinces; and that if the want of further information was to be admitted now, or at any other future period, as a ground for delaying the declaration of the permanency of the assessment, the commencement of the happiness of the people and of the prosperity of the country, would be delayed for ever.

The question that has been so much agitated in this country, whether the zemindars and talookdars 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 the amount of those rents at its own discretion, has never been denied or disputed.

Under the former practice of the annual settlement, zemindars who have either refused to agree to pay the rents that have been required, or who have been thought unworthy of being intrusted with the management, have, since our acquisition of the Dewanny, been dispossessed in numberless instances, and their land held khas, or let to a farmer; and when it is recollected that pecuniary allowances have not always been given to dispossessed zemindars in Bengal, I conceive that a more nugatory or delusive species of property could hardly exist.

On the other hand, the grant of these lands at a fixed assessment, will stamp a value upon them hitherto unknown; and, by the facility which it will create of raising money upon them, either by mortgage or sale, will provide a certain fund

for the liquidation of public or private demands, or prove an incitement to exertion and industry, by securing the fruits of those qualities in the tenure, to the proprietor's own benefit.

I now come to the remaining point upon which I have differed with Mr. Shore; *viz.*, the expediency of taking into the hands of Government, the collection of the internal duties on commerce; and allowing to the zemindars and others, by whom these duties have been hitherto levied, a deduction adequate to the amount which they now realize from them.

Mr. Shore's propositions for the settlement of Bengal, will point out his sentiments regarding the collection of the internal duties; and I believe it was principally at my instance, that he acquiesced in the resolution for taking the collection of these duties into the hands of Government, in Behar, as entered on our proceedings of the 18th September last.

It was by my desire, also, that similar instructions were issued to the Collector of Midnapore.

To those who have adopted the idea, that the zemindars have no property in the soil, and that Government is the actual landlord, and that the zemindars are officers of Government removable at pleasure; the question regarding the right of the zemindars to collect the internal duties on commerce, would appear unnecessary. The committing the charge of the land-revenues to one officer, and the collection of the internal duties to another, would to them appear only a deviation from the practice of the Mogul Government, and not an infringement of the rights of individuals; but what I have already said will be sufficient to show, that these are not the grounds upon which I have recommended the adoption of the measure.

I admit the proprietary rights of the zemindars, and that they have hitherto held the collection of the internal duties; but this privilege appears to me so incompatible with the general prosperity of the country, that however it may be sanctioned by long usage, I conceive there are few who will not think us justifiable in resuming it.

It is almost unnecessary to observe, how much the prosperity of this country depends upon the removal of all obstructions, both to its internal and foreign commerce. It is from these resources only, that it can supply the large proportions of

its wealth, which are annually drained from it, both by the Company and by individuals.

The rates by which the internal duties are levied, and the amount of them collected in each zemindary, have, as far as I have been able to trace, never been ascertained: when the lands of the zemindars have been leased out to farmers, these duties have been collected by them.

It is, I believe, generally allowed, that no individual in a state, can possess an inherent right to levy a duty on goods or merchandize purchased or sold within the limits of his estate, and much less upon goods passing along the public roads which lead through it. This is a privilege which the sovereign power alone is entitled to exercise, and no where else can it be lodged with safety. Every unauthorized exaction levied on the goods of a merchant, and every detention of them in their progress through the country, is a great public injury. The importation of foreign commodities, and the exportation of our own, are alike obstructed; for accumulated exactions, by raising the price, diminish the consumption of the commodity, and the merchant is under the necessity either to give up his trade, or to go to other countries, in search of the same goods. It cannot be expected that a zemindar will be influenced by these considerations, and much less a temporary farmer, whose only object can be to exact from the cultivators of the soil, as well as from merchants and traders, as much as he can compel them to pay.

The Court of Directors themselves appear to have been of this opinion, from the following paragraph of their letter of the 10th April, 1771:—

"As we have reason to believe that many bazaars are held in the provinces, without the authority of Government, and which must be an infringement of its right, a great detriment to the public collection, and a burden and oppression on the inhabitants; you will take care that no bazaars or gunges be kept up, but such as particularly belong to the Government.—But in such bazaars and gunges, the duties are to be rated in such manner as their situations, and the flourishing state of the respective districts will admit."

And in the same letter, they observe:—"Persuaded as we are that the internal traffic of Bengal has received further

checks from the duties which are levied, and the exactions which are imposed at chokies, we positively direct, that no such chokies be suffered to continue, on any pretence whatever, to impede the course of commerce from one part of the province to the other. It is necessary, however, that the nine general chokies which have been established for collecting the duties payable to the Circar, should remain, and these only."

The chokies stationed upon the banks of the rivers to collect duties on boats, on the part of the zemindars, were directed to be abolished, in consequence of the Company's orders, and adequate deductions were granted to the zemindars; but the duties levied at the hauts, gunges, and inland chokies, were ordered to be continued, in the hands of the zemindars as formerly. The zemindars were also prohibited from collecting inland rahdarry duties, that is, duties upon goods not bought or sold within their zemindaries, but only passing through them. Notwithstanding this prohibition has been frequently repeated, our proceedings exhibit numerous instances of these rahdarry duties being levied by zemindars and farmers; and from opportunities which are afforded them, by having the collection of the authorized inland duties in their hands, I have every reason to believe that the practice is but too general. I understand that the Collector of Nuddea has lately abolished a very considerable number of chokies, at which unauthorized duties were collected on the internal trade, by the officers of the zemindar, in defiance of the repeated orders of Government. If these interruptions to commerce are found to exist in a district almost in the neighbourhood of Calcutta, and under a vigilant Collector, it may be supposed that, in the more inland parts of the country, and under Collectors less active, that the evil prevails to a greater extent.

The inefficacy of the power of Government to restrain zemindars from these oppressive exactions, whilst they are allowed to possess the right of levying taxes of any kind upon commerce, has been long experienced in many shapes. It is only by the total resumption of this right, that such abuses can be prevented; and as the general interests of the community require that a regular system of taxation upon the internal trade of the country should be established, we are

justified by the constant practice of our own country, and that of other nations, in demanding from individuals, upon granting them a full compensation for their present value, a surrender of privileges which counteract so beneficial a measure.

Further benefits are to be derived from this arrangement when the amount of the internal duties, the rates by which they are levied, and the articles subject to the payment of them are ascertained. Some may be increased, and others diminished or struck off, according as may be judged advisable; and in course of time, as commerce and wealth increase, such regulations may be made in the duties on the internal trade, and the foreign imports and exports, as will afford a large addition to the income of the public, whenever its necessities may require it, without discouraging trade or manufactures or imposing any additional rent on the lands.

Having stated such remarks on Mr. Shore's Minute as appeared to me necessary, I shall subjoin the following observations on the revenue system of this country, which may be found deserving of consideration:—

Although Government has an undoubted right to collect a portion of the produce of the lands to supply the public exigencies, it cannot, consistent with the principles of justice and policy, assume to itself a right of making annual or periodical valuations of the lands, and taking the whole produce, except such portion as it may think proper to relinquish to the proprietors for their maintenance, and for defraying the charges of managing their estates.

The Supreme power in every State, must possess the right of taxing the subject, agreeably to certain general rules; but the practice which has prevailed in this country for some time past, of making frequent valuations of the lands, and where one person's estate has improved, and another's declined of appropriating the increased produce of the former, to supply the deficiencies in the latter, is not taxation, but in fact a declaration that the property of the land-holder is, at the absolute disposal of Government. Every man who is acquainted with the causes which operate to impoverish or enrich a country, must be sensible that our Indian territories must continue to decline, as long as the practice is adhered to.

The maxim that equality in taxation is an object of the greatest importance, and that in justice all the subjects of a State should contribute as nearly as possible, in proportion to the income which they enjoy under its protection does not prove the expediency of varying the demand of Government upon the lands; on the contrary, we shall find that, in countries in which this maxim is one of the leading principles in the imposition of taxes, the valuation of the land on which they are levied is never varied.

In raising revenue to answer the public exigencies, we ought to be careful to interfere as little as possible in those sources from which the wealth of the subject is derived.

Agriculture is the principal source of the riches of Bengal; the cultivator of the soil furnishes most of the materials for its numerous manufactures. In proportion as agriculture declines, the quantity of these materials must diminish, and the value of them increase, and consequently the manufactures must become dearer, and the demand for them be gradually lessened. Improvement in agriculture will produce the opposite effects.

The attention of Government ought therefore to be directed to render the assessment upon the lands, as little burdensome as possible: this is to be accomplished only by fixing it. The proprietor will then have some inducement to improve his lands; and as his profits will increase in proportion to his exertions, he will gradually become better able to discharge the public revenue.

By reserving the collection of the internal duties on commerce, Government may at all times appropriate to itself a share of the accumulating wealth of its subjects, without their being sensible of it. The burden will also be more equally distributed; at present, the whole weight rests upon the landholders and cultivators of the soil.

Whereas the merchants and inhabitants of the cities and towns, the proprietors of rent-free lands, and in general, all persons not employed in the cultivation of the lands, paying revenue to Government, contribute but little, in proportion to their means, to the exigencies of the State. It is evident, therefore, that varying the assessment on the lands, is not the mode of carrying into practice the maxim, that all the

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subjects of a State ought to contribute to the public exigencies, in proportion to their incomes; and that other means must be employed for effecting this object.

In case of a foreign invasion, it is a matter of the last importance, considering the means by which we keep possession of this country, that the proprietors of the lands should be attached to us, from motives of self-interest. A land-holder, who is secured in the quiet enjoyment of a profitable estate, can have no motive for wishing for a change. On the contrary if the rents of his lands are raised, in proportion to their improvements—if he is liable to be dispossessed, should he refuse to pay the increase required of him—or if threatened with imprisonment or confiscation of his property, on account of balance due to Government, upon an assessment which his lands were unequal to pay; he will readily listen to any offers which are likely to bring about a change that cannot place him in a worse situation, but which hold out to him hopes of a better.

Until the assessment on the lands is fixed, the constitution of our internal Government in this country will never take that form which alone can lead to the establishment of good laws, and ensure a due administration of them. For whilst the assessment is liable to frequent variation, a great portion of the time and attention of the Supreme Board, and the unremitted application of the Company's servants of the first abilities, and most established integrity will be required to prevent the land-holders being plundered, and the revenues of Government diminished, at every new settlement; and powers and functions, which ought to be lodged in different hands, must continue as at present, vested in the same persons; and whilst they remain so united, we cannot expect that the laws which may be enacted for the protection of the rights and property of the land-holders, and cultivators of the soil, will ever be duly enforced.

We have, by a train of the most fortunate events, obtained the dominion of one of the most fertile countries on the face of the globe, with a population of mild and industrious inhabitants, perhaps equal to, if not exceeding in number, that of all the other British possessions put together

Its real value to Britain depends upon the continuance of its ability to furnish a large annual investment to Europe; to give considerable assistance to the treasury at Canton; and to supply the pressing and extensive wants of the other Presidencies.

The consequences of the heavy drains of wealth, from the above causes, with the addition of that which has been occasioned by the remittance of the private fortunes, have been for many years past, and are now, severely felt, by the great diminution of the current specie, and by the languor which has thereby been thrown upon the cultivation, and the general commerce of the country.

A very material alteration in the principles of our system of management has therefore become indispensably necessary in order to restore this country to a state of prosperity, and to enable it to continue to be a solid support to the British interests and power in this part of the world.

We can only accomplish this desirable object, by devising measures to rouse and increase the industry of the inhabitants; and it would be in vain to hope that any means but those of holding forth prospects of private advantage to themselves could possibly succeed to animate them to exertion.

I am sorry to be obliged to acknowledge it, but it is a truth too evident to deny, that the land proprietors throughout the whole of the Company's provinces, are in a general state of poverty and depression.

I cannot even except the principal zemindars from this observation; and it was not without concern, that I saw it verified very lately, in one instance, by the Rajah of Burdwan, who pays a yearly rent of upwards of £400,000 to Government, having allowed some of his most valuable lands to be sold, for the discharge of an inconsiderable balance due to Government.

The indolent and debased character of many of the zemindars must no doubt have contributed to the ruin of their circumstances; and though I am afraid the cases are but few, yet I conceive it to be possible that there may be some instances, in which the poverty that is pleaded may be only pretended.

Either supposition must, however, reflect some discredit upon our system of management; for it would imply, that we have been deficient in taking proper measures to incite the zemindars to a line of conduct, which would produce advantage to themselves; or, that if they have acquired wealth, their apprehension of our rapacity induces them to conceal it.

We are therefore called upon to endeavour to remedy evils by which the public interests are essentially injured; and by granting perpetual leases of the lands at a fixed assessment, we shall render our subjects the happiest people in India; and we shall have reason to rejoice at the increase of their wealth and prosperity, as it will infallibly add to the strength and resources of the State.

I therefore propose, that the letter from the Board of Revenue with the reports of the Collectors in Bengal, respecting the ten years' settlement and Mr. Shore's Minute and Proposition, delivered in for record in June last, be now entered upon the proceedings.

That a copy of Mr. Shore's Propositions (the articles relating to the gunges excepted) with such of the alterations contained in our Resolutions of the 25th November last, for the settlement of Midnapore, as are applicable to the districts in general, be transmitted to the Board of Revenue; and that they be directed to proceed, without delay, to form the ten years' settlement in Bengal, agreeable to the rules and prescriptions therein laid down.

That the Board of Revenue be directed to notify to the land-holders, that the settlement, if approved by the Court of Directors, will become permanent, and no alteration take place at the expiration of the ten years.

That the Board of Revenue be further directed to issue the same instructions to the Collectors in Bengal, for the separation of the gunges, bazaars, and hauts, held within them, as have been transmitted to the Collectors of Behar, and the Collector of Midnapore.

February 3rd.

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MINUTE OF MR. SHORE, ON THE PERMANENT SETTLEMENT OF THE LANDS IN BENGAL: AND PROPOSED RESOLUTIONS THEREON.

RECORDED ON THE 18TH SEPTEMBER 1789.

Extract, Bengal Revenue Consultations, 18th September 1789.

1.—My time, since I had last the honour of attending the Board, had been occupied in perusing the replies of Collectors of the Fussilly districts, to the references made to them under dates the 11th August 1788, and 20th May 1789, on the subject of the intended permanent settlement; and with a view to assist the deliberations of the Board, and to enable them to form decisive resolutions upon this important subject, I have collected all the material information which has occurred, and shall now state it, with my own observations upon the whole.

2.—It may be proper to premise, that the Minute which I delivered for record, upon the 18th June last, on the revenues of this country, related to the districts of Bengal only, and had no reference to the divisions of this country, which pay their rents according to the Fussilly year. I have formerly remarked, that between Bengal and Behar there are many important distinctions, both in principle and practice; and in determining the system of management for regulating and collecting the revenues of these two provinces, these distinctions should not be disregarded: the most material of them, are as follows:—

1*st*.—In Bengal the zemindaries are very extensive, and that of Burdwan alone is equal in produce to three-fourths of the rental of Behar, in which province, the zemindaries are comparatively small. The power and influence of the principal zemindars in Bengal is proportionably great; and they have been able to maintain a degree of independence, which the inferior zemindars of the Behar province have lost. The latter

also, having been placed under the authority of a provincial administration, from distance as well as comparative inferiority, have been precluded from that information which the zemindars of Bengal, from their vicinity to Calcutta, and their access to the members and officers of Government, have been able to obtain: the latter have acquired ideas of right, and assume principles of conduct, or reasoning, which do not extend to the zemindars of Behar.

2*ndly*.—The proprietors of the soil in Behar universally claim and possess a right of malikana, which whenever they are dispossessed of the management of their lands, they receive from the aumil, as well as from the tenants of the jaghirs and proprietors of altumghas. In Bengal, no such custom has ever been formally established, although there is some affinity between this and the allowance of moshaira.

3*rdly*.—The lands of Behar have from time immemorial, been let to farm, and no general settlement, as far as we can trace, since the acquisition of the Dewanny, has been concluded between Government and the real proprietors of the soil. The Collector of Sarun asserts that this has ever been the usage in the districts under his charge. The aumil or farmer has deemed himself entitled to avail himself of the agency of the zemindars and talookdars, or dispense with it, at his own discretion. This power was formally delegated to the farmers in 1771, by the provincial Council at Patna, with the sanction of the superior authority at Calcutta, and the rate of malikana was then settled, for the dispossessed proprietors of the land, at 10 per cent. as the ancient allowance agreeable to the constitution of the country Government.

4*thly*.—The numerous grants of lands in Behar, under various denominations, have had an influence upon the proprietary rights of the zemindars and talookdars, and upon their opinions of those rights. There are few instances of jaghirs in Bengal: I cannot recollect more than three or four.

5*thly*.—The custom of dividing the produce of the land in certain proportions between the cultivator and the Government, or the Collector who stands in its place, is general, but not universal, throughout Behar. In Bengal, the custom is very partial and limited.

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6*thly*.—The settlement in Behar whether by the aumil or manager, on the part of Government, is annually formed upon an estimate of the produce. In Bengal, the mofussil farmers, with some exceptions, collect by different rules.

In Behar, the functions of the mofussil canongoes, however they may have been perverted, have not been superseded: and their accounts, admitting the uncertainty of them, furnish detailed information of the rents, which is not procurable in Bengal from the same sources.

3. The preceding circumstances will sufficiently account for what is actually the case—the very degraded state of the proprietors of the soil in Behar, comparatively with those in Bengal. The former, unnoticed by Government, and left at the mercy of the aumil, have in fact considered themselves as proprietors only of tythe, of their real estates, and assured of this when dispossessed, they have been less anxious to retain a management, which exposed them to the chance of losing a part of what they received without it. The neglect of Government with respect to their situation is very apparent from the *mokurrery* grants of entire pergunnahs upon individuals, without any stipulations in favour of the zemindars and talookdars holding property within them.

4. I know but three principal zemindars at present in Behar, the Rajahs of Tirhoot, Shahabad and Sunnote Tekarry. Their jurisdiction comprehends much more than their actual property, and extends over numerous land-holders possessing rights as fixed and indefeasible, as their own. With respect to this class of proprietors, the superior zemindars are to be considered in the light of aumils only; and I think it probable that the origin of their jurisdiction arose, either from their influence with the supreme provincial authority, or from the facility of such a plan for managing and collecting the revenue. In this point of view, it has its advantages: although it is attended with this obvious evil, that it is the interest of the principal zemindars to throw additional burthens upon the inferior proprietors of the soil, with a view to save his own lands, and augment their value.

