

recording mutations is one of the duties set forth in the memorandum given to village headmen on appointment, and the *lambardar* of the *patti* in which a mutation takes place is expected to attest by his seal or signature the report made on it by the *patwari* for the orders of the revenue officer.

• 374. Registrars and sub-registrars send monthly to *tahsildars* Reports of particulars of all registered deeds which purport to transfer agri- registered cultural land. The entries relating to each deed are made on a deeds. separate slip. The office *kanungo* forwards these slips to the field *kanungo* of the circle, who distributes them to the *patwaris* concerned.

375. The *patwari* keeps up a register of mutations in which Register of he records all acquisitions of rights of the kinds described in the mutations, preceding paragraphs, reported to him or which he "has reason to believe to have taken place," except those relating to land revenue assignments and undisputed mutations of tenants-at-will, "as soon as they are acted on." The last words do not occur in the Act, but in a rule framed under it.* They were seemingly introduced to carry out the principle that the revenue officer who is revising a record of rights is concerned only with rights actually enjoyed by the persons claiming them.† But a mere entry in the register cannot cause any alteration in the *jamabandi* without an order by a revenue officer, and for the sake of convenience the *patwari* enters all transfers by registered deed, of which he has received intimation under the procedure described in the last paragraph. It is the duty of revenue officer to refuse to sanction the mutation in such a case unless he is satisfied that the transfer has actually been completed.‡

376. The form of the mutation register with instructions re- Copy of regarding the making of entries in it will be found in Revenue mutation register filed Circular 30. It is kept up in duplicate, one copy being retained by the *patwari* and the other sent to the *tahsil* to be attached to the with *jama-* *jamabandi* as an authority for the new entries which it contains. *bandi*. The *patwari's* report, the attestation of it by the field *kanungo*, and the order of the revenue officer are written only in the copy of the register to be filed with the *jamabandi*. It is enough in the *patwari's* copy to show how the case was disposed of by entering the briefest possible abstract of the order, and this abstract should be written by the revenue officer with his own hand. §

377. Within a week of writing an entry in the register the Public notice *patwari* must make it known by putting up a copy of it in some of mutations. public place in the village. This copy is taken from his own register, and does not include his report on the proposed mutation.

* See Act XVII of 1887, Section 34 (3), and Land Revenue Rule 45.

† See paragraph 369.

‡ See also paragraph 27 of Revenue Circular 30.

§ See also general instructions appended to form of mutation register in Revenue Circular 30.

Officers on tour should see that the notices are published and that they continue to be exhibited until the cases to which they relate have been disposed of.

Undisputed
entries relat-
ing to tenan-
cies-at-will

378. The only alterations in the *jamabandi* which the *patwari* can make of his own authority are undisputed mutations of tenants-at-will. These are not entered at all in the register. When the new *jamabandi* is being compiled they are taken straight from the *khassra girdawari*.^{*} Disputed changes of tenants-at-will are treated exactly like other mutations.

Orders in
mutation
cases.

379. Orders in mutation cases can be passed by an Assistant Collector of either grade. In practice nearly the whole of the work is disposed of by *tahsildars* and *naib tahsildars*. In a country of small peasant proprietors the number of mutations to be attested annually is very large, and it is found necessary every year to appoint in some districts one or more extra *naib tahsildars* selected from the lists of accepted candidates and to invest them with the powers required for the disposal of business under Chapter IV of the Land Revenue Act. An appeal of course lies to the Collector against orders sanctioning or refusing mutation of names.

Mutation
work largely
done by
officers of no
great stand-
ing or
experience.

380. It is clear from what has been just said that much of the mutation work is done by officers of small standing and little practical experience. It is also true that the work has often to be carried out very rapidly, if the important object of keeping the *jamabandi* up to date is to be attained. These are matters for reflection considering that each *jamabandi* now possesses the same authority as a record of rights drawn up at settlement.[†] Fortunately the bulk of the work is exceedingly simple; there is no dispute as to facts, and no opening for doubt as to the order that should be passed. But this is by no means true universally, and cases find their way into the mutation register which require both care and knowledge to decide correctly.

Supervision
of work by
Deputy Com-
missioner and
Revenue
Assistant.

381. A Deputy Commissioner ought not therefore to regard the few appeals which come before him as a sufficient test of the work. Unfortunately it cannot be effectively examined in the villages, because the sheets on which the *patwaris'* reports and the revenue officers' orders are recorded are sent straight into the *tahsil*. But when a Deputy Commissioner or a Revenue Assistant is inspecting a *tahsil*, the mutation work of the *tahsildar*, *naib tahsildar*, and any extra *naib tahsildar*, who may have been employed, should all be brought under review. With the *jamabandi* of an estate lying open before him it is perfectly easy to pick out all the holdings in which changes have been made, for in support of them references to the mutation register are always given. If the inspecting officer looks up each case in the register, he can soon satisfy himself as to the quality of the work of the reporting *patwari* and of the Assistant Collector. Having done so, he can turn back to the *jamabandi*, and see whether the changes ordered have been correctly made. If this process is repeated for several estates in

^{*} See paragraph 359.

[†] See paragraph 368.

the circles of the *tahsildar* and *naib tahsildar* respectively, the Deputy Commissioner cannot fail to gain a considerable insight into the value of the work done by both these officers, and by some of the *patwaris* and *kanungos* under their control. In examining mutation sheets special attention should be paid to orders passed in the absence of any of the parties. No order should be passed affecting the share of any right-holder who has not had an opportunity of appearing.

382. *Tahsildars* and *naib tahsildars* are expected to deal with revenue work, and especially with cases relating to *lambardars*, land revenue assignments, partitions, and mutations, within the estates in which the cases have arisen. The extent to which this obligation may be relaxed with the express permission of the Deputy Commissioner has been noted in paragraph 247.

Mutations to be attested on the spot,

383. Every mutation order should show on the face of it the place where, and the date on which, it was passed, and that all the parties interested were present, or, if any one was absent, the way in which his evidence was obtained, or, if it was not obtained, what opportunity was given to him to be present. No detailed record of the statements of parties and witnesses is required, but the order should note briefly the persons examined and the facts to which they deposed.* The facts on which the order is based should be stated succinctly but clearly, and the order must show without any possibility of doubt whether the revenue officer accepts the new entry proposed by the *patwari* as it stands, or, if it requires amendment, exactly what the entry is which is to be made in the *jamabandi*. The order must always show whether a share of the village *shamila* has been included in the transfer.

Contents of mutation orders.

384. A person who, after receipt of notice by summons or proclamation to appear before a revenue officer at some place within the estate in which he ordinarily resides or cultivates land, fails to present himself, becomes liable to a fine not exceeding Rs. 50.† This provision can suitably be put in force when the default is wilful and contumacious. But, where a man's attendance would involve an amount of inconvenience which under all the circumstances could reasonably be regarded as excessive, the proper plan is to take his evidence by commission.

Attendance of parties.

385. Disputed cases may be referred to arbitration with or without the consent of the parties,‡ but little use is made of this provision of the Act. Where it is resorted to care must be taken to make the arbitrators understand that they must give a clear opinion as to the question whether the right claimed is actually enjoyed. If the revenue officer cannot satisfy himself as regards the fact of possession and thinks it inexpedient to refer the point to arbitration, he is required to make a summary enquiry as to title, and to direct that the