5. There is an apparent analogy between the talookdars in Bengal situated within the jurisdiction of a principal zemindar,

and that of the proprietors of the soil of Behar in a similar predicament; but in their reciprocal rights, I understand there exists a material difference. The Muskoory Talookdars of Bengal are dependent upon the zemindar, and have no right to be separated from him, except by special agreement, or in case of oppression, or where their talooks existed previous to the zemindary; neither do they possess the right of malikana. I wish I could account for this important variation from authoritative information or records; but wanting these, I can only conjecture the grounds of it, which may be the following: that the talookdars in Behar are the original proprietors of the soil, whereas in Bengal, most of the Muskoory Talookdars have obtained their tenures, by grant or purchase from the zemindars; if this were not the case, the talookdars in the principal zemindary jurisdictions in Bengal, would, I think, be more numerous than they are. From the Aumeeny papers, it appears that the talookdary jumma of Rajshahy amounts to Rupees 3,70,879; in Nuddea to Rupees 17,059 only, and from information in Dinagepore, to about Rupees 20,000, and in Burdwan to about Rupees 65,000. The Aumeeny investigation did not extend to the two last districts. In Rajshahy the zemindaries of Sultanabad, Amar and Beerterbund, though comprehended within the jurisdiction of the zemindar of the district, are independent of them; and I see no material difference between these places and the inferior zemindars in Behar.

6. With respect to the malikana in Behar, I have in vain endeavoured to trace its origin. If the provincial Council of Patna are correct in their information as to the antiquity of it, which is confirmed by Busteram, the darogah of the amanut dufter in Behar, I should suppose it to have arisen from the custom established in that province, of dividing the produce between the cultivator and Government, in order to afford the proprietor of the soil a proportion of the produce, which, under such an usage strictly enforced, he could never receive, without some authorized allowance in his favour; instances have lately occurred and are adverted to in the letters now before the Board for consideration, of zemindars who have obtained a separate grant for their malikana, and have subsisted upon that, without any interference in the management of their zemindary lands.

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7. I shall now consider the remarks upon the resolutions for the Board, containing propositions for the settlement of Behar, and the objections of the Collectors to them.

Resolution 1st.—That at the expiration of the present Fussilly year, a new settlement of Behar be concluded with the actual proprietors of the soil, whether zemindars, chowdries or independent talookdars; and whether at present paying their revenues to Government through other zemindars, or not.

8. The objections to this resolution are general and special. It is observed, that the system is calculated to raise upon one description of men, *viz.*, the zemindars, the misery of another infinitely more numerous, useful and defenceless; that the zemindars being declared in act and name lords paramount of soil, their abject and helpless vassals, the ryots, trained up to hereditary submission, will bear in silent dread whatever their imposing tyranny may inflict. The proof of this reasoning rests upon internal evidence; and to argue differently is to reason one way for him, who reasons another for himself.

9. These objections are stated by the Collector of Tirhoot, who, in opposition to a zemindary settlement, contends for the superior advantage of letting the lands in farm, and he is supported in this opinion by the Collector of Circar Sarun. He remarks that comparisons between the farming and zemindary systems are inconclusive; that the former has never had a fair trial; no fixed principle ever marked its progress, but on the contrary, all was diffidence, apprehension and distrust: and that experience alone can decide the eligibility of the two systems: a farmer not possessing the same influence as a zemindar, he cannot exert in the same degree, his power and influence to the oppression of the ryots, who will not so readily submit to him.

10. The above is the only argument of a general nature, which I find advanced in the papers before me.

11. I most willingly admit that the fluctuation and uncertainty of the measures of Government have been ill calculated to promote the success of any system, and so far that of letting the lands to farm has not been supported, as it might have been; but the argument applies with more force in favour

of the zemindary plan of settlement, and has always been urged, as a reason for reverting to it. Experience must be the test of all measures; and where the execution of a system depends upon so many agents, possessing in various and unequal degrees, the qualifications necessary for the task, no other test can be appealed to. Permanency is the basis upon which every system ought to be established, and there is no doubt that a farmer holding a lease of ten years would have motives of exertion, which an annual renter does not possess; but it is too much to affirm, that the proprietor of the soil, when he has obtained assurances of security from increasing demands, will want those motives which would stimulate a farmer; on the contrary, they ought to be more efficacious, as his interest is more deeply concerned.

12. The general and fatal incapacity of zemindars has been amply detailed, but it is not probable that under our form of Government the evils attending it would be remedied, by the substitution of farmers at the discretion of the controlling officer; that amongst the natives generally, men of abilities, experience and capacity, superior to the present zemindars in general, might be selected, is indisputable; but such a plan is in its nature, variable. Favour and patronage would often direct the choice, which, without such motives, would also be subject to the evils of want of experience and judgment in the person who selected the farmers. We are not to depend upon the virtues or abilities of the natives only; our reliance must be placed upon the restrictions of our own laws, and upon an undeviating enforcement of them; and the same zeal and abilities that can control the conduct of a farmer, may direct and restrain that of a zemindar, admitting self interest, in opposition to public good, to have equal operation with regard to both.

13. Mr. Bathurst's arguments appear to me to have been suggested by the conduct of Mahdoo Sing, the Rajah of Tirhoot, the only principal zemindar under his authority. He describes him as incapable, nearly an idiot, oppressive, tyrannical and faithless, and as abusing his authority by the delegation of it, to improper agents. To deduce general conclusions from particular instances, is not fair argument; the conduct of Meterjeet Sing, the zemindar of Jeekarry, is an instance on the other

side, equally favourable to the zemindars: and, as far as one example may be admitted as a character of the whole, must be opposed to all conclusions derived from the behaviour of Mahdoo Sing; but we ought not to reason generally from the conduct of either; and unless the proprietors of the soil can be proved liable to disqualifications greater than any other class of people, and such as overbalance the comparative advantage of making a settlement with them, in preference to any other set of men, and the injustice of taking the management out of their hands, they ought not, upon general principles, to be set aside. Certain exceptions, in the case of peculiar disqualifications, are allowed, and there may be further particular reasons for dispensing with the general rules, which however I would establish as universally as possible.

14. I do not pretend in this place to discuss the question in all its extent, as it has been before fully considered.

15. In his letter of the 23rd July, 1789, the Collector of Sarun details many objections, which I shall hereafter state, to a settlement with the immediate proprietors of the soil; recommends in preference the employment of farmers, contends for the propriety of this system, and proposes the plan of a ten years' settlement with 14 farmers for Sarun, and 4 of Champarun, and he gives the following definition of a zemindary in Sarun.

"That it is a portion of land consisting of sundry farms "paying revenue to Government, belonging to numberless pro- "prietors managing their lands, either by themselves or their "agents, but acting in general under a nominal proprietor, "called the zemindar (with whom they engage for their revenue) "having a real property perhaps of a fiftieth part of the zemin- "dary."

16. Upon these paragraphs I shall observe, that the objections stated against farmers on the 30th May, 1788, ought to be as solid now as they were at that period. The propositions of the Collector, on both dates, apply to a ten years' settlement; nor can I reconcile the Collector's definition of a zemindar, or the fact of a zemindary settlement as made in September last with 74 proprietors, with the declared refusal of the zemindars to rent each other's lands, combined with the number of zemindars in Sarun.

17. So much as to general objections, with respect to the special, I shall premise that I was not unapprized of the objections which might be made to the first propositions, and expected accordingly that they would be stated, as the mode in which it was conveyed to the Collectors of Behar, was the best calculated to bring them forward in their full force.

18. The acting Collectors of Bauglepore state that the Muskoory Talookdars are at present dependent upon the zemindars, in the same manner as the latter are upon Government; they are liable to dispossession, and in that case, entitled to a russoom; that to render them independent, would be an infringement of the rights of the zemindars; and the execution of such a plan would be attended with peculiar difficulty, both in ascertaining those who are independent, and in detaching them from the zemindars. That the expectation of such a measure would excite clamorous claims of independence, in crowds who are quietly and contentedly subsisting under the ancient custom of the country.

19. The Board of Revenue do not consider the Muskoory Talookdars, mentioned by the Acting Collector of Bauglepore, as intended to be included in the independent talookdars with whom the settlement is to be made, of course that the objections of the Acting Collector, founded on the jurisdiction exercised over them by zemindars, and which they consider as their rights, are obviated: in this opinion, I agree with them.

20. The preceding objections, founded upon the dependence of the Muskoory Talookdars, are special with regard to Bauglepore; the remaining objections may be reduced to the following points:—

1. The number of zemindars:

2. The endless sub-divisions of their tenures, and enmities subsisting between the various proprietors, as well as their individual claims to separate management:

3. The state of the property with respect to mortgages, and the difficulty of ascertaining the actual proprietors:

4. The difficulty of distinguishing the limits and extent of each zemindary:

5. The impoverished state of the proprietors of the soil, and the insecurity attending engagements made with them:

6. The probability of a deficiency from the inequality of the assessment:

7. The time required for making a settlement with different proprietors:

8. The expense.

21. These objections are stated by the Collectors of Circar Sarun and Tirhoot, who have detailed and amplified them. I have separated them, for the purpose of considering each more particularly, that the difficulties attending the plan may be thoroughly investigated, and the importance of them be duly weighed.

22. First. The number of the zemindars.

The multiplication of petty renters beyond certain bounds is certainly an evil of considerable magnitude, when the form of our Government and the formality of our proceedings are considered; the attention which must be paid to each, whether in forming the settlements or in collecting the rents, is considerable; and under such circumstances, there is danger that it will be dissipated and ineffective. The Board of revenue will find it difficult, properly and effectually to control such a system; still less, will this be in the power of the Supreme Board.

23. These are objections, which must ever remain, to a settlement with the immediate proprietors of the soil; where the distribution of property is so minute; and if the settlement were to be renewed annually, would be almost insuperable. But on the principle of a permanent settlement with the immediate proprietors of the soil where the distribution of property is so minute, and if the settlement were to be for a long period, much of the difficulty is removed, as the annual labour of investigating the resources of the renters, and fixing the assessment upon them, is done away.

24. With respect to collecting from a number of petty zemindars the trouble must be considerable; but I do not see that it is insurmountable. That balances will happen in the intermediate kists of the years, it is to be apprehended from the dissipation and inattention of the proprietors, and from the difficulty of a close attention to the detail; but ultimately the lands will prove a security for the recovery of them, and some additional regulations may be made, authorizing the attach

ment or sale of the lands, whenever the kists shall fall in arrears to a certain degree, during the course of the year. The Board of Revenue do not deem the number of proprietors a sufficient objection to the general rule.

Second.—The sub-divisions of the tenures, and the enmities subsisting between the various proprietors, as well as their individual claims to separate management.

25. The sub-divisions of the tenures, as far as they affect the proposed arrangement, may be considered in two points of view; first, where a number of proprietors have a right to a portion of land, which is undivided; and, secondly, where the land stands in the joint names of several, or of one for many, but each proprietor has his separate share in his own possession and management, or in that of an agent for him.

26. In the first case, the settlements must be made with all the proprietors jointly, each answerable for his specific proportion of rent, according to his right; and they must determine amongst themselves in what mode the management is to be made.

27. In the second case, there is no difficulty in determining with whom the settlement shall be made, or from whom the revenues shall be demanded, or whence the balances are to be recovered. The persons in possession, and the lands, are responsible.

28. In the first case, there is a clear rule for the recovery of balances, for where a settlement is made with the number of proprietors jointly, a portion of the land may be separated, and sold, equivalent to the amount; but there are other points of view, in which the subject is to be considered.—The Collector of Sarun quotes one instance of a village paying 600 rupees revenue, and having 52 proprietors; supposing the proportion to be four times greater, in this instance, between the property and proprietors, than in others, the difficulty of making a settlement with so many, or of collecting the revenues from them may be presumed very considerable.

29. These difficulties may occur on the following grounds:—either when all the proprietors will not attend; or, will not agree to a manager. In either case, the determination of the majority in attendance should be binding upon the remainder.

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30. This decision will, I think, obviate all difficulties; for, supposing the proprietors numerous in any degree, and that the property is undivided, it can hardly ever happen that some will not attend; after all, however, every supposed obstacle arising from the refusal of the proprietors to propose a manager, may be obviated by the appointment of a Tahsildar to collect the rents from the ryots; after the discharge of the Government's rental, to divide the remainder amongst the proprietors, according to their respective shares.

31. That these difficulties exist at present must be admitted; and they must be overcome, or the collections could not be realized. The Collectors, who have stated the objections, ought to have mentioned how the business, under the circumstances detailed, is carried on, and why they are precluded from adopting the same plan, as is now followed by the zemindars and farmers.

32. Thirdly.—The state of the property, with regard to mortgages, and the difficulty of ascertaining the actual proprietors.

These mortgages, as explained by the Collector of Sarun, who urges the objection most pointedly, may be considered in two principal points of view.

First, whether the mortgagee has obtained possession of the land; and, secondly, where he has not possession; but by the conditions of the mortgage is entitled to it, in case of non-payment of the sum borrowed, after a specific time.

33. In the former case, the settlement is to be made with the mortgagee, and if the zemindar is able to discharge his obligation, he will recover possession from him by a suit, and succeed to his engagements. In the second, the settlement is to be made with the zemindar in possession, and the process above pointed out, must be observed by the mortgagee.

34. There are other objections to this point, stated upon different grounds, which will be considered in their proper place.

35. With respect to the difficulty of ascertaining the proprietors of petty estates, it may perhaps in some instances, be considerable; and yet I should suppose that the mofussil records would point them out; where the majority of pro-

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prietors appear, and admit the mutual claims of each other, part of the difficulty is removed; although there should be others unknown: the rights of the absentees are not superseded, and, when proved, will be admitted; where many appear, and dispute each other's right, the settlement can only be made with those in possession, or a native Collector must be appointed, as before observed. If no proprietors come forward, the same mode must be followed, or the lands be given in farm. The objection is certainly founded on real difficulties, which cannot be obviated, without great application and attention; but what plan has not its inconveniences and embarrassments.

36. Fourth.—The difficulty of distinguishing the limits and extent of each zemindary.

I do not consider this as material; present possession can be determined, and the limits in general must be sufficiently ascertained: if any disputes arise concerning them, they may be adjusted in the Adawlut. The 85th article of the Revenue Regulations provides for the intermediate management during the litigation. If the limits (as the objection to be well founded, supposes) are very indefinite, how have the collections hitherto been made.

37. Fifth.—The impoverished state of the proprietors of the soil, and the insecurity attending engagements to be made with them.

38. The state of the proprietors is thus substantially described by the Collector of Sarun:—That they are, in general, involved in great distress, and their lands mortgaged over and over again, both on public and private accounts, to almost their full value; that the proprietors in this situation have made over their lands; or entrusted them to a superior zemindar, who favours the possession with his indulgence and assistance, by procuring for the proprietors continual and occasional loans.

39. The inconveniences resulting from this state of things are thus detailed:—That the connection, by the proposed plan of settlement, between the inferior and superior zemindars, will be dissolved, and the former be left without support; consequently, they must fail; that although the sale of the land should indemnify the Government from loss, the proprietor

will be ruined by the sale of his lands, proceeding from a want of support and assistance.

40. The Collector further states that from extensive enquiries made by him upon this business, it by no means appears that the proprietors are themselves anxious for the establishment of a system, which they consider as exposing them to trouble and distress, without any adequate advantage.

41. Extravagance and mismanagement are assigned as the causes of the distress of the zemindars; and it may be admitted, that such, as by these means, have reduced themselves to depend upon expedients for support, may want the inclination or resolution to resume the management of their estates, and take upon themselves a responsibility, to the discharge of which they are unequal. Experience in common life is in favour of this reasoning. To face heavy distress, and overcome it, often requires a degree of resolution to which persons in this unfortunate situation are unequal.

42. For where the zemindars are involved in great distress, and are liable to the demands of numerous creditors, they will probably foresee the necessity of parting with some portion of their rents, in order to pacify them; and in all cases of incapacity, a failure may ensue with regard to their public payment, which must be made good by a sale of the lands. But the objection, as far as relates to the personal interest of the zemindars, applies equally to the existing system, by which they must be invoved in total ruin; for if they subsist by loans, which they can never discharge (and from the Collector's account, this appears to be the case) the accumulation of debt must at last sink them.

43. Their case, as described, seems desperate, under any plan, yet the chance of relief is greater, where they take the management of their own lands, than where they lessen their profits, by resigning them to the management of others; and if their present distress may in any degree be supposed to originate from the revenue system, as heretofore established in Behar, it is the interest and duty of Government to afford them a chance of relief, by a change of management. Those who have capacity for the task will probably obtain relief; with those who want it, or the means of promoting the cultivation of their estates or

are driven by the distress in which they are involved to unfrugal expedients, their final ruin may be precipitated; but the foundation is already laid in existing evils, to which, and not to the proposed system, their ruin must be imputed.

44. With proprietors of this description, if a settlement be made neither they nor the State will immediately benefit by it; hereafter the introduction of more frugal or able managers will be advantageous to the latter. As property becomes more valuable, the care of managing it will increase.

45. To the concluding remark of the Collector of Sarun, it may be sufficient to reply—that in directing him to make a settlement with the immediate proprietors of the soil, they are not compelled to enter into engagements. It is optional with them to engage or decline; if they do embrace the offer made to them, the risk is their own, and they must stand to the consequence of it; or if they think it will be more advantageous to them, to resign the management to a principal zemindar, I see no objection to the measure.

46. Sixth.—The probability of a deficiency from the inequality of the assessment.

47. This objection is founded on a supposition that, under the present system of combining many petty zemindars under one principal, the deficiency in one, is supplied by the profits of another, and the sum total payable to Government made good; whereas by separating them, the deficiency will be unprovided for.

48. The fundamental inequality ought to be corrected by knowledge and ability of the Collector, by reducing the assessment where too heavy, and by increasing it where it admits: supposing this to be done, the objection no longer remains; and this indeed appears to be effected by the present zemindars, though in a mode less regular.

49. I acknowledge the task to be very difficult, if the greatest precision be required; but the regularity of the mofussil accounts in Behar, renders an operation easier in that province than it would be in Bengal, where they cannot be procured with the same facility.

50. Seventh.—The time required for making a settlement with the different proprietors.

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51. From the declarations of Messrs. Bathurst and Montgomerie, we cannot entertain hopes that the settlement will be accomplished by them, in one year, and perhaps not in two. Admitting this, the ten years' settlement cannot at once be effected, but must be completed gradually, pergunnah by pergunnah, and the old system of a yearly assessment, where the new cannot be introduced, be continued for the present. In those places where the new plan is unattempted, the settlement must be made, upon the general regulations of the 25th April 1788.

52. Eighth.—The expense.

This is stated by the Acting Collector of Bauglepore at 4,800 rupees; by the Collector of Sarun, at 47,880 rupees; and by the Collector of Tirhoot, at 92,250 per annum.

53. Why this heavy expense, in the two last instances, should be incurred, I am at a loss to conceive. The charges attending the appointment of Tahsildars must be considerable; but considering them in the light of substitutes for farmers, the amount ought not to fall upon Government, that is, it ought to be made good, by realizing an amount equal to it. In the same manner as the expenses of the former are provided for, those of Government ought to be supplied, or nearly so, allowing all operations to be carried on by Government, at a greater charge than an individual would incur.

54. I should therefore hope that, with more particular information and further experience, the Collectors of Sarun and Tirhoot will discover the possibility of reducing the expenses, or the means of providing for them. The deduction from the gross payments of the ryots ought to be less under the proposed system, than under the former, as it admits of more economy. The zemindar, who supports with loans or credit the inferior land-holders, is paid in proportion to his risk, which is again to be estimated by the distresses of the borrower; and the malikana and kurcha must be at all events deducted. The Collector of Behar states the expenses of a native Collector over a pergunnah yielding two or three lacs of rupees, upon the principle of a village assessment, at 2 per cent.

55. The Board must however consider and determine upon the objection of the expense, supposing ultimately a necessity of incurring it, in the degree stated. The question is—whether

we are authorized to establish it, at an expense so great as that stated by the Collectors of Tirhoot and Sarun; and I think a trial, under the suggestions now pointed out, should be made previous to an absolute decision upon it.

56. I acknowledge that I consider the necessity of introducing Tahsildars, or native Collectors, which is essential to the proposed plan, as a principal inconvenience attending it. This officer stands between the inferior tenants and the Collector, supplying the place of a Sudder farmer. I do not think the substitution, attended with such great advantages as it may apparently have, Government can never afford to reward the Tahsildars in a degree sufficient to preclude temptation, and must rely upon its coercion over them; but coercion cannot be exercised, without understanding the detail of the duties committed to their management. If it be contended that the Tahsildar is liable to dismissal, and that, therefore, the principle of coercion is stronger with respect to him, than in the case of a farmer, who cannot be dismissed; on the other hand, it may be observed, that extortion in the latter may be punished by fine and damages, and that he has in self-interest, under the supposition of a permanent system, a greater motive to restrain him than a native Collector. The latter will regulate his conduct by the estimate which he forms of the abilities of the Collector under whose authority he is placed; if he knows him to be vigilant, active, and well-informed he will be cautious, diligent, and honest: if he supposes him to be otherwise, and that he can misbehave with impunity, he will intrigue with under-renters, or abuse his influence, withhold true knowledge, and impose upon his principal by misinformation. The plan in its detail, by fixing the rents, removes a grand opportunity of abuse in the Tahsildar.

57. The objections which I have gone through, may be reduced in great measure, to the detail of the system, and the difficulty of executing and controlling it. The Collector of Tirhoot with great candour acknowledges this; and with a diffidence which is highly to his honour, observes, that many evils must inevitably present themselves under the superintendence of men of an ordinary stamp, in the execution of systems adapted to the genius and comprehension of a favoured few.

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58. I most certainly agree with him, that systems of management should be adapted to ordinary capacities; and so far an objection lies against a plan which requires a considerable degree of knowledge, and great exertions; but on the other hand, when the object of the system is considered, the establishing the proprietors of the soil in the management of their lands and rents; the importance and justice of the consideration ought to weigh against arguments founded on convenience alone, and a trial should at least be made, particularly since we find it practicable, in some instances.

59. Upon the whole, I do not see sufficient objections to supersede the first proposition, which is the foundation of all the rest. Two points are necessary to be attended to:—

First.—That the instructions for the execution be more detailed and calculated to point out, for the information of the Collectors, the mode by which the present difficulties, as far as we can judge of them, may be removed.

Secondly.—That the settlement with the proprietors be progressively and partially formed; so that knowledge and experience may be gradually acquired, and the difficulties in one place be surmounted, before the plan is attempted in another.

Resolution 2nd.—That the settlement be made for a period of ten years certain, with a notification that, if approved by the Court of Directors, it will become permanent, and no further alteration take place, at the expiration of the ten years.

60. Objections to this are stated by the Collectors of Sarun and Bauglepore: those of the former, have been enumerated and considered.

61. The Collector of Tirhoot does not specifically object to the resolution, though he does virtually, by proposing another different in principle, *viz.*, that it be declared a final settlement will be made at the end of the ten years, according to the assets of the country, at that time. The Collector of Bauglepore assumes other grounds:—the imperfections and abuses which at present exist, in the system of the mofussil collections; that the zemindars and farmers making it a rule to collect in

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whatever manner their predecessors collected, unless there are stipulations to the contrary, every unjust and destructive custom will become in some degree sanctioned.

62. To this I shall first reply, admitting what I believe to be true, that we are not fully informed of all abuses which are practised by zemindars, farmers, and their officers, in the detail of the collection, or fully prepared to correct in every instance such as we know or presume to exist, by specific regulations; much may however be done, and many rules may be established for remedying existing evils; and if the country has supplied the resources for so long a period, subject, during it, to the great abuses affirmed to exist, it ought to be in a much better condition at the end of ten years, than it is at present; supposing regulations established and enforced, which is certainly practicable; besides, as many of these abuses have arisen from annual settlements, and the necessity which the renters have thereby been under, of resorting to unthrifty expedients for making good their engagements, the cause being removed, the effect may in some degree be expected to cease. As to Mr. Bathurst's proposition, I agree with the Board of Revenue, in deeming it unnecessary and impolitic; unnecessary, because it will be in the power of Government to adopt such a principle at the expiration of the ten years, if then judged more advisable than the confirmation of the existing settlement; and impolitic; because the previous declaration might tend to discourage industry and improvement.

63. As to the assurance proposed to be made to the proprietors, that if the settlement be approved by the Court of Directors, it will become permanent, and no further alteration take place at the expiration of the ten years, I entertain some doubts of its propriety.

64. The intention of making it, is to give fuller confidence to the proprietors of the soil than a ten years' lease will afford. I am not sure that it will have this effect in any material degree, to those who have subsisted upon annual expedients, a period of ten years is a term nearly equal in estimate to perpetuity. The advantages of the last years of this period, must depend upon their exertions during the first, and if these are neglected in the outset, few of these zemindars will be in possession of their

lands half the prescribed term. Their own security, without the declaration, requires exertions in the beginning of the lease.

65. Towards the close of it, or after some years have elapsed, when they are become sensible of the advantages of a permanent system and have acquired a confidence in the assurance of Government, and the stability of its measures (and experience alone will teach it) then they will be anxious for the confirmation of a system which they find advantageous. There may be particular instances to the contrary; but, generally, I conceive that the natives would receive such a declaration without much confidence in it, referring their belief to time and experience. If it be admitted, that their confidence in public measures and declarations has been shaken by the fluctuation of system, this reasoning will be just.

66. But it may be asked, what positive objections occur to the declaration? In my opinion, the following:

67. That we cannot answer for the confirmation of it; and if it be not confirmed, the confidence of the natives will be shaken. For if they act upon the declaration, it must be under a conviction that it is well founded; and if this conviction be afterwards done away, they will suspect all assurances. It is true that nothing certain is promised, but those who rely upon the certainty of the notification, will, if they are disappointed, conclude that it was meant to deceive them. With others, who are not stimulated by it, the declaration is of no importance.

68. But it may be further asked, what reason have I to suppose it will not be confirmed? My answer to this is, that whatever confidence we ourselves have in the propriety of the measures which we mean to adopt, we cannot pronounce absolutely upon their success, without experience; and before we recommend the perpetual confirmation of a general measure of so much importance, we ought to have that experience. I am not sure that the plan will be executed with such ability, as to justify a recommendation of its confirmation in perpetuity:—of this, we can only judge, when we have seen the progress and conclusion of the settlement.

Resolution 3rd.—That the jumma which each zemindar is to pay, be fixed by the Collector on fair and equit-

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able principles, with the reserve of the approbation of the Board of Revenue, to whom the Collector is to report the grounds of the decision on the jumma, according to the best accounts which he can procure of the value of the lands, without a measurement of them. That if he should deem it eligible, he may call upon the zemindars to deliver in proposals for renting their lands, but that this judgment is in the first instance, to determine the amount.

69. With respect to the Huzzoory mehals of Bauglepore, the Acting Collector observes that, with such information as stands recorded in the Cutcherry, joined with experience and local knowledge, the jumma may be fixed, with sufficient exactness: and the Collector of Tirhoot, in stating the mode of fixing the jumma at present, gives a rule for his own conduct, *viz*, the jumma of each village is taken for four years, or sometimes more, and the prospect of the current year's produce considered, when the aumil and the malik or proprietor, agree to the medium jumma.

70. This last seems a very fair rule; but how the information pointed out can be obtained, without some examination of the putwarries' accounts, and without the discrimination mentioned by Mr. Bathurst, I am at a loss to conjecture.

71. The objections to this rule will, in a great measure, be obviated, if time be allowed to the Collectors for finishing the task prescribed in it; and this must be done.

72. The Board should, however, determine what is meant by fair and equitable principles; and I would accordingly propose the following definition:

73. That the average products of the land for common years, say of three or four, be assumed as the basis of the settlement; and that from this a deduction be made, equal to the malikana and kurtcha. The Collectors must of course take care, that the produce be duly ascertained. In any case of great uncertainty, they may be authorized to measure the lands; but this should only be done on the grounds of particular necessity, and a report be made to the Board of Revenue, whenever it is undertaken. There is some difference between this pro-

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position, and that for the settlement of Bengal. The prevailing system in Behar allows the investigation of the mofussil accounts in that province, with more facility than in Bengal, where they cannot be procured, without much labour, expense, and delay.

Resolution 4th.—That the gunges, bazaars, hauts, and other sayer collections, be not included in any settlement with any zemindar; but that for the present they remain under the exclusive jurisdiction of an officer appointed by the Collector, who is to propose such regulations as he may think best calculated for regulating and collecting the duties.

74. Amongst the objections urged to this proposition, I find one only stated against it, as an invasion of the zemindary rights; and this is very pointedly made by the Acting Collector of Bauglepore, who observes that, on asking the sentiments of a zemindar upon the separation proposed, he replied with sullen emphasis, "that Government if it pleased, might take from him his whole zemindary."

75. If the same objection existed in other parts of Behar, I conclude it would have been stated. The reason why it is not, may possibly be this, that the system of management adopted in Behar for so many years, having been calculated to destroy all ideas of right in the proprietors of the soil, beyond their admitted claims to a tithe of their proprietary rights they consider all besides this, at the discretion of Government whereas in Bauglepore, the management has partaken more of the nature of that established in Bengal and the zemindars will urge their claims with a confidence proportioned to it.

76. If this were not the case, I should conclude that the principle recommended ought to be extended to the gunges and sayer held and collected by the proprietors and tenants of the altumgha and jaghire lands; for, as far as right is concerned, I see no reason why that of the zemindars should be invaded, whilst men of another description are left unmolested; nor if public utility only be consulted, why the inconveniences resulting from variable rates in one instance, and the number of managers, should not operate equally to prove the necessity of a reform in another, and the propriety of undertaking it.

77. In Bengal, I conceive most of the zemindars would argue in the manner pointed out by the Acting Collector of Bauglepore; nor do I think the observation of the Board of Revenue a sufficient reply to it. That, considering the actual practice of the Government they were subject to, long before the administration of their present rulers, the adoption of the settlement would leave them no ground of complaint; and that in general, they would agree to relinquish the sayer collections, to obtain a permanent assessment of their lands, is a doubtful opinion—they ought and must submit, but that the submission would be voluntary cannot be affirmed; but a Government should consider what is right in itself, and not merely be influenced by the opinions of its subjects.

78. In the propositions for the settlement of Bengal, I extended the regulations regarding the gunges as far as I could, without a declared violation of proprietary right; but the arguments against the measure in Bengal, are much stronger than in Behar, to which the present discussion applies; and I shall hereafter state them.

79. The distribution of property in the Behar province, obviates an objection, which, from a different state of things, would occur to the measure in Bengal.

80. Admitting therefore, for the present, that the zemindars do not in that province contend for the right of possession with respect to the gunges, the question goes to the propriety of the measure, and to the extent in which it shall be carried into execution.

81. To the separation of the gunges from the zemindary jurisdiction, I find no objection urged; and the propriety of it, with an exception of the Acting Collector of Bauglepore, is admitted by the other Collectors of Behar; but the Collector of Sarun objects to the separation of the haut, bazaar, and petty sayer duties; and the Collector of Tirhoot who adds the bazaars to the gunges, excludes a number of articles, commonly estimated in the sayer, in all eleven, because they are included by the putwarries of each village in the same accounts with the mehal, or land-tax, and considered by them as attached to it, and their separation would bring on endless disputes, and multiply inconveniences instead of diminishing them.

82. If those articles be examined, although they may be denominated sayer, many of them will be found very different from custom-house duties, in which sense the term is often understood; indeed, I have always conceived the sayer to mean articles of revenue distinct from the land-tax. Thus, the rent or revenue levied from fisheries, for a right of grazing on cocoa or palm trees, or orchards, and some others, cannot be considered in the native custom-house duties, but much more so as rents.

83. There is a distinction between hauts and bazaars; the former are markets held on certain days only, and resorted to by petty vendors and traders; they are often established in open plains, where a flag is erected on the day and at the place of purchase and sale.

84. Bazaars are daily markets, though, on particular days, it is not unusual to have them in a haut, where a number of petty vendors besides the established shopkeepers, frequent them.

85. In gunges, the chief commodities sold are grain and necessaries of life, and generally wholesale. They often however include bazaars and hauts, where the articles are sold in retail, and in greater variety; and this in towns is commonly the case.

86. Independent of the question of right, I am of opinion that neither the collections on account of the sayer generally, nor the hauts, should remain under the charge of the Collectors; and that such a measure would multiply labour and expense, without producing any adequate convenience. With respect to the bazaars, the same objections occur in a degree, unless they are of considerable importance; but these, as well as the gunges may, for the purpose of regulation, be placed under their authority.

87. Before a final determination is made upon the general question, whether the gunges, bazaars, sayer and hauts, should be separated from the jurisdiction of the zemindars, I would propose some queries to the Collectors, as to rights. In the meantime the settlement may be made, with the proprietors of the soil, agreeable to the terms of the second resolution, in order to afford the Collectors due means of obtaining more

particular information into the nature of the sayer generally or the gunges and bazaars only, may be excluded, and the hauts and sayer be included in the zemindary assessment, under a claim binding the proprietors to submit to such regulations and limitations regarding them, as may be hereafter determined upon. With the information required, before us, we can then determine, whether abuses in the sayer collections are such as cannot be remedied without a declared violation of proprietary right supposing it to exist; and whether they are of such importance to the welfare of the community as to justify an infringement of that right, at a period when we profess to confirm and strengthen the rights of the zemindars.

Resolution 5th.—That the jumma of each zemindary being assessed, the amount thereof shall be apportioned upon the different villages in it, if possible, previous to the conclusion of the sudder jumma, either by the zemindar, who is to be required to make the distribution, or Collector; or, subsequent thereto, under a clause binding each zemindar to deliver in an account of the assessment on the villages apportioned to the sudder jumma, within three months from the signature of his cabooleat; and that it be notified to the zemindars, that a portion of their estates will be sequestered, and sold, to make good any deficiency of the revenue paid by them; and if the Government should think proper to alienate the land sold at the amount of the assessment, as delivered by them, they shall not receive any remission, on account of inaccuracy of their statement.

88. No objection is made to the principle of this resolution; but the Collector of Sarun states various reasons why the distribution of the village assessment ought to be performed by the Collector; and not by the zemindar. They may all be reduced to this; that with a view to defraud the Government, or individuals, the proprietors or possessors of villages will rate them unequally.

89. The different cases which he states are possible; but intentional fraud, when proved, may be punished legally by

fine and damages. He supposes a zemindar to have mortgaged a certain number of his villages, and that to prevent the mortgagee obtaining possession, he will overvalue the produce; as the possession of the land will entail an annual loss upon the mortgagee, he will renounce his claim rather than prosecute it. He reverses the case, by supposing the mortgagee in possession: but this can only be possible, where the mortgagee is a principal zemindar possessing many other villages.

90. A general regulation may be formed to correct this practice; but I would leave it to the Collectors to distribute the assessment, or demand from the zemindars the distribution, as he may think proper, adopting, in the latter case, such correction, as from information he may be enabled to make.

91. The term of three months I consider too short for preparing this record, in whatever manner it be done, and would extend it at least to the first year of the lease.

Resolution 6th.—That if there are villages, of which there are no proprietors the settlement of them be made with a farmer, for the term of ten years.

92. Upon this resolution, the following queries have been made:—

93. The Collector of Behar requires information, whether the farmer's son or heir is to succeed to the lease.—2. The Collector of Shahabad states the following questions:—

First. Whether villages, of which there are no proprietors, shall all be let out to one farmer or in different lots, to different teekadars. Secondly, whether the farmers or teekadars of such villages are to receive a similar assurance to that given to zemindars, of a mukurrery at the end of ten years or not.

94. The decision of the first query should be left open, I think to the discretion of the Government. Where the heirs are capable, I see no objection to confirming them in possession, during the remainder of the lease, if they are willing to undertake it: where they are minors, or females, or where the succession to the property of the deceased farmer is disputed by many, the remainder of the lease may be better disposed of. In a contingency of this nature, the convention ought to be reciprocal between the parties concerned in it. To the queries

proposed by the Collector of Shahabad, I think the following answer should be given :—

95. The villages be not all made over to one farmer, but disposed of in lease to several, according to their value and situation, and the character and responsibility of the farmer.

96. To the second, that a promise of mokurrery at the end of the lease be not made, for the reasons which I have assigned under the former resolution, as well as on the suggestion of the Board of Revenue.

Resolution 7th.—That the sudder kistbundy be so regulated, as to afford the zemindars all possible convenience in the discharge of their rents with a due regard to the security of Government ; and that the Collectors report whether any and what inconvenience would ensue, from extending the period of the sudder kistbundy to two months instead of one.

97. I shall quote the observation of the Board of Revenue, on the remark made by the Collector of Behar on this resolution : that it appears to apply only to the first part of the resolution, the regulation of the sudder kistbundy, according to the convenience of the renters.

98. I am decidedly of opinion, that the kistbundy ought to be monthly ; and that the reasons stated against the extension of it, are solid ; the alteration would be attended with risk, which prudence ought to avoid.

Resolution 8th.—That, as the number of persons paying revenue immediately to Government, may, in consequence of forming a settlement with the zemindars, be greatly increased, the Collectors report if it will be necessary and advisable to appoint Tahsildars to receive the revenue, from a certain number of the land-holders ; and whether any and what additional expense will be required on this account.

99. My remarks upon this have been already detailed. With respect to the expense, I see no reason to apprehend that the establishment of Tahsildars, will diminish the resources either in Shahabad or Behar. In the districts of Tirhoot and Sarun, where the increase of charges are stated enormously

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high, we shall be better enabled to judge, when some progress is made in the settlement, as this will be progressive; the expense will of course keep with it.

Resolution 10th.—That unless any objections, arising from the insufficiency of the number of sicca Rupees in circulation, should occur, all engagements between Government and the zemindars, talookdars, and farmers, be made in sicca Rupees, and that no other species of rupees be received in payment of the revenues; and, if any such objections should occur that the Collectors be required to detail them, and to state their opinion with as much accuracy as they may be able, as to the additional number of sicca Rupees which it would be necessary to introduce into the circulation of their respective districts, to enable the zemindars, talookdars, and farmers, to pay their revenues in that specie.

100. The stated insufficiency of the sicca Rupees in circulation, is an insuperable obstacle to the immediate declaration of this specie alone, being the legal tender of payment.

101. The information given in the last part of this proposition, is not so ample as I could wish: indeed, it may be presumed of difficult attainment. The following is all that I can collect upon it.

102. In Tirhoot, the Sanaut Rupees with respect to sicca are stated in the proportion of two to one.

103. In Purneah, the sicca Rupees are said to make no part of the actual circulation, and never amount to a considerable quantity: that to carry the resolution into effect, the currency must be changed, and a number of sicca Rupees, equal to the whole circulation, be introduced. This is estimated at twenty lacs of rupees. In Circar Sarun the quantity of siccas required for the circulation, is stated at one year's produce.

104. The objections to the resolution, and the grounds on which they stand, are as follows:—

That the ryots pay what they receive for the produce of their goods, which are not siccas; the zemindar, what they collect from them by impelling the zemindars to pay siccas.

The compulsion extends through the under-renters to the ryots, upon whom the weight of the shroffage ultimately falls.

105. The resolution would afford an opportunity for the greatest impositions upon the ryots.

106. But although there are objections to compelling the zemindars and renters to make good their payments in sicca Rupees, I agree with the Board of Revenue, in the propriety of the resolution,—

That all engagements between Government and zemindars and talookdars should be in sicca Rupees; and that further, a clause should be inserted, obliging them to pay the same species of rupees to the Collectors, as they receive from their under-tenants.

107. This clause has a reference to the future regulation of the coinage, when, in consequence of the proposed coinage, sicca Rupees became more in quantity. The zemindars and talookdars, without the clause, may protract the progress of the coinage, by an intermediate exchange of the sorts which they received for the sicca species.

108. I agree with the Board of Revenue in the propriety of establishing printed forms of Pottahs, as suggested by the Collector of Behar; but they cannot, I think, be prepared in time, for the new settlement. I wish also to know, if the proposition is meant to extend to the Pottahs given by the zemindars to their under-tenants.

109. The Collector of Shahabad states also an important query—whether, after the conclusion of the settlement, the zemindars are to be allowed to borrow money, on the credit of their estates; or to dispose by sale or otherwise, of such estates or any parts thereof, registering such sales or transfers in the Collector's Cutcherry, for the purpose of ascertaining from whom the revenue of Government is demandable.

110. The Collector of Behar, in an address to the Board of Revenue, of the 13th July 1788, which was submitted to the decision of this Board, proposed an alteration of the 53rd and 56th Articles of the Revenue Regulations, the former of which prohibits the conferring of any grants of lands, or authorizing any alienations, sale, mortgage or other transfer of landed pro-

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perty, without the express sanction of the Board of Revenue; and the latter prohibits the sale of lands belonging to any zemindar or other proprietor, without the previous and express sanction of the Board of Revenue, which could not be given, without that of the Supreme Board.

111. I have always proceeded with caution, in recommending alteration of the public regulations. The restriction conveyed in the 23rd Article existed long before the date of the regulations referred to, and was suggested originally, I believe, with a view to prevent collusive transfers, and particularly to guard against the influence of the public officers over the zemindars.

112. As it now stands with respect to Behar, considering the great distance of that province from the seat of Government, it must operate virtually to the prohibition of all transfers, to the depreciation of real property, and the evident inconvenience and distress of the proprietors in many cases.

113. I would therefore propose the revocation of the 53rd Regulation with respect to Behar, and that the question of the Collector of Shahabad should be answered in the affirmative. A new regulation must of course be substituted in lieu of that annulled, with the necessary cautions and provisions. It is not absolutely necessary that it should form a part of the present instructions. The notification of the permission will be at present sufficient for the renters.

114. With respect to the 56th Regulation, it cannot be rescinded, without a deviation, from the orders of the Court of Directors; nor would I, independent of this, recommend it. The power of distraining may be delegated to the Collectors; this will be sufficient for them, and the sale be postponed, for the orders of the Supreme Board as at present.

115. In all cases where the zemindars have resigned the management of their lands, relating to possession of the malikana or tithe, it should, I think, be established as a general rule, that the whole be re-annexed, and that they be required to enter into engagements for the whole zemindary, including the malikana. The terms of the lease will, in this case, be regulated by the definition of the terms of the third resolution; if they

decline, the settlement should be made with others, and the zemindar receive his malikana in money.

116. All grants of malikana confirmed by the Supreme authority, are of course to be excepted from this rule, and should be reported; and we must establish provisions for cases in which the malikana, after authorized separation, may have been mortgaged or sold.

Mr. SHORE DELIVERS THE FOLLOWING MINUTE.

18th September 1789.

I have perused, with deliberate attention, the Minute of the Governor-General, in opposition to two points, in the proposition which I submitted to the Board. The question at present between us is, whether a notification shall be made to the proprietors of the soil in Bihar, that the settlement, if approved by the Court of Directors, will become permanent, and no further alteration to take place at the end of the ten years. My opinion is, that it ought not to be made because the declaration will produce little, if any, advantages, whilst it may be attended with great inconvenience. The Governor-General on the contrary, contends, that great benefit will result from the declaration; that it will be attended with no inconvenience; and that the suppression of it will be in the highest degree detrimental.

After thanking the Governor-General for his approbation of my public conduct, which I value as highly as any that can be bestowed upon it, I shall now support my former opinion, in which I am strongly confirmed, with the same freedom with which I invite discussion.

A declaration of the nature of that in question, is by no means adapted to the habits or modes of thinking of the people to whom it is addressed; and it is from their understanding and not from our own conceptions, that our conclusions, as to its effects, must be drawn. With men who have seen systems vary with every change of administration, and new plans successively introduced under the same Government, I can never expect that a declaration, conditional on its terms, will have that effect which the Governor-General supposes, in opposition to the whole experience of their lives; and this too, at a moment

of innovation, when we are introducing a system of management different from any that has ever yet subsisted in Bihar, since it came under the dominion of the English.

The declaration implies an attempt to reconcile the idea of a dubious perpetuity, with an absolute engagement for a limited time; the zemindars and talookdars will look to the latter only, relying upon it, from year to year, until experience shall have shown that reliance to be well founded.

I do not admit, that by withholding the declaration, the idea of permanency, as far as the proprietary rights of the zemindars are concerned, is withdrawn, or that the acknowledgment of those rights by such a measure, ceases to avail to them; the contrast between annual imposition, and a certainty of ten years, suggests a very different conclusion; great as the difference is in fact, between a permanency of ten years, and a perpetuity yet under the present circumstances of the country, the difference between the former and an annual assessment, will, to the conceptions of the people in general, if they reason at all, appear equally great and beneficial.

I have said, that in the estimate of the people, a period of ten years will be nearly equal to perpetuity; and although the Governor-General differs with me in opinion, I still think the position well founded, supposing the possibility of some exceptions; yet the confidence of the natives in the stability of this assessment, will not be immediate, but arise from time and experience; and those who do rely upon it, must, for their own security, exert themselves. I am not inclined to expect any sudden revolution in the habits and opinions of the natives of this country but rely upon time and the stability of our arrangements, to produce this change—that they are more influenced by temporary advantages than by a prospect of certain and remote benefit, and that their conduct is regulated by this principle, the concurrent experience of all will allow. We wish to infuse more prudent and economical principles, and we adopt the conduct calculated to produce this effect; but time and self-interest will be required to confirm them. When the zemindar of Nuddea undertook to be answerable for the revenues of that district, in April 1786, it was under conditions that left him without a possible chance of any advantage, under renunciation of a certain

subsistence, and subject to a responsibility which was discharged by a sale of part of his zemindary.

Whether, the proportion of jungle is more or less than a third of the Company's territorial possessions in Hindustan, I know not; but with respect to the past I am, from my own observation, as far as it has extended, authorized to affirm, that since the year 1770, cultivation is progressively increased, under all the disadvantages of variable assessments and personal charges; and with respect to the future, I have no hesitation in declaring, that those zemindars who, under confirmed engagements, would bring their waste lands into cultivation, will not be deterred by a ten years' assessment, from attempting it. If at this moment, the Government chose to confer grants of waste land in talookdary tenure, under conditions that no revenue should be paid for them during five years, and that at the end of ten, the assessment should be fixed according to the general rates of land in the districts, where the tenures are situated, they would find no difficulty in procuring persons to engage, even upon less favourable terms. If I mistake not, the grants in Ramghur were precisely upon these principles, which are conformable to the usage of the country. Because the utmost scope of encouragement is not held out by a ten years' settlement, it will not follow that none is afforded, or that the country, at the end of ten years, will become desolate. I desire to be understood in this place, that I do not mean to tax industry, in proportion to its improvement.

The Governor-General seems to consider the declaration under discussion as equivalent in effect, to an assessment in perpetuity, and his arguments are deduced from this principle, and from the necessity of establishing it. He considers a ten years' settlement as a bar to all solid improvement: my opinion and arguments oppose this interpretation of the declaration, and go to show, that improvement, if at all likely to happen, may be expected under a ten years' settlement. I do not consider the perpetuity of the assessment as properly forming any part of the present discussion, although it is required that our arrangements be made with a view to this principle. Such I understand to be the orders of the Court of Directors, whose reasoning upon this subject is not very different from my own;

for they are of opinion, that the idea of a definite term would be more pleasing to the natives than a dubious perpetuity; and upon this ground, and because they do at the same time, upon a full consideration of the subject, see other reasons for preferring a given term of years at present, they therefore direct that we form the assessment for a period of ten years certain.

But I have, on a former occasion, expressed my doubts whether the Company or Government in England should bind themselves to fix the assessment of this country, in perpetuity. These doubts were suggested by mature consideration of the various existing abuses, which I have so fully detailed, and very serious reflection upon the consequences of them, and the difficulty of establishing regulations, which shall, in their progressive operation, correct them. They have a reference to the circumstances of the country at this time, independent of the question upon general principles; and I shall deem it my duty, before I leave this country, to point out more particularly the foundation of those doubts, and to declare whether I retain or renounce them. I shall only observe in this place, that although the land is a security to Government for its revenues, and although exactions and oppressions may lead to the transfer of it, from bad managers to economical substitutes, yet improvement may be long and effectually obstructed by the abuses practised, without leading to these consequences; if this were not the case, the amount of sales of land would be much greater than they are at present.

The Governor-General asks, what are those measures of which I require experience, before I can pronounce absolutely of their success? To reply to this question as fully as might be necessary would require a detail beyond what my present time allows. I shall only therefore answer, that before I commit myself to recommend the confirmation of a settlement in perpetuity, I require the experience, that it has been formed with a due attention to the prescribed instruction; considering that two of the five Collectors in Bihar, taking the result of their objections, have declared the proposed settlement impracticable; and a third officer, the Acting Collector of Bauglepore, has asserted, that a ten years' settlement will confirm all existing abuses, and that as these are the agents by whom

the settlement is to be formed, the expectation cannot be deemed unreasonable.

But if this were the place for discussing the perpetuity of the assessment, I should suggest another question. Whether we ought not to have some experience, that the regulations which we mean to establish, are found in practice sufficient to correct the various abuses existing, in the detail of the collections? If these regulations are generally necessary, as I suppose them to be, it is very evident that they must be enforced, before we can expect improvement from the labours of the ryots, for whose ease and security they are principally calculated. I am willing to admit, that far greater abuses prevail in the detail of the collections in Bengal, than in Bihar; and that in the latter province, the rules for detecting and correcting them, are more easily ascertained; as far therefore, as the argument drawn from abuses applies, it is stronger, in one case than in another. In fixing the assessment upon the zemindars for a term of years, we remove one temptation to oppression; but the prosperity of the country must no less depend upon the energy with which our regulations are enforced; and in forming a judgment from past experience, we may be allowed to entertain very justifiable apprehension, that, from a want of knowing sufficiently existing abuses, we may be under the necessity of correcting them in future by new rules, which may either affect the revenues of Government, or the stipulations of the zemindars. It is upon such considerations that my doubts arise. They have no reference to future inquisitions into the value of zemindary estates which, as far as the amount of the assessment is concerned, I deem in general, sufficiently ascertained.

The confirmation of a perpetual assessment, is a very serious consideration. I am not sure that in authorising the settlement made by Mr. Law, we have not given sanction to an act of injustice, in perpetuating the exclusion of the proprietors of the soils, for their refusal to agree to the terms of the proposed settlement; but upon this, as well as the whole of this plan, I mean carefully to revise the opinions which I have recorded, and state what further occurs to me upon the subject.

Under the various circumstances which I have detailed, I cannot but adhere to my opinion regarding the declaration;

and if it should with any produce effect that, the non-confirmation of it, will be attended with this consequence, that it will shake the confidence of the natives, at the very time when it begins to operate. I cannot agree with the Governor-General, that these provinces, if let upon a lease of ten years only, will be found in a depopulated state; or, that more difficulties will then be experienced, than even this Government have had to encounter; nor, that this inference can be established upon any other principle, than by proving that a permanency of ten years, to those who have subsisted upon annual expedients is destructive.

With respect to the early periods of the decennial assessment as far as the four or five years, I think every advantage will be gained, which would be derived from a declared mokurrery; and at that period, if a perpetuity is to be established, it may be declared. I do not believe the zemindars would offer more at this time, under one declaration than another; and if so, no advantage would arise to the Government in this respect. I do not see the utility of the conditional declaration in any sense, and if it be resolved upon, I think it should succeed, not precede, the formation of the settlement, and under certain limitations that the zemindars fulfil their engagements, and comply with the regulations prescribed. If it be capable of producing any advantage, it will equally follow from this mode, as from a previous declaration; and if the Court of Directors should finally determine to confirm the settlement in perpetuity, the fourth or fifth year will be fully time enough, and they will then have before them those documents and illustrations which they require, with the advantage of knowing the progress of the assessments for two or three years.

If the declaration be made at all, either now or subsequent to the formation of the settlement, the Court of Directors, if they should not approve it, are bound to declare their disapprobation of it.

APPENDIX III.

A SHORT CATALOGUE OF SUBORDINATE INTERESTS IN LAND.

Explanatory Note.

THE catalogue embodied in the following pages is not exhaustive. It is well-known to all students of the land systems of Bengal that the incidents and minutiæ of tenures, even of those which bear the same vernacular name, vary so greatly in different local areas that an attempt to account for them all would involve an amount of labour which would not be compensated by the results obtained from such a process. Even Mr. Field who, while he lived, was no mean authority on this subject was so much daunted with the difficulty of the task that he thus wrote in despair. "I have never met with a complete list of these tenures or a description of their incidents, and even in the district in which any particular tenure is most usual, I have in vain endeavoured to get an accurate description of its origin and peculiarities. During a considerable judicial experience, I have never had a case before me in which it was attempted to prove the custom of any particular tenure." I have, however, endeavoured to make the catalogue sufficiently comprehensive for all practical purposes, and have been careful not to sacrifice any material particular in order to confine the list within the limits proper to an elementary treatise.

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No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
1	*Abadi* taluk.	Tippera ..	*Abadi* taluk is a tenure for the reclamation of land. It is liable to assessment at progressive rates.
2	*Abadkari* or *Mandali*.	Midnapore	As the name *Abadkari* signifies, the tenure was at its inception, a lease for the reclamation of waste land. The original lessees, called *Abadkars*, who were men of substance, reclaimed the land by their own labour or with the help of other raiyats whom they induced to settle with them; established a village to which they usually gave their name; and being heads of the settlements, were called *mandals* or headmen. The zemindar and the *mandal* from time to time re-adjust the terms of their bargain but the former does not interfere between the *mandals* and his under-tenants. In the settlement proceedings of 1839, these *mandals* were declared to have only the right of *sthani* or *khudkast* raiyats and not to be entitled to the status or profits of middlemen, but they gradually acquired rights superior to those of ordinary *khudkast* raiyats; and as they were left to make their own terms with their raiyats, they made considerable profits apart from those which they obtained from the land under their own cultivation. The *mandali* right was heritable from the beginning and in course of time it became transferable by custom. Whenever at any settlement, they came into immediate contact with Government, 15 per cent. was deducted in their favour from the gross jama and after some demur they accepted this as a sufficient recognition of their status. In 1906-7 the status of the *mandals* in Pargana Kalyanpore and the allowance to be given to them were decided during the resettlement of the Pargana. Those *mandals* who were found to be middlemen were given an allowance of 20 per cent. to be distributed between them and the subordinate tenure-holders (if any) but the allowance was raised to 30 or 35 per cent. in cases in which the tenure-holder had been treated more or less as a raiyat of the last settlement.

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No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
3	*Adhiari* or *Burgadari*.	Rangpur and Western Duars of Jalpaiguri.	The *Adhiar* is a tenant whose status corresponds to that of a raiyat or under-raiyat as defined in the Bengal Tenancy Act. He is a sort of metayer tenant who cultivates land under *joteders* or *chukmadras* or their derivatives and pays rent in kind. The produce is equally divided between the *Adhiar* and his landlord, unless the latter supplies cattle, plough and seed, in which case he becomes entitled to more than a moiety of the crops. The *Adhiar* has no transferable interest in his holding (1) and in the Duars, he is more or less a tenant at will (2). "Some of these *Adhiars* have acquired the status of settled raiyats, some are non-occupancy raiyats—while others are under-raiyats. Many *Adhiars* possess lands which they hold in their own right and naturally they devote more attention to these than to their *adhi* lands. Landlords find it more profitable to cultivate their *khamar* lands with hired labour or to let them out to tenants and the number of *adhi* holdings is decreasing."(3)
4	*Agat* taluk.	Tippera (Chakla Roshanabad).	The *agat* taluk signifies what has come from a taluk. The *Agatdar* is a person who has obtained in some way a portion of an undivided taluk. He undertakes to pay a portion of the rent and is not the original talukdar's sub-tenant but his co-sharer. The holder of an *agat* taluk bears the same relation to the original talukdar as the purchaser of a portion of the land of a settled raiyat does to that raiyat. It will thus be seen that the *agat* taluk is a recognised local tenure but it does not come within the purview of the Bengal Tenancy Act—"In actual practice" says Mr. Cumming, Settlement Officer of the Roshanabad estate, "an *agat* is obtained by paying as a price a lump sum which works out to from 10 to 14 years' purchase of the net profits and by agreeing to pay contributions to the taluk-

(1) Final Settlement Report of four estates in the Rangpur district by Syed Izahar Hosein.
(2) Jalpaiguri Settlement Report, p. 119.
(3) Provincial Gazetteer—Rangpur district.

No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
4	*Agat* taluk —contd.	....	dar until the *Agatdar* may have himself separately registered.'' Mr. Cumming says further ''Mr. Mitra my predecessor examined the nature of the *agat* taluks closely from a legal point of view and he came to the conclusion, in which I share, that the *agat* talukdar is not subordinate as a rent-paying tenant to the talukdar, but is merely an offshoot of the talukdar and co-equal with him in responsibility to the proprietor to the extent of his share of the rents. The record of taluks and *agats* have been prepared on this principle; and thereby the talukdar is liable for the assets of all the offshoots. Opportunity was given both by the Special Judge and myself, during the resettlement of rents, for this view to be challenged by the parties; but it has not been done.'' The term *agat* talukdar was used formerly for a small talukdar who placed himself under the wing of a big talukdar to escape from the interference of the zemindar's agents, but this was really not an *agata* but a *gata* taluk.
5	*Aghar-Batai*	Behar ..	*See* Nos. 12 and 113.
6	*Aima* ..	Midnapore	The *Aimas* are tenures granted for the purpose of clearing jungle or for other improvement, free of rent or subject to small rents for the first few years and assessable subsequently at fixed or progressive rents. '' The *Aimas* of Midnapore are creations subsequent to the Permanent Settlement. The estate of Balarampur, in which they exist, was purchased by Government in 1838 at a sale for arrears of revenue. In 1875 the estate came under resettlement. The *aimadars* who would not agree to the terms offered them by the Settlement Officer were then set aside and the settlement was made with the tenants immediately below them. Litigation ensued, and the *aimadars* were declared by the Civil Court to be raiyats having a right of occupancy. The settlement was then concluded with the *aimadars*, leaving them to settle with their under-

No	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
	Aima—contd.	....	raiyats."(1) The rights awarded by the Civil Court were less than those claimed and the settlement was far from acceptable to those most affected by it. Subsequently, however, in 1904 during the resettlement of the estate, the question of the status of *aimadars* was referred to the Board of Revenue and it was decided that they are tenure-holders within the meaning of the Bengal Tenancy Act.
7	*Altumgha*.	....	The word *altumgha*, says Galloway, is a compound of *al*, a crimson colour, and *tumgha*, a seal, and signifies the royal seal.(2) He continues: "The meaning which the British Government attaches to an *altumgha* grant is, that it is a royal grant, but only in *perpetuity* to the grantee and his heirs, but that it is a transferable and perpetual *lakhiraji* or rent-free tenure. It is certain, however, that it by no means necessarily implies [originally] either *permanence* or *exemption from revenue*, or *right of transfer*.(2) An *altumgha* would now be an estate under section 3, clause 1, of the Bengal Tenancy Act.
8	*Arazi* or *Malikana*.	Behar ..	*See* No. 131.
9	*Assamiwar, raiyati, tin kathia-patti dehai*.	Behar ..	The incidents of this tenure are thus described by Mr. C. H. Macpherson—"These terms are used to describe a condition of things whereby a raiyat (in a village leased to an Indigo factory) enters into an agreement to grow indgo on a portion of his holding, he being paid for the same at the rate of Rs. 13 to Rs. 14 per *bigha* of 6½ *haths laggi*, *i.e.*, a measuring rod about 9 feet 9 inches long and proportionately more when the *bigha* is bigger. The raiyat prepares the land. It is sown, and the crop is cut and carried by the factory. The money payable to the raiyat usually goes as a set-off against rent payable by him to the factory."(3)

(1) Bengal Administration Report, 1901-02.
(2) Galloway's India. p. 73.
(3) Mazaffarpur Settlement Report, para. 886

No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
10	*Ayma* ..	....	*Aymas* are tenures granted rent-free or subject to a small quit-rent, to learned or pious Mussalmans or for religious or charitable uses connected with the Mahomedan faith. Galloway thought *ayma* was the plural of *imaum*, and that, "if so, it was probably nothing more originally than the grant of a small living to maintain a priest, or *imaum*, at the neighbouring *mosque*, to preside over the people at prayers: the person who guides the people at their public devotion being the *imaum*, or *leader* for the occasion. Or it may have taken its name from the donor, the sovereign, in his capacity of *imaum*."(1) The Bengal Financier, Grant, observes: "*Ayma* is the popular general term for all charitable or religious donations made by the sovereign to Mahomedans in Hindustan,—and, technically, in forms of *sunnud*, as well as of the exchequer, always more particularly distinguished by the words *altumgha* or *muddud maash*."(2) *Ayma* is supposed, says Galloway, to be a regular form of grant, conveying from the Crown a free and perpetual transferable title.(3) A revenue-free grant is now an "estate."
11	*Bandobasti taluk.*	Tippera ..	Is similar to a *Miadi* taluk (*see* No. 83).
12	*Batai* ..	Behar ..	Also known as *Aghor batai*. Under this system, the grain is harvested by the cultivator and carried by him to the threshing-floor, where the wages of the labourers engaged in reaping are paid in kind, and the residue of the grain is divided between the landlord and the raiyat half and half or in the proportion of 9 to 7. Various deductions are, however, made from these shares, on account of payments due to village officials, etc., before the produce is distributed. It is a form of raiyati holding.

(1) Galloway's India, p. 73.
(2) *Ibid.*
(3) *Ibid*, p. 74.

No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
13	*Bhatottar* ..	Not restricted to any local area.	A grant for the maintenance of *Bhats* or Brahmin bards. If the grant is revenue-free, the interest would amount to an estate, but if held rent-free under a proprietor, it would be classed as a tenure.
14	*Bhogottar* ..	Do. ..	From *Bhoga* (enjoyment) and *ottar* (fit for). It is a revenue-free or rent-free Hindu grant made to any person, irrespective of his caste or calling.
15	*Birt* ..	Behar ..	A *Birt* is a rent-free grant made to a Hindu for religious purposes. It is a permanent and necessarily transferable tenure.
16 & 17	*Bishnottar* and *Brahmottar*.	Not restricted to any local area.	*Bishnottar* is a grant of land for the worship of *Bishnoo* and *Brahmottar* is a grant of land to a Brahmin. If held revenue-free, either interest would amount to an estate, but if the grant is rent-free, it would be no higher than a tenure. *Brahmottar* lands are lands granted rent-free to Brahmans for their support as a reward for their sanctity or learning or to enable them to devote themselves to religious duties.
18	*Chakath — Shikam, Nakdi.*	Gaya ..	*Nakdi* lands are of three kinds in Gya, ordinary *nakdi*, *shikam* and *chakath*. The ordinary *nakdi* tenure presents no peculiarities. A *shikam* holding is one held on a cash rent fixed for ever. The term *shikam* is derived from sikka rupees, the cash rents being payable in sikka rupees—(one sikka rupee = Re 1-1 of present currency). The lands comprised in *shikam* holdings are invariably the best in the village, usually yielding two crops. *Chakath* lands are those temporarily settled at cash-rents. Dr. Grierson says the term is specially applied to waste, but cultivable land settled for a limited term of years with a view to reclamation. He adds that the name is frequently applied to ordinary *nakdi* holdings. But settlements of this nature are made not only of waste lands, but also of lands which, owing to difficulty of irrigation or natural unfertility are unpopular and will be

No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
18	*Chakath — Shikam, Nakdi*— contd.	Gaya ..	taken on no other terms. Then, again, the landlord may not have the means to put the irrigation system in a sound state, and without it the tenant will engage on no other terms. The landlord reserves to himself the right to demand a produce rent on the expiry of the lease, but in practice this right is seldom enforced.
19	*Chakran* ..	Generally throughout the Presidency.	*Chakran* or service-tenure is a grant of land conferred by zemindars upon their servants or retainers in consideration of public or personal services to be rendered by them. Before the advent of the British, the zemindars not only defended the country against foreign enemies with armed retainers but also administered the law and maintained order with a large force of rural police, known as *thanadars, phauridar, choukidars, paiks*, etc., who helped in protecting person and property, collecting revenue and doing other services personal to the zemindar. They were at the time servants of the zemindar, appointed and removed by him and often remunerated by grants of land, rent-free or at a quit-rent. The lands so held were called *chakran* or service lands. These tenures were created generally with a view to relieve the zemindar of the trouble and risk of direct management or of the labour and expenditure required for reclaiming waste lands. A service-tenure created for the performance of services, private or personal to the zemindar, may be resumed by him, when the services are no longer required or when the grantee refuses to perform them. A zemindar is, however, not entitled to resume, when the grant is for services of a public nature. There are various forms of service-tenures of which the *choukidari, thanadari*, and *phauridari chakran*, the *patwari* and *paikari jagire* and the *ghatwali* tenures are the most important. The effect of the Decennial Settlement was to divide *chakran* lands into two classes. (i) *Thanadari* lands which by Regulation I of 1793, were made

No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
19	*Chakran*—contd.	Generally throughout the Presidency.	resumable by Government; (ii) another, *chakran* lands which, by Regulation VIII of 1793 were, whether held by public officers or private servants in lieu of wages, to be annexed to *malguzari* lands. The duty of protecting life and property having now entirely devolved upon Government, the policy at present is to resume and assess lands of class (1), and accordingly they are being converted—usually by amicable arrangement—into ordinary tenures.
20	*Choukidari chakran.*	....	*See* No. 19.
21	*Cheragi*	....	Is a Moslem grant bestowed for the purpose of meeting the cost of maintaining lamps at the shrines of saints.
22	*Chukani* (*vide* also No. 49.)	Rangpur ..	The term *chukani* originally signified a tenancy held under a *jotedar*, as distinguished from that held directly under a proprietor or *talukdar*. But the term is now loosely used, not only for cultivators' holdings but for all degrees of under-tenures and other subordinate interests, such as those of raiyats and under-raiyats. The *chukanidars* have often raiyats under them and in some cases, specially in the larger *jotes*, there are four or more degrees before you get to the actual cultivator (*e.g.*, *dar-chukanidars*, *dar-a-dar chukanidar*, *Tasya-chukanidar*, *Tale—tasyachuknidar.*)
23	*Danabandi*	Behar ..	"Under the *danabandi* system the landlord, or his agent, and the cultivators repair to the fields when the crops approach ripening. The accountant (*patwari*), the assessor (*amin*), the measurer (*jarib kash*), an arbitrator (*salis*), a writer (*navisinda*), and the headman of the village, accompany them. The field is measured with the local pole, and a conclusion come to about the out-turn, either by guess or test crop-cutting. This is done with regard to every field of the cultivator held on a *bhaoli* rent, and the results recorded by the *patwari* in a *khasra*, which is signed by the cultivator. The

No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
23	*Danabandi*—contd.	....	total share of the landlord is entered in a statement called *behri*, appraised according to the market-value of the grain, and, if the agreement is to pay in cash, the cash equivalent is entered as a demand against the tenant, who can then take away the whole crop. If, however, the parties cannot come to terms, a test crop-cutting is made, the landlord selecting ½ a *katha* of the best part of the field, and the raiyat ½ a *katha* of the worst part. The produce of both is reaped and weighed; these form the basis of the appraisement."(1) The calculation of the shares to be actually taken by the landlord and the tenant are, however, subject to various deductions, similar to those made in the case of *batai* rents. See *Batai, ante.*
24	*Dar-agat taluk.*	Tippera ..	An under-tenure subordinate to *Agat taluk.* *See* No. 4.
25	*Dar-chukani*	Rangpur ..	An under-tenure subordinate to *chukani.* *See* Nos. 22 & 49.
26	*Dar-a-dar chukani.*	....	An under-tenure subordinate to a *dar-chukani.* *See* Nos. 22 & 49.
27	*Dar-Itmam*	Chittagong	*Dar-itmam* is a tenure subordinate to an *Itmam.* *Dar-itmams* and other under-tenures of the second degree bear precisely the same relation to the *itmamdars* that the latter does to the talukdar. The *itmamdar* who sublets to a *dar-itmamdar* converts himself into a mere rent-receiver and parts with all real interest in land which passes to the *dar-itmamdar.*(2)
28	*Dar-nimosat taluk*	....	*See* No. 40.

(1) Report of the Tikari Estate Settlement, p. 22.

(2) Ordinarily the tenant of the lowest grade, with permanent and heritable rights, is the person who has the largest aggregate interest in the land, those above him being merely annuitants. The expenditure of capital and the risks of cultivation fall on him alone, but this rule does not hold good in seaboard tracts, large embankments are indispensably necessary which are quite beyond the means of the tenants. Expensive protective works are usually erected and maintained by the proprietor or talukdar. This system prevails in the south-west of the district, where the taluks are large owing to the necessity of surrounding large areas with a ring of embankment, to keep off salt tidal water and the outlay on protective works is consequently heavy.

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No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
29	*Dar-osat-nim howla.*	....	*See* No. 40.
30	*Dar-osat-nim raiyat.*	....	*See* No. 40.
31	*Dar-patni* .	....	*See* No. 106.
32	*Dar-patni-osat taluk.*	....	*See* No. 40.
33	*Dar-taluk* ..	Tippera ..	The term has now a double meaning. The number of real dar-talukdars, *i.e.*, under-tenure-holders immediately subordinate to talukdars is very small. There is however a number of tenure-holders who are directly subordinate to the proprietor, as auction-purchasers of the rights of the talukdar which have been sold for arrears of rents. Such tenure-holders take settlements exactly like any other talukdar but they are entered as *dar-talukdars* in the landlord's papers. This form of tenure has its origin in the desire of the proprietor to retain some property in land if his zemindari rights happen to be sold for arrears of revenue.
34	*Dhankarari*	E. Bengal .	*See* No. 113.
35	*Debottar* ..	....	From *deba*=a god, and *oottur*=fit for; belonging to. A grant of rent-free land, the proceeds of which are appropriated to the worship and support of Hindu idols and temples. The ordinary method of making such grants is to dedicate certain property to an idol o temple; and this endowment is henceforth called *debottar* property. As soon as the lands have been so dedicated, the rights of the donor lapse; he cannot alienate them nor can his heirs inherit them.
36	*Enam* ..	....	(Lit. gift, present). A grant of land given by Mahomedan zemindars or amils as a favour. If held revenue-free, it is an estate; if rent-free, it is a tenure or holding.
37	*Fakiran* ..	....	(From fakir=a mendicant). A Mahomedan grant for the maintenance of the poor.

No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
38	*Ghatwali* tenure.	Birbhum, Bankura, Burdwan, Bhagalpur, Monghyr, Manbhum, Purnea, Patna, Sonthal Pargannas.	These tenures may be generally divided into two classes (i) tenures granted for a species of military service to be rendered by guarding the mountain passes (*ghats*) on the western frontiers of Bengal, (ii) tenures granted on condition of rendering police service. A small quit rent is generally paid by the *ghatwals*, through the zemindar, in addition to the service rendered. Of recent years, extensive resumptions have been made of these tenures in the districts of Birbhum and Bankura, on an amicable basis, the *ghatwals* being released from rendering service and recognised as subordinate tenants with rights of occupancy while the lands have been assessed to revenue and settled with the zemindars.(1) There is considerable variety in the tenures known under the general name of *ghatwali* in different parts of the country, but "they all agree in this, that they are grants of land situated on the edge of the hilly country, and held on condition of guarding the *ghats* or passes. Generally, there seems to be a small quit rent payable to the zemindar in addition to the service rendered, and with the view of marking the subordination of the tenure. But in some zemindaris and *putnis* these tenures are of a major, in others of a minor, character. Sometimes the tenure of the great zemindar himself seems to have been originally of this character. More frequently large tenures, consisting of several whole villages, are held under the zemindar. And in other places, *e.g.*, in Bishenpur as explained by Harrington (Analysis, Vol. III, p. 510), the sirdar and superior *ghatwals* have small and specific portions of land in different villages assigned for their maintenance. These last, says Harrington, are of a nature analogous to the *chakran* assignments of land to village watchmen in other districts. But he goes on to explain that the *ghatwali* tenure differed essentially from

(1) Bengal Administration Report, 1901-02.

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No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
38	*Ghatwali* tenure—contd.	....	the common chakran in two respects; first that the land was not liable to resumption at the discretion of the landholder nor the assessment to be raised beyond the established rate; and secondly that, although the grant is not expressly hereditary, and the *ghatwal* is removable for misconduct, it is the general usage, on the death of a faithful *ghatwal*, to appoint his son, if competent or some other fit person in his family, to succeed to the office.(1) A *ghatwal* held his tenure on condition of performing certain services and was liable to dismissal for default. On such dismissal his right to retain the land ceased.(2) In the leading case of *Kuldip Narayan Sing* v. *Govt.*,(3) it has been held that the resumption of land on the ground of the *ghatwal's* default was valid. The Chief Justice observed "Possibly, if the services were no longer required, the rent might be enhanced, but the zemindar certainly could not recover possession of the lands on the ground that he no longer required the services, when the Government had expressly refused to dispense with those very services." Also *held* that a *ghatwal* generally has no power to grant a *mokrari* lease,(4) but subject to certain reservation such power has been conferred by statute upon the *ghatwals* of Birbhum. Section 181 of the Bengal Tenancy Act lays down "Nothing in this Act shall affect any incident of a *ghatwali* 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." It will be seen that this section does not exclude *ghatwali* and other service tenures from the purview of *all* the provisions of the Act. It bars the operation of sections

(1) Monoranjan Sing *v.* Lilanand Sing, 3 W. R., 84.

(2) 1 W. R. Civil Rule, 321.

(3) B. L. R. Sup. Vol. F. B., 559. In Mokbul Hosein *v.* Amir Sekh, I. L. R., 25 Cal., 131, it was found that the ghatwal's liability to dismissal at the will of the zemindar was an incident annexed to the particular tenure under consideration.

(4) Narain Malik *v.* Badi Roy, 6 C. W. N., 94.

No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
38	*Ghatwali* tenure—concld.	. . .	11 & 18 of the Act which confer the right of inheritance and transfer on tenures, but such provisions as do not affect the incidents of service tenures (*e.g.*, the provisions relating to recovery of rent, distraint, survey and record of rights are applicable to *ghatwali* and other service-tenures in common with ordinary tenures and raiyati holdings. The *ghatwali* tenures of Birbhum have formed the subject of special legislation (Regulation XXIX of 1814 and Act V of 1859). Under Regulation XXIX of 1814, the *ghatwals* in Birbhum and their descendants in perpetuity are to be maintained in possession of their lands without being subject to enhancement of rent. On failure of the *ghatwals* to discharge their stipulated rents the tenure may be sold by public auction or be disposed of in any other manner by Government. Act V of 1859, after reciting that the *ghatwals* of Birbhum who pay revenue direct to Government have no power to alienate their lands and that for the development of the mineral resources of the country, it is expedient to extend to these the power of granting leases not limited by the term of their tenure, enacted that they shall have the same power of granting leases for any period which they may deem most conducive to the improvement of their tenures, as is allowed by law to the proprietors of other lands; provided that no such lease for any period extending beyond the life-time of incumbency of the grantor of the lease, shall be valid and binding, unless the same shall be granted for the working of mines or for the clearing of jungle or for the erection of dwelling-houses, manufactories, tanks, canals, and similar works. The *ghatwali* tenures of Birbhum cannot be treated as null and void so long as the holders discharged their obligations of service and of payment of rent to Government and as they were estates of inheritance it followed that a perpetual sub-lease granted *bonâ fide* by a

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No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
			ghatwal would hold good not only during the tenancy of the grantor but during that of his heirs.(1)
39	*Hat-hasili*.	Bhagalpur division.	"A peculiar form of cultivating tenure, known as *Hat-hasila* prevails over a considerable portion of the Bhagalpur division. The tenant pays rent for the lands cultivated by him, according to the nature of the crops grown on them, and for the fallow lands at the rate which he paid for the same land in the previous year, or according to the rate for the fallow land specified in the lease, when there is a lease and a condition to that effect."(2) *Hat-hasili* lands are treated as ordinary raiyati holdings.
40	*Howla* ..	Bakarganj and East Bengal generally.	The Rent Commission made the following remarks on the subject of *howladars* :— "In Backergunge there are as many as thirteen persons having successive interests in the land inferior to that of the proprietor *zamindar*. These interests are—(i) *taluk*, (ii) *zimba taluk*, (iii) *shamilat taluk*, (iv) *osat taluk*, (v) *nim osat taluk*, (vi) *howla*, (vii) *osat howla*, (viii) *nim osat howla*, (ix) *nim howla*, (x) *osat nim houla*, (xi) *miras karsha*, (xii) *kaim karsha*, (xiii) *karshadar* or *raiyat*. 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 sub-let portions to smaller reclaiming tenants; or perhaps sub-let the whole, if he could find tenants to reclaim it. These sub-lessees sub-let again and the sub-letting was carried still lower, until the whole tract was divided into holdings of a managable size for single families. The number 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 sub-let it, when the demand for

(1) Deputy Commissioner of Sonthal Parganas *v.* Ranga Lal Deo, W. R (Special number), p. 34.
(2) Bengal Administration Report, 1901-02, p. 99.

No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
40	*Howla*—contd.	..	land increased or a person, who had taken enough for two or three holdings, reclaimed and retained enough for one, and sub-let the remainder. It is easy to imagine the intricacy of interests which must have been the result of such a system. Sometimes the *zamindar'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 sub-letting part to persons who again repeat the process." The *howlas* and *nim howlas* of Bakarganj are permanent and hereditary tenures.(1) Fixity of rent is not a necessary incident of such tenures.
41	*Inamat* ..	....	*See* No. 131.
42	*Istemrari* .	....	*See* No. 90.
43	*Itmams* (derived from *ihtimam* which means "entrusted to"), dar-taluks.	Chittagong	An *itmam* is ordinarily an under-tenure subordinate to a taluk. Under-tenures in Chittagong bear a variety of names, *e.g.*, *itmam*, *dar-taluk*, *tappas*, *dar-tappas*, *muskasi*. By whatever name it is known, the under-tenure carries with it the same rights as the taluk, being transferable, heritable, and held at fixed rates of rent in perpetuity. Under-tenures in Chittagong are indeed very similar to taluks, not only in their incidents but also in their history. Many

(1) Jagat Chandra Roy *v.* Ram Narain Bhattacharjee, 1 W. R., 126.

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No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
43	*Itmams* (derived from *Ihtimam* which means "entrusted to"), dar-taluks—*contd.*	....	*itmams* existed before the creation of the taluks to which they are now subordinate, while in Ramu, *itmams* are to be found which are not subordinate to any taluk but are independent tenures, paying rent direct to Government as the proprietor. So far as under-tenures were created by grants from talukdars, they probably owed their existence originally to the incapacity of the latter to bring the whole of their taluks under cultivation. Generally speaking the talukdar under whom there are *itmamdars* or similar tenure-holders is a mere rent-receiver and has no real or abiding interest in the land comprised in the tenure. In the permanently-settled portions of Chittagong, an *itmam* is transferable, heritable and held at a fixed rate of rent in perpetuity. In the *Noabad* taluks, as talukdars have no power to grant leases at rents fixed beyond the term of the settlement made with them by Government, *itmams* are not held at rates fixed in perpetuity. Such *itmams* may be classed as permanent tenures, under-tenures, or raiyati holdings, according as their incidents fall under the one or other category as defined in the Bengal Tenancy Act. During the last settlement, *itmams* were entered in the record of rights and the status of each (whether tenure-holder or raiyat) was determined. In cases where the *itmamdar* is a tenure-holder, the rent was revised upon the basis of his assets.
44	*Jagir* ..	Throughout Bengal and Behar.	The word *jagir* is supposed to be derived from *jah*, a place, and *geruftun*, to lay hold of. A *jagir* "is known to be merely a life-rent tenure, but it is stated to convey a rent-free title. A *jagir*, when given in land, is known, in the Mahomedan law, by the name of *anktaa*, from *kutta*, to cut; signifying a portion cut off for a particular purpose. *Jagir* may be said to be a military tenure."(1)

(1) Galloway's India, p. 74.

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No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
44]	*Jagir*— contd.	....	Galloway traces its origin to Timur, whose practice it was to give assignments of revenue or *yurleegh* to his *omrah* and *mingbaushis* (officers of horse, who received sixty times the pay of a trooper).(1) A *jagir* which consists of revenue-free land is an estate.—A *jagir* consisting of a grant of rent-free land made by a proprietor or permanent tenure-holder may be a service-tenure, or an ordinary tenure or holding, according as it falls under one or other of the definitions of these terms in the Bengal Tenancy Act. Mr. Field observes :— " *Jagirs* were grants of lands to retainers still in service, in lieu of wages. When granted by the Emperor, they were assignment not of the land but of the revenue, 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. *Jagirs* were of two kinds, conditional and unconditional. *Conditional jagirs* 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 jagirs* 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 *mansubdar* or *jagirdar* was bound to have in readiness. These grants were for life only. If the lands produced more than the *mansubdar's* allowance, which was always fixed, he was bound to account for the surplus (*tanfir*). There were few *jagirs* in Bengal. In Behar a large number were created in the time of Shah 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 inheritance succeeded to *jagirs* contrary to the constitution of the empire and thus what was originally a mere life-grant has been an estate of inheritance.(2)

(1) Galloway's India, p. 74.
(2) Introduction to Field's Regulations, p. 53.

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No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
45	*Jamai* ..	....	*See* under "*Uthandi*" No. 134.
46	*Jer raiyats*	....	*See* No. 40.
47	*Jimba* ..	....	*See* No. 40.
48	*Jote* ..	E. Bengal generally.	*Raiyati* holdings are generally known as *jotes* but their incidents are liable to important local variations, some of which are noted below.
49	*Jote, Chukani, Dar-Chukani*	Rangpur ..	In the district of Rangpur, the word *jote* is used very loosely and means any kind of holding. Generally speaking the *jotedar* holds land immediately under the proprietor but in rare instances a *Patnidar* or *Upanchowkidar* intervenes between the two. He is sometimes a cultivating tenant but more often a middleman. The *jotedar's* holdings are far from uniform in size, and the annual rent varies from one rupee to three-quarters of a lakh. There are *jotedars* in the Baherband estate who pay Rs. 80,000 a year as rent. The *chukanidar* is a tenant under the *jotedars* and the sub-infeudation sometimes extends to four or more degrees (*e.g., dar chukanidars, dar-a-dar chukanidars, tasya chukanidars, tale tasya-chukanidars*). Until recently *jotes* were not in great demand and landlords raised no difficulties about the recognition of transfers. Mr. Glazier, sometime Collector of Rangpur, writing in 1875, noted the tendency of cultivators to drift from one place to another, and the frequency of sales of *jotes* by private bargain or decree of court. In his opinion all *jotes*, large or small, were saleable and heritable. Since 1875, the tables have been turned; the population of the district has increased and the zemindars now claim that all transfer are subject to their consent, while the *jotedars* on the contrary set up an indefeasible and absolute right of alienation as a necessary incident annexed to their tenure. All *jotes*, whether tenures or not, are now freely sold. The landlord takes no action so long as rents are paid and

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No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
49	*Jote, Chukani, Dar-Chukani*—contd.	....	receipts accepted in the name of the transferor. Very often the *jote* passes through several hands, without any mutation being effected in the zemindars' books. It is only when the transferee asks the landlord to recognise the transfer and register his name that trouble arises. Some zemindars are unable or unwilling to enforce the payment of a mutation fee, and in such estates it may be maintained that *jotes* are transferable by custom, irrespective of the landlord's consent. Owing to the operation of the Bengal Tenancy Act, transferability now forms one of the incidents of all *jotes* of the tenure class; but there is no similar statutory provision in respect of such *jotes* as fall within the category of raiyati-holdings. In the latter case, the question whether the *jotedar* has any power of alienation is regulated by custom. But the standard of proof required to establish custom is extremely variable and in many cases, different courts have given contrary decisions on practically the same evidence. As a general rule, however, it may be said that the *jote*, the *chukani* and its derivatives are transferable by custom. The incidents of the Rangpur tenancies are so various as to include classification in the manner prescribed by the Bengal Tenancy Act which does not take account of local peculiarities. The question arose during the settlement of Panga and some other private estates in the Rangpur district and after a good deal of discussion, in which the Director of Land Records and the Commissioner took part, it was decided that no hard and fast rule should be laid down and that each case should be dealt with according to its merits. "It was ruled that in some cases, the *jotedar* should be regarded as a raiyat and those below him as under-raiyats; while in other cases, the *chukanidar* or one of his derivatives should be regarded as the raiyat; the *jotedar* and any others above the selected man being regarded as tenure-holders and those below the

No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
49	*Jote, Chukani, Darchukani*—contd.	....	selected man, as under-raiyats."(1) In the result two-thirds of the *jotes* were recorded as tenures and one-third as holdings. The differentiation was not based upon the size of the *jotes*, as the area of the tenancy is only one of several factors which determine the question. Very few tenants were recorded as raiyats who were found to have sub-let upon cash rents for an indefinite term. In the above settlement which was wound up in 1907, all the *jotes* which were placed under the category of tenures were classed as permanent within the meaning of section 3(8) of the Tenancy Act. It should be borne in mind, however, that the term does not connote any fixity of rent but under section 11 of the Act, it carries with it a statutory right of transfer which is independent of the landlord's consent.
50	*Jote, Chukani, Mulan, Darchukani*	Western Duars of Jalpaiguri.	The incidents of these tenancies have been described as follows :— "A *jotedar* is a person who holds lands directly under Government. His holding is called a *jote*. He is a tenant with a heritable and transfecable title in his holding, vested in him by his lease and by the fact of possession, with the power to transmit his title to those to whom he sub-lets ; he has the right to resettlement of the land included in his *jote* on the expiry of the term of settlement, but subject to an increase of rent should Government see fit to enhance. His title to the possession of land included in his *jote* is, however, always subject to the superior right of Government as proprietor to resume any portion required for public or other purposes, a proportionate abatement being made in the rental and compensation allowed for any permanent improvements. "A *jote* may be acquired (i) by direct settlement from Government; (ii) by purchase ; and (iii) by inheritance.

(1) Final Report of the Settlement of four private Estates in Rangpur by Sayed Izahar Hosein, p. 7.

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No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
50	*Jote, Chukani, Mulan, Dar-chukani* —contd.	....	"The tenant immediately below the *jotedar* is the *chukanidar* or *Mulandar*. The rent payable by him has been fixed for the term of this settlement. His title to his holding is heritable and transferable. He is not allowed under the provisions of the *jotedar's* lease to sub-let the whole or any portion of his tenure under pain of immediate forfeiture of his tenure, but he is permitted to employ *Adhiars*. A *chukanidar* cannot be ousted from his holding, except by order of a competent court, notwithstanding the fact that he may not have been 12 years on a *jote*. There is an unwritten law between him and his *jotedar* that he cannot be ousted from his lands so long as he pays his rent. Some *jotedars* endeavour to get over this by giving a *chukanidar* a lease on plain paper but they never succeed against the *chukanidar*. "*Dar-chukanidar*.—This class of tenants holds direct from the *chukanidars*. These tenures have been made contrary to the express orders of Government. Accordingly tenants of this class were not in the recent settlement supplied with copies of the *khatian*, nor was anything done to give them a title to their holdings."(1) The Bengal Tenancy Act is in force in Western Duars, but where anything in the Act is inconsistent with any rights or obligations of a *jotedar, chukanidar, dar-chukanidar* or *adhiar* as defined in the settlement proceedings or in leases granted by Government, the rights and obligations recorded in the settlement proceeding are enforceable notwithstanding anything contained in the Act.(2)
51	*Jote* ..	Chittagong	The *jotes* in Chittagong are *raiyati* holdings of Government land which were for the most part settled by Mr. Fasson in the years 1875-82. The bulk of these in the central thanas consists of

(1) Jalpaiguri Settlement Report, pp. 118 & 119.
(2) *Vide* Government Notification No. 964 T. R., dated 5th November, 1898.

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No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
51	*Jote*—contd.	....	exceedingly small plots or patches of worthless land and the average area is only 1¼ acres. Besides the *jotes* settled by Mr. Fasson, a considerable number of new *jotes* was created during the last settlement. These *jotes* consisted partly of recently occupied lands and partly of lands which had formerly been held as appertaining to permanently-settled estates but which were identified as *Noabad* lands, the property of Government and settled with the occupants. The average area of these jotes is nearly 4 acres and many of them comprise waste lands, specially in the Chakaria Thana.
52	*Kain karshe*	....	*See* No. 40.
53	*Kamat* ..	....	*See* under "*Zirat*" No. 137.
54	*Kamdura* ..	Midnapore	*Kamdura* tenures are lands granted by zemindars previous to the Permanent Settlement, avowedly at less than prevailing rates, either as marks of favour or for jungle clearing. In the settlement of the parent estates these rates were allowed to stand good and the tenures were assessed accordingly. Such tenures are hereditary and transferable.
55	*Kankut* ..	....	*See* No. 113.
56	*Karshadar*	....	*See* No. 40.
57	*Karar* taluk	Tippera ..	*Karar* means contract and the holder of a *Karar* taluk is entitled under the terms of a contract between him and his landlord, to pay a sum less than the nominal rent reserved at the inception of the tenancy. This tenure is usually created when for some reason or other, the tenant is unable to pay the rent originally agreed upon and either obtains a remission from the zemindar or surrenders it to the latter.
58	*Karari* or *Dhan-karari.*	E. Bengal	*See* No. 113.
59	*Kara Zarpeshgi* lease.	Behar ..	*See* under "*Zarpeshgi.*" No. 136.

No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
60	*Karsha* ..	E. Bengal .	An ordinary *raiyati* holding.
61	*Kartauli, Sad-barna.*	Behar ..	"This is a sub-lease of a portion of the holding of a *raiyat*. The *raiyat*, in consideration of a lump sum payment, which may be five or seven or nine years' rents in advance, grants a lease. He continues to pay the rent to the *maliks* on the portion of his holding which he has sub-leased to the factory. ....The loan with interest liquidates from year to year. These leases are sometimes for the whole of a holding. .....A *raiyat's* sub-lease, analogous to the *kartauli*, is the *sud-barna*, or common usufructuary mortgage.... The advance or loan given to the *raiyat* does not liquidate from year to year. It remains intact. The interest on the advance is equivalent to the rent."(1)
62	*Kat agat* taluks.	Tipperah ..	*Kat agat* taluks are subordinate *agat* taluks.
63	*Katkena* ..	Behar ..	"The lease of an under tenure is called *katkena*..... It is the method by which [indigo] factories settle the very few interloping disputes that occur, one factory taking *katkena* from another. Again, to prevent such interloping disputes, the factory that takes a lease of a proprietor's estates in several villages, some of which are not in his own *dehat* (or sphere of influence), gives a sub-lease of the lands in the villages outside his jurisdiction to the factory recognised as entitled to it."(2)
64	*Kat* taluk .	Tippera ..	Is subordinate to a *dartaluk*. (*See* No. 33).
65	*Khairati* ..	....	The term *khairati* literally means alms or that which is given in charity. These tenures were originally granted by amils, zemindars and nazims.(3)
66	*Khamar, Nij, Nij jote.*	Bengal ..	The name *khamar* probably originated in the name of a spot near the village or in the most suitable place, where

(1) Muzaffarpur Settlement Report, p. 119.
(2) Mozaffarpur Settlement Report, p. 345.
(3) Galloway's India, p. 76.

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No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
66	*Khamar, Nij, Nij jote*—contd.	....	corn and other grain were brought to be threshed and winnowed. "In Muhammadan times, this spot was excluded from the revenue and probably a considerable appendage adjacent.(1) *Nij jote*, which Galloway thought to be *neech jote* is from *neech*—under and *jote*=to plough, *i.e.*, land reserved by the zemindar and set apart for his own cultivation. According to other authorities, the expression is derived from *nij*=own and means land in the zemindar's own cultivation. The terms denote proprietor's private lands, as distinguished from those let out to tenants. The *khamar* lands have always been recognised as being in a special and exclusive sense the private property of the zemindar, as distinguished from all the rest of the cutivated or cultivable area which may be called *raiyati* land, and in respect of which the zemindar's rights were merely to receive a share of the produce or equivalent in money. Under the rules of the decennial settlement, *khamar* was understood to signify lands appropriated to the subsistence of zemindars and their families.(2) Under the Permanent Settlement (Reg. VIII of 1793, sections 37 to 39) no land was recognised as *khamar* which was not such on the 12th August 1865, the date of the grant of the Dewani; and there is no law recognising the creation of *khamar* subsequent to that date. Section 116 of the Bengal Tenancy Act bars the acquisition of occupancy-rights in *khamar* land. (*See* also sec. 120.) It is to be noticed that it is only proprietors who can have private land and not patnidars or tenure-holders.
67	*Khanabari*.	24-Parganas and elsewhere.	"Non-agricultural tenures, which are granted for building purposes to trader, artisans or other non-agricultural classes of the community and go by the name of *khanabari* tenures, are numerous in the populous district of the 24-Parganas."(3)

(1) Galloway's India, p. 88.
(2) Colebrooke's Supplement, p. 315.
(3) Bengal Administration Report, 1901-02, p. 97.

No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
68	*Kharija jama.*	Bengal and Behar generally.	*Kharija* literally means out of, or excluded from, the revenue and sold by the zemindar.(1)
69	*Khas* taluk	Tippera ..	This is a taluk purchased by the proprietor and held under direct management.
70	*Khet batai*	Behar ..	*See* No. 113.
71	*Khoris* ..	.....	*See* No. 131.
72	*Khushki* (Indigo).	Behar ..	"Indigo is sometimes grown by *raiyats* not subordinate to the factory on agreements which are called *khushki sattas*. An advance of Rs. 20 to Rs. 30 is given at a light rate of interest. This is usually the basis of the agreement. The indigo plant is paid for at so much per maund."(2) "The remaining *asamiwar* system of growing indigo to be noticed is the *khushki*. In the words of Mr. C. H. Macpherson— 'Under this system the *raiyat* grows indigo, which he sells to the factory at so much per bundle or so much per maund, the weighment test being most in use. The factory may or may not give an advance, and the price usually paid is from 2 to 3 annas per maund of plant (maund=80 *gandas*), according to whether or not certain deductions are made. It works out to something over 2½ annas per maund. Seed is provided by the factory. In the case of *khushki*, indigo is very often a second crop, the lands being prepared and sown after the rice or another crop has been reaped.'"
73	*Kole* raiyat	E. Bengal .	Is an under-raiyat as defined in the Bengal Tenancy Act.
74	*Korfa proja*	Rangpur and E. Bengal.	Is an under-raiyat as defined in the Bengal Tenancy Act.
75	*Lang batai*	Behar ..	*See* No. 113.

(1) Galloway's India, p. 75.
(2) Muzaffarpur Settlement Report, p. 347.

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No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
76	*Laksan* ..	Presidency division (Bengal).	*See* under "*Utbandi.*" No. 134.
78	*Mafi* ..	....	*lit.* exempted, privileged, or revenue exempted lands). Field says.—"*Mafi* 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 the course of time."(1)
79	*Malikana* .	....	*See* 131.
80	*Mandali* ..	Midnapore	*See* under "*Abadkari*" No. 2.
81	*Mankhap* .	Behar ..	Under the *Mankhap* system, the raiyat contracts to pay a fixed quantity of grain, usually so many maunds of grain per *bigha*.
82	*Marwat* ..	....	*Marwat* grants were grants of a little land rent-free, as pensions to the heirs of retainers killed in the service of the proprietor.
83	*Miadi* taluk	Tippera ..	Is a taluk held at a variable rent for which successive settlements must be made. The proprietor may refuse to make a fresh settlement with the former holder.
84	*Miras* ..	....	*Miras* signifies ancestral tenure and in its literal sense does not connote fixity of rent but in the fact, this incident is always found annexed to the tenure.
85	*Miras Ijara*	....	*See* No. 40.
86	*Miras Karsha*	....	*See* No. 40.
87	*Mohuttran*	....	From *Mohut*=great and *tran*=cherish. A Hindu grant consisting of lands set apart for the maintenance of a great or revered person or place.
88	*Mudafat* ..	....	*See* No. 40.

(1) Field's Introduction to the Bengal Regulation, p. 53.

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No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
89	*Muddud maush*	....	From *Muddud*=aid; and *Maush*=living. "It is stated to be a royal grant in perpetuity, to be transferable and to convey a rent-free tenure; but it was probably nothing more originally than the grant of a pension to an individual in distress (Galloway's India, p. 73)."
90	*Mukarrari Istimrari*	Bengal & Behar generally.	*Mukarrari* tenures are tenures granted at a fixed rent not liable to enhancement. *Istimrari* is a tenure granted in perpetuity. As a rule these two conditions are found combined and where the term is in perpetuity, the rent is fixed for ever. These tenures may be protected by registration from the effects of a revenue-sale. It has been held by the High Court that the use of the word *Mukarrari* alone in a lease raises no presumption that the tenure was intended to be hereditary and that the court should consider the other terms of the instrument under which the tenure was granted, the circumstances under which the instrument was made and the intention of the parties.(1) The use of the words "from generation to generation" in a lease creates an absolute and hereditary *Mukarrari* grant.(2) The use of the word "*Istemrari*," it was held in one case, shows that the lease was intended to be perpetual and hereditary(3) but in another case it was held to be doubtful whether *Mukarrari Istimrari* meant permanent during the life of the grantee or absolutely permanent and hereditary.(4) Under sec. 11 of the Bengal Tenancy Act all permanent tenures are transferable and heritable. On failure of the heirs of the lessee, an absolute hereditary and *Mukarrari* tenure escheats to the Crown and does not revert to the grantor or his heirs.(2)

(1) I. L. R. 5. Cal. 543 (Sheo Prosad Sing *v.* Kali Das Sing).
(2) I. L. R., 1 Cal., 391. (Sonnet Kooer *v.* Haimat Bahadur).
(3) 14. W. R., 107. (Kurankar Mahotee *v.* Neeladhra Chowdhury).
(4) 13 B. L. R., 133. (Lilananda Sing *v.* Monoranjan Sing).

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No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
91	*Muqaddami*	....	The *Muqaddams* are the old Hindu village headmen or *padhans* under a Mahomedan name. They are of three classes —(i) *Maurasi* or hereditary, (ii) *Kharidars*, those who purchased a hereditary right from the talukdar or *Muqaddam* (iii) *Zati*, i.e., appointed by the people of the village as their representative or, sometimes, created by a zemindar. The *Muqaddams* of Bhagalpur have been held to be entitled to all the privileges of maliks and to be quite independent of the zemindar.(1)
92	*Nakdi, Shikam Chakatt.*	Gaya ..	*See* No. 18.
93	*Nankar* ..	....	"*Nankar* (literally bread for work) stated to be land given by the *Amils* or *Nazim* or the zemindars, chaudhris, talukdars, for some service performed. It was, however, an allowance received by the zemindar, while he administered the concerns of the zemindari, from Government, without reference to proprietary right. When he did not administer the affairs of the zemindari, no *nankar* was allowed."(2) Mr. Field says: "*Nankar* 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 rights, such as *kanungos*, *muqaddams*, *chaudhris*, *kazis*, who were generally however servants of the State; and it was doubtless in this capacity that the allowance was made to *zamindars*. Sub-proprietary *nankar* is usually an assignment like *didari*, 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

(1) Rung Lal Chowdhury *v.* Romanath Das. (Morley's Digest, Vol. I, p. 406).
(2) Galloway's India, p. 76.

No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
			latter case, however, the item remained fixed and not subject to enhancement or abatement.'' (1)
94	*Nij, Nijjote*	Bengal ..	*See* under *Khamar* No. 66.
95	*Nim howla*	E. Bengal.	*See* No. 40.
96	*Nim Osat howla.*	Do.	*See* No. 40.
97	*Nim Osat* taluk.	Do.	*See* No. 40.
98	*Nim raiyat*	Do.	*See* No. 40.
99	*Noabad* taluk.	Chittagong	The term *Noabad* which literally means newly cultivated land is a form of tenant interest in Chittagong. In local extent, these tenures cover all land not measured during the course of the original settlement of 1126 *Muggy* corresponding to 1764 A.D. Unlike lands in other districts which were admitted to a permanent settlement, Chittagong was surveyed and the actual fields comprised in each estate measured and recorded in 1764. It was only these estates thus precisely defined that were included in the Decennial Settlement subsequently made permanent and the remaining area of the district, about 1,882 square miles in extent technically called *Noabad* lands remained at the absolute disposal of the State. A strictly literal interpretation of the term *Noabad*, would confine it to lands cultivated since 1764 but it has long been loosely employed to denote *all* lands in which the proprietary right vests in the State, including not only cultivated fields but even hills, rivers, roads, etc., which are not capable of cultivation. The term *Noabad* in fact denotes all land which was not included in one or other of the estates measured in 1764 and is also applied to the Jaynagar Mahal which is described as the Mahal *Noabad Taraj* of Joynarain Ghosal. In 1870 after thirty-

(1) Introduction to Field's Regulations, p. 51.

No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
99	*Noabad* taluk—*contd.*	Chittagong	two years of vacillating policy it was finally decided not to extend a permanent settlement to the *Noabad* taluks. The *noabad* taluks comprise a number of tenures of widely differing character. Thus, in the remoter parts of the district, specially in the Cox's Bazar Subdivision, large taluks are found with a revenue of several thousands of rupees. These taluks are situated in villages which had not been reached by cultivation in 1764 and were not therefore permanently settled. There are again many thousand taluks of moderate size in all parts of the district, which were originally reclamations of land occupied at sometime subsequent to 1764. Clearances do not, however, constitute the majority of these taluks, which consist of scraps of land which previous to the Survey of 1837, had been held as part and parcel of taluks subordinate to the permanently settled states of *tarafdars* and other classes of proprietors. It would thus appear that the *noabad* talukdar is sometimes the grantee of a large tract of land, in which case he belongs to the proprietary class of landholders, although he is *dejure* a tenure-holder subordinate to the Government in its capacity of the owner of all *noabad* land. Again, many of the *noabad* taluks were created during the settlement of 1848 from excess lands separated from permanently settled estates and these taluks were settled with the proprietors of the parent estates who thus became *noabad* talukdars. In such cases, the original talukdars, who held these lands as appertaining to their permanently settled taluks were nominally relegated to the position of *dar-talukdars* or *itmamdars* but for all practical purposes retained their proprietary status of talukdar. It will thus be seen that the *noabad* taluks of the latter class are not homogeneous but are interlaced on the ground with other tenures like squares in a chessboard. For instance, it often happens that the banks of a

No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
99	*Noabad* taluk—*contd.*	Chittagong	tank appertain to a permanently settled *taraf* or taluk, while its water forms part of a *Noabad* taluk. The *Noabad* talukdars are the most important class of tenants in Government estates. They hold directly under Government for a limited term and on the expiry of that term are entitled to re-settlement of such portion of the taluk as is cultivated, the uncultivated portion being at the absolute disposal of the State. The talukdar can not grant any leases binding on Government, after expiry of the term of settlement and should he refuse re-settlement at the rent offered, the whole taluk is liable to resumption by Government.(1) The *Noabad* talukdars, as a rule, are permanent tenure-holders within the meaning of the Bengal Tenancy Act, but are not entitled to hold at fixed rates of rent. In common with other tenure-holders, the *noabad* talukdar has a transferable and heritable interest in the lands held by him.
100	*Nuzzeri durgah.*	....	A Mahomedan grant for the maintenance of places of worship (literally, an offering at a sacred place).
101	*Osat howla*	E. Bengal	*See* No. 40.
102	*Osat nim howla.*	Do.	*See* No. 40.
103	*Osat nim* raiyat.	Do	*See* No. 40.

(1) Many *noabad* taluks were created during the settlement of 1848 from excess lands separated from the permanently settled estates. The status of a *noabad* talukdar as it stood in 1848 has been thus described by Sir Henry Ricketts. "A *noabad* taluk cannot be regarded as a farm only, for right of possession has always been conceded to the talukdars. The tenure partakes of the nature of a Zemindari estate in an unsettled district, inasmuch as the owner has a right to possession on agreeing to the *jama* assessed for the term of the lease. It partakes of the nature of a Sub-tenure, the Government claiming the Zemindari right as vested in the State. It partakes of the nature of a raiyati tenure, these talukdars being some of the Jungleboori, as having first reclaimed the land from the forest and tilling them with their own hands. It partakes of the nature of a farm only, as being limited in the period of its existence on the terms now adjusted."

No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
104	*Osat* taluk.	E. Bengal.	Is similar to a *dar-taluk*. *See* No. 33.
105	*Pahi* or *kast raiyats*	....	*Pahi* raiyats were originally non-resident tenants who cultivated lands in villages other than those in which they lived and had practically no rights beyond those secured by their pattas (leases). Under the Bengal Tenancy Act, however, residence is not a condition precedent to the acquisition of occupancy rights. Sections 20 & 21 lay down that a raiyat who has held for twelve years continuously land situate in any village becomes a "settled" raiyat of that village and acquires a right of occupancy in *all* lands, held by him for the time being, in that village. *Pahi* raiyats who fulfil these conditions acquire the status of settled raiyats.
106	*Paikan* or *paik jagirs.*	Midnapore	These are a form of service-tenure and consist of lands held by *paiks*. These *paiks* formerly constituted a frontier militia, their services being remunerated by grants of land which they held rent-free or at quit rents. A large body of *paiks* used to be kept up by the zemindars and jungle chiefs for the purpose of aggression and defence; and the *paiks* were also responsible for maintaining order within their estates. After the establishment of British rule, they were retained for police duties. The zemindar was responsible to Government for the efficient service of the *paiks*. He was entitled to appoint them and to dismiss them for incompetence or misconduct. The *paiks* on their part were responsible to the zemindar.(1)
107	*Panchaki Peshkasi.*	Midnapore	Tenures similar to *Kamdura*, No. 54.
108	*Paran* ..	Gaya ..	This tenure is peculiar to lands devoted to sugarcane. The land in a village fit for sugarcane is divided into three blocks in each of which the tenant has a share. In two years each block can grow two crops, sugarcane and poppy. In the third year rice is grown as a

(1) Gazetteer of the Midnapore district, p. 143.

No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
108	*Paran*—contd.	....	rotation crop. For blocks under sugarcane and poppy, cash-rents are paid at specially high rates, while for the blocks under rice, rent is paid in kind.
109	*Patwari jagirs.*	....	Are lands assigned to *Patwaries* or village accountants in lieu of wages. The *Patwaries* have no proprietary right in the land which is held on condition of service.
110	*Phauridari chakran.*	....	This is a form of service-tenure to be found in Hughly and other districts. The *Phauridars* were originally semi-Military Police holding rent-free lands. They were authorised to apprehend robbers and house-breakers, to patrol the villages attached to their *phauris* and performed other police duties. In 1881 Government sanctioned an arrangement by which where any of the *Phauridars* died or was dismissed the vacancy should not be filled up and their lands which were specially excluded from the Permanent Settlement, should be taken charge of and settled by the collector.
111	*Piran* ..	....	....
112	*Patni, Darpatni, Sepani* taluk.	Burdwan and other Bengal districts.	The *Patni* taluk may be described as a tenure created by the zemindar to be held by the lessee and his heirs for ever at a rent fixed in perpetuity. It is liable to annulment on the sale of the parent estate for arrears of Government revenue, unless protected by common or special registry as prescribed by section 37 and 39 of Act XI of 1859. The tenant is called upon to furnish collateral security for the rent and for his conduct generally but may be exempted from this obligation at the zemindar's discretion. The main condition in the lease is that, in the event of an arrear occurring, the tenure may be sold by the zemindar, and if the sale-proceeds do not cover the arrear, the other properties of the defaulting *patnidar* is liable fo. it. *Patnidars* may sub-let but such leases are not binding on the zemindar, in the event of the tenure being sold.

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No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
112	*Patni, Darpatni, Sepatni* taluk —*contd.*	....	"A *patni* taluk is heritable, capable of being transferred by sale, gift or otherwise at the discretion of the holder, answerable for his personal debts and subject to the process of the civil courts in the same manner as other immovable property. A *patni* taluk is not liable to be cancelled for default in payment of the rent thereof but the tenure may be brought to sale by public auction, and the defaulting *patnidar* is entitled to any surplus proceeds of sale beyond the arrear of rent due thereupon. A *patni* talukdar is entitled to let out the lands composing his taluk in any manner most conducive to his interest, and any engagements entered into by such talukdar with others are legal and binding between the parties to the same, their heirs and assignees: provided, however, that no such engagements shall operate so as to prejudice the right of the proprietor to hold the *patni* taluk answerable for any arrear of his rent in the state in which he granted it and free of all encumbrances resulting from the act of his tenant, the *patnidar*."(1) A *patni* taluk cannot be created by the proprietor of a temporarily settled estate. Section 2, Regulation XVIII of 1812, implies that a proprietor is not competent to enter into engagements with dependent talukdars for any period beyond the term of his own engagement with Government. The proprietor of a temporarily settled estate may create a permanent tenure, because his own proprietry right is permanent but he cannot create a permanent tenure at a fixed rent, because his own engagement with Government as regards the amount of his assessment is not a permanent one. A single *patni* taluk cannot cover the lands of more than one estate. It is quite clear that a *patni* taluk being the offspring of an estate can not be more extensive than the estate itself.(2)

(1) Field's Digest, p. 29., Art. 26.
(2) Board's Miscellaneous Proceedings No. 214 of 3rd. August, 1889.

No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
112	*Patni, Darpatni, Sepatni* taluk —*contd.*	....	Where a *patni* already exists, the zemindar cannot again let out his land in lease of any kind.(1) The effect of the sale of a *patni* for arrears of rent is not *ipso facto* to cancel incumbrances created by the defaulter but to render them voidable if the purchaser wishes to avoid them.(2) A purchaser is not entitled to collect rent at a higher rate than was demandable by his predecessor, without establishing his right to do so.(3) A purchaser of a *patni* taluk at a sale for arrears of rent is not entitled to hold the property free from a customary right or a right recognised by usage which has grown up during the subsistence of the *patni* and under which occupancy-raiyats are entitled to appropriate and convert to their own use such trees as they have a right to cut down, inasmuchas he is not entitled to cancel a *bonâ fide* engagement made by the defaulting proprietor with the resident and hereditary cultivators.(4) The *patni* taluk had its origin in the estate of the Maharaja of Burdwan. At the Permanent Settlement the assessment of this estate was very high and in order to ensure easy and punctual realization of rent, a number of leases in perpetuity were given to middlemen. These tenures are called *patni* or dependent taluks and are in effect leases which bind the holder by terms and conditions similar to those by which a zemindar is bound to the State. The law relating to *patni* taluks is to be found in Regulation VIII of 1819, which defined the relative rights of the zemindars and their subordinate *patni* talukdars, established a summary process for the sale of such tenures in satisfaction of the zemindar's demand of

(1) Board's Miscellaneous Proceedings No. 128 of 2nd September 1882.
(2) Madhusudan Kundu *v.* Ram Dhan Ganguli, 3 B. L. R., 431.
(3) Magaran Ojha *v.* Raja Nilmoney Sing Deo, 21 W. R., 326.
(4) I. L. R., 37 Cal., 322.

No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
112	*Patni, Dar-patni. Se-patni* taluk —*contd.*		rent and legalised sub-letting by *patni dars*. The *patni* system has proved very popular in Western Bengal and is largely availed of by zemindars who wish to divest themselves of the direct management of their property or part of it, or who wish to raise money in the shape of a bonus. Under-tenures created by *patnidars* are called *dar-patni*, and those created by *dar-patnidars* are known as *sepatni* tenures. These under-tenures are, like the parent tenures, permanent, transferable, heritable and otherwise subject to the same incidents. The first effect of this system was to introduce a class of middlemen who had no interest in the raiyat, except to extract from him as much as they possibly could. By degrees, however, the sons and grandsons of the original tenure-holders acquired something of the sense of duty to their tenants which the hereditary possession of landed property gives and it is probable that the raiyat is no worse off now than he would have been, if the system had never been introduced. Nothing in the Bengal Tenancy Act affects any enactment relating to *patni* tenures. (*Vide* section 193, cl.e.).
113	Produce-paying tenancies.	Prevail chiefly in Behar but are to be found in a smaller scale in the Bengal districts also.	The system of rent in kind prevails chiefly in the South Gangetic districts of the Patna Commissionership (*i.e.*, Patna, Gaya and Shahabad), and to a lesser extent in the Monghyr and Bhagalpur districts. There are two broadly different methods of paying produce-rents. Under one, the *aghorbatai*, the crop is divided, and the landlord's share which is generally one-half, is made over to him in kind. Under the other (the *danabandi*) the value of the crop is appraised and the price of the landlord's share is paid to him in money. In Bengal there are two principal systems in vogue—*barga* and *kararí*. Under the *barga* system the cultivator shares half the produce of his field with his landlord. In rare instances the landlord takes a

No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
113	Produce paying tenancies. —*contd.*	....	higher proportion. Under the *kararí* system, the rent is exacted in the form of a fixed quantity of grain, independently of the season's outturn. The *kararí* system is unpopular and harsh in its operation, as the cost of cultivation and the risks of the season fall upon the cultivator alone. Akbar, in the instructions issued to his *malguzars* describe four classes of produce-rents. (1) *Kankut.*—The land on which the crop is standing is measured and the outturn estimated. In case of doubt a portion of the produce is weighed. This corresponds to the *danabandi* or *bhaoli* system of the present day. (2) *Batai.*—The harvest is reaped and divided on the threshing floor. (3) *Khetbatai.*—The field is divided as soon as it is sown. (4) *Langbatai.*—The grain is formed into heaps and a division made. It was pointed out by Akbar that both the *kankut* and *batai* methods are liable to imposition, if the crops are not carefully watched. In recent times it was found that the system of produce rents was attended with grave abuses which sections 69 to 71 of the Bengal Tenancy Act sought to remedy. These sections however proved a dead letter, as they were not made use of to any considerable extent.
114	*Sadua patua*	Behar ..	"A *sadua patua* lease is one in which there is a *zarpeshgi* loan which liquidates principal and interest by deduction from the yearly rent payable to the maliks." (1)
115	*Sanya* ..	....	*See* No. 113.

(1) Mozaffarpur Settlement Report, p. 344.

No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
116	*Sarbarakari*	Parts of Midnapore.	The form of tenure is to be met with in parts of Midnapore. The *sarbarkars* were originally mere servants of the zemindars, who collected rents from the cultivators and enjoyed *jagirs*. Some of these *sarbakars* obtained possession of their villages as farmers only but the tenure having descended for several generations from father to son, a prescriptive right has been created. Under the rules in force, the Collector at the time of making a settlement, must fix the share of the existing rental to be allowed to a *Sarbarkar* and the amount payable by him to the zemindar. *Sarbakari* tenures are neither saleable nor divisible without the consent of the zemindar.
117	*Se-patni* ..	....	*See* under "*patni*" No. 112.
118	*Shamilat* .. taluk.	....	*See* No. 125.
119	*Shikam* ..	....	*See* No. 18.
120	*Sir Shikun*	....	"(Literally broken headed, but stated to be) land broken or separated from the capital or head; granted in charity, by zemindars, *chaudhuris*, *kanangoes*. It is a grant of parcels or portions of land to some public functionary of the village, the priest or perphaps the village washerman or ploughmaker, to induce him to reside there. It is taken a little and little from each zemindar or head, *i.e.*, breaking a little off each head to give for the above purpose, so called *Sir Shikun*, head-breaking."(1)
121	Sir ..	Behar ..	*See* under "Zerat" No. 139.
122	Special tenures.	24-Parganas	"In the vicinity of Calcutta, in Baranagor and Panchanangram there are a large number of permanent tenures of very old standing, which are saleable and heritable, the holders paying rent to Government at fixed rates."(2)

(1) Galloway's India, p. 762.
(2) Bengal Administration Report, 1901-02, p. 97.

No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
123	*Takhsisi* Taluk.	Tipperah	A *takhsisi* tenure is one in which the proprietor reserves to himself a right to enhance the rent after measurement at some future period.
124	Tale *tasya-chukanidar.*	Rangpur ..	*See* No. 22.
125	Taluk ..	....	The word *taluk* is derived from the Arabic word *Alak* which signifies "to hang from," "to depend upon." In Bengal, the *taluk* is usually subordinate to the zemindari; where it is not, it goes under the name of *Huzuri* and constitutes a proprietary interest answering to the description of estate in the Bengal Tenancy Act. The latter class of *taluks* were either those that paid revenue direct to Government before the Permanent Settlement or were since separated from zemindaries to which they appertained. The dependant *talukdars* do not possess any proprietary interest and pay their revenue through the *zemindars* specified in their respective *sanads*. These *taluks*, which are called *Mazkuri* (dependant) or *shikmi* (literally, pertaining to the *shikm* or belly) are tenures within the meaning of the Bengal Tenancy Act. The liability of such tenures to enhancement of rent and the limits of such enhancement are regulated by sections 7 to 9 of the Bengal Tenancy Act. Various forms of tenure, with widely differing incidents peculiar to specific local areas, are included in the generic name of *taluk*. They have been noticed in their proper places. The word *taluk*, it was said in a High Court decision, *primâ facie* imports a permanent tenure.(1) Lands situated within a *zemindari* are *primâ facie* to be considered as part of the *zemindari*, and it is for those who insist on the separation of these lands from the general lands of the *zemindari*, and on their

(1) Krishna Chandra Gupta v. Mir Jafarali, 22 W. R., 327.

No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
125	Taluk—*contd.*	....	settlement as a *shikmi* taluk, to establish their title. But the fact of a *shikmi* taluk not being mentioned in the Decennial or Quinquennial Settlement, and of the lands comprised therein being included in the Decennial Settlement as part of the *zemindari* for which the *zemindar's* land-revenue was assessed, does not afford any very strong evidence against the existence of such a taluk. If a *taluk* was only a *shikmi taluk* paying rent to the *zemindar, the* talukdar was not required to mention it, nor was it necessary for the *zemindar* to do so. An independent taluk would be liable to direct assessment by the Government, and the revenue would have been assessed on the talukdar.(1) The *onus* of proof that a tenure has been held from the time of the Permanent Settlement ordinarily lies on the tenure-holder who raises the plea,(2) but if it is found that a *taluk* is a dependent *taluk*, within the purview of section 51, Regulation VIII of 1793, the burden is on the plaintiff *zemindar* to show that the rent is variable.(3) In a suit for enhancement of rent in respect of land which the defendant claimed to hold as a dependent taluk, it was held that the *onus* was upon the *zemindar* to show that the land was included in the *zemindari* at the time of the Permanent Settlement.(4) In the case just referred to, the question in issue was whether the lands in dispute did form part of the *zemindari* when the Permanent Settlement was made; the plaintiff alleging that they did and the defendant that they did not. It was held that the burden of proof was on the plaintiff. But where the defendant admitted his tenancy, it was held that the *onus* was on him of proving that the tenancy was a permanent one at a rate which could not be altered.(5)

(1) Wise *v.* Bhooban Moyee Debya, 10 Moore, I. A., 174.
(2) Gopal Lal Thakur *v.* Tilak Chandra Roy, 3 W. R. P. C., 1.
(3) Bamasundari Dasi *v.* Radhika Chaudhurani, 13 W. R. P. C., 11.
(4) Ashanulla *v.* Basaratali Chaudhuri, I. L. R., 10 Cal., 920.
(5) Khetrakrishna *v.* Kumar Dinendra Narain Roy, 3 C. W. N., 202.

No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
126	*Tarafs* ..	Chittagong	Permanently settled(1) revenue-paying estates in Chittagong are known as *tarafs*. These estates were measured in 1126 and afterwards permanently settled under the Regulations of 1793. The owners of these estates are called *tarafdars*. Subordinate to *tarafs*, are various degrees of interest of which taluk forms one class. The original unit of each *taraf* was the settler's clearance known as taluk and the *tarafdar* was created during the Muhammadan period as a middleman between the central Government and the talukdars for the purpose of collecting the revenue from the latter. The bulk of the district was then covered with dense forest and what cultivation there was, lay scattered about in small clearances which were like oases in a desert. The *taraf* or estate was therefore only an aggregate of scattered clearances. Such *tarafs* were usually called after the name of the original grantee; and as the settlers were many and scattered all over the district, and, as the number of persons in a position to take up such grants was limited, it happened that one *tarafdar* would acquire clearances in many parts of the district. The extraordinary intermixture of lands of different estates forms a peculiar feature of the revenue system of Chittagong.(2) The majority of the *taraf* is petty estates and there are only eight with an area of 3,000 acres or more.
127	Taluk ..	Ditto ..	The talukdars were originally squatters on jungle lands, who reclaimed them by clearing the jungle, and many of the talukdars are the descendants of the original reclaimers. In permanently settled estates, the taluks are held at fixed rates of rent in perpetuity and are heritable, transferable, and saleable under Regulation VIII of 1819.

(1) The district of Chittagong, as a whole, was not permanently settled in 1793. The permanently settled area forms only two-seventh of the district.

(2) "The extraordinary spectacle not unfrequently occurs of a tank, the bank of which is permanently and the water temporarily settled.

No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
127	Taluk—*contd.*	....	The talukdar's title is based generally on reclamation of waste and clearance of jungle and was not the creation of contract but originated in prescription. He squats down on the taluk first and obtained formal settlement of it later, so that his title arose from occupancy, and was only ratified by the lease subsequently obtained from the *tarafdar*. In his relations with the raiyats under him the talukdar is not a mere middleman. His interest exceeds that of a middleman, for it is the talukdar who originally brought the raiyats on the land, furnished him with capital and was responsible for the success or failure of the enterprise of reclamation. There are, however, many talukdars who have sub-let to middlemen or purchased the title from other talukdars and who have no actual interest in the land beyond the right to collect rent from the raiyats.
128	*Tashkhisi* taluk.	Tippera ..	This is a species of tenure in which the zemindar grants a lease at a rent assessed after a measurement already made.
129	*Tasya Chukanidar.*	Rangpur ..	*See* No. 22.
130	*Thanadari* or *Phauridari Chakran.*	....	....
131	*Thika, Malikana, Arazi, Khoris, Inamat, Birt.*	Behar ..	A *thika* is a farming lease for a term of years. This is an interest very largely held by indigo factories.(1) "*Malikana* is not [always] used [in Behar] in the sense recognised by law, namely, an allowance to a proprietor who refuses to accept settlement of revenue."(2) "The right of *malikana* in Behar was undoubtedly of great antiquity even at the commencement of the British administration. It was not generally met with in Bengal, where *mashahra*, the nearest equivalent, was an allowance of quite a modern

(1) Mozaffarpur Settlement Report, p. 149.
(2) *Ibid.*

No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
131	*Thika, Malikana, Arazi, Khoris, Inamat, Birt*— contd.	....	origin. Even at the present day the frequent use of the term *malikana* by the people of Behar is very striking. It is now usually applied to those cases in which proprietors selling their estates stipulate that so much land (generally from that held in direct cultivation) be assigned to them in perpetuity for their maintenance, with or without the payment of rent. They cease to be responsible for the revenue, and in this way retain sufficient land for their subsistence. Such lands are called *malikana*, and sometimes *arazi*. Sir John Shore's explanation of the origin of true *malikana* is probably correct. A middleman was found with vested rights. Akbar determined to deal direct with the *raiyats*, and the middleman was compensated with an allowance. This would explain why *malikana* did not exist in Bengal, to which Akbar's revenue system was never extended in its entirety.''(1) ''In the time of the Moghals, it was an invariable custom to allow proprietors, whose estates were leased to *amils* or farmers, an allowance for their maintenance.....The custom largely prevails for proprietors, when alienating their estates, to retain some land for their own maintenance. They may or may not be responsible for the Government revenue, but this in any case is a private arrangement, not binding on Government, for the purchaser is recorded in the land registration register for the entire share of the estate. The so-called *malikanadars'* rights are permanent, while a *khoris*, on the other hand, is a grant of land given for maintenance by a relative to the grantee for the period of his life-time. The *khorisdar* is rarely, I believe, responsible for the Government revenue of the land so alienated. An *inamat* is a rent-free grant given to a Muhammadan as a reward. It is permanent and transferable. A *birt* is a rent-free grant made to a Hindu for religious purposes. It

(1) Mozaffarpur Settlement Report, p. 46.

No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
131	*Thika, Malikana, Arazi, Khoris, Inamat, Birt*—contd.	....	is also permanent and transferable."(1) *Malikana* in Bengal is an allowance granted to a proprietor excluded from settlement.
132	*Tinkathia patti Dehai.*	....	*See* No. 9.
133	*Upanchauki*	Rangpur ..	In Rangpur a permanent tenure is found which is called *upanchauki*. It is a grant in perpetuity for religious services at a nominal quit rent, and is hereditary and transferable. If liable to enhancement of rent, it is distinguished as a *mazkuri*.
134	*Utbandi* ..	Nadia and other districts of the Presidency Division.	*Utbandi* means "assessment according to cultivation," from *Uthut*—risen, and *bandi*—assessment. There are different types of *utbandi* which however may be generally described as a tenancy at will. In Nadia there are two broadly different classes of land tenure known as (i) the *jamai* and (ii) the *utbandi* systems. *Jamai* lands are held as ordinary occupancy holdings. As to *utbandi*, it is difficult to frame a comprehensive definition which will cover all the various types which are found to prevail in different localities. In 1861 Mr. Montresor described the system as follows :— "The *utbandi* tenure apparently has its origin in this district and is peculiar to Nadia. There is in almost every village, a certain quantity of land not included in the rental of the raiyat and which, therefore, belongs directly to the recognised proprietor of the estate. This fund of unappropriated land has accumulated from deserted holdings of absconded tenants, from lands gained by alluvion, from jungle-lands recently brought into cultivation by persons who hold no leases, and from lands termed *khas khamar*, signifying land retained by the proprietor for his household.

(1) Mozaffarpur Settlement Report, p. 149.

No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
134	*Utbandi*—contd.	....	"In other districts, lands of the three first descriptions are at once leased out to tenants but in Nadia it appears to be different. Owing either to the supineness of the landlord or to the paucity of inhabitants, a custom has originated from an indefinite period of the raiyats of a village cultivating, without the special permission of the landlord, portions of such land at their own will and pleasure. The custom has been recognised and established by the measurement of the lands at the time the crop is standing, through an officer on the part of the landlord styled *halsana* and when the assessment is accordingly made." In the report of the Government of Bengal on the Tenancy Bill (1884), the *utbandi* holding was described as follows :— "A tenancy from year to year, and sometimes from season to season, the rent being regulated not, as in *hat hasili*, by a lump payment in money for the land cultivated, but by the appraisement of the crop on the ground, and according to its character. So far it resembles the tenure by crop appraisement of the *bhaoli* system, but there is between them this marked difference, that while in the latter the land does not change hands from year to year, in the former it may." In *Beni Madhab Chakravarti* v. *Bhuban Mohan Biswas*(1) decided in 1890, Pethcrham, C. J., and Tottenham, J., rejected the earlier opinions of judges and after discussing the views of Sir William Hunter and of Sir Henry Cotton and the reports of the Collectors of the Presidency Division observed "These descriptions of *utbandi* do seem to refer rather to particular areas taken for cultivation for limited periods and then given up, than to holdings of which parts are cultivated and other parts lie fallow, while the rent for the whole is assessed year by year with reference

(1) I. L. R., 17 Cal., 393.

No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
134	*Utbandi*—contd.	....	to the quantity within the holding under cultivation in that year. A holding of the latter description hardly seems to answer to the general conception of *utbandi*." The amount of rent of *utbandi* land is regulated by, and varies according to, the area which the tenant may cultivate from year to year, the tenant being at liberty to relinquish at the end of the year any portion of the land cultivated in the previous year, or to take up new land with the landlords' consent, express or implied; and the landlord being at liberty to oust the tenant from the whole or any part of his *utbandi* land that he may think fit at the end of the year. This is the normal type of *utbandi* which however is liable to considerable variation in regard to minor incidents. Some of the more important variations are noticed below :— (*a*) In some cases *utbandi* land is let for only one year : while in others, it is let for three years. (*b*) In some cases *utbandi* land is held by the same tenant continuously : that is to say, though the land is called *utbandi*, the tenant cultivates it continuously and does not allow any part of it to lie fallow ; in other cases *utbandi* land is periodically fallowed. (*c*) In some cases rent is paid on the area cultivated, according to a recognised and established rate ; in others, the rate varies from time to time and is regulated by agreement with the tenant. (*d*) In some cases the rate varies with the crop grown ; in others, the rate is independent of the crop. (*e*) In some cases the tenant has to obtain the landlord's previous consent before taking up and cultivating *utbandi* land ; in other cases express consent is not necessary.

No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
134	*Utbandi*—contd.	....	The tenants of *jamai* lands are not different or distinct from those occupying *utbandi* lands. The same individuals usually hold some land on the *jamai* and some on the *utbandi* system, in one and the same village or estate. There is generally no difference between the quality of *jamai* and *utbandi* lands but the rent paid for *utbandi* is double that paid for *jamai* land. Mr. Radice, late Collector of Nadia, writing in 1902 expressed the opinion that there is no difference between *naksan* properly *loksan*, and *utbandi*. Mr. Taylor formerly Collector of Nadia, who held charge long before Mr. Radice, described *loksan* as being "*jamai* land relinquished by raiyats and not re-let to fresh raiyats." *Utbandi* land is sometimes confounded with *khas khamar*(1) but the nature and incidents of *khamar* as defined in sections 116 and 120 of the Bengal Tenancy Act are entirely different from those of *utbandi*. The *utbandi* system probably originated from the mutual convenience of landlord and tenant at a time when land was abundant, population sparse and fallowing profitable. As population and demand for land increased, shifting cultivation developed into settled cultivation elsewhere but in Nadia the transition was retarded partly by the comparative lightness and poverty of the soil and partly by the demand for indigo cultivation which was extensively carried on in former days, the successful growth of which needed more frequent change of soil in Nadia than in the richer lands of Behar. The interests of agricultural economy required that land should be allowed to lie fallow in order to recruit its productive powers. Analogous archaic systems of land tenure may be traced in Gya and Chota Nagpur. The effect of section 180 of the Tenancy Act is that a tenant cannot acquire occupancy rights in a plot of *utbandi*

(1) Mirzan Bisvas *v.* Hills, 3 W. R., Act X, 159.

No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
134	*Utbandi*—contd.	....	land unless and until he has held that particular plot for twelve years continuously. In fact however landlords and raiyats believe that practically speaking occupancy rights can *never* be acquired in lands held under this system. The evils of the *utbandi* system came prominently before the Government of Bengal during the years 1900-1903. In 1900, the Collector of Nadia reported that advantage had been taken of the prevalence of this system to extort excessive rents. The remark attracted the attention of Government, and an enquiry was held chiefly with a view to ascertain whether any amendment of the law was necessary. After considering the matter in all its bearings, the Lieutenant-Governor came to the conclusion that "the system, though theoretically unsound, is practically unobjectionable and that the need for change is not acute." The local authorities were however enjoined to keep a vigilant watch over the system and to promptly bring to the notice of Government any signs of its abuse.
135	*Wakf* ..	....	*Wakf* lands are rent-free lands appropriated for Muhammadan religious or charitable purposes. Like the *debottar* lands of Hindus, *wakf* lands are neither liable for the debts of the testator, whose proprietary rights cease after the completion of the endowment, nor alienable, though transferable temporarily for the preservation or benefit of the endowment or the mosque. It has been held that if the property is *wakf*, *i.e.*, if all the profits are devoted exclusively to religious or charitable purposes, the *Mutwalli* or the Superintendent of the endowment, having only a life-interest, is incompetent to grant leases for a longer period than the term of his own life; but if the office is hereditary, and the *Mutwalli* has a beneficial interest in the property, the *wakf* land is heritable, though burdened with a certain trust.

No.	Name of the tenancy.	Locality in which it prevails.	Description and incidents.
136	*Zarpeshgi*.	Behar ..	A *zarpeshgi* is a usufructuary mortgage. It has been held by the Privy Council that a *zarpeshgi* lease is not a mere contract for the cultivation of land, but is a security to the tenant for his money advanced. The tenant's possession is, in part at least, that of a creditor, operating to pay himself and is no foundation for a claim for occupancy rights.(1) It is only where the contract is merely for the cultivation [illegible] that a deed which might be called a *zarpeshgi* would create a *raiyati* interest.(2) A *Kara Zarpeshgi* lease is one in which only the interest is payable yearly and the principal is repayable at the end of the term.(3)
137	*Zirat, Kamar, Kamat.*	Behar ..	Proprietor's private land. Corresponds to *Khamar* in Bengal. *See* under "*Khamar.*" No. 66.

(1) Bengal Indigo Co. *v.* Raghobur Das, I. L. R., 24 Cal., 272.
(2) Ram Khelawan Roy *v.* Sambhoo Roy, 2 C. W. N., 758.
(3) Mozaffarpur Settlement Report, p. 344.

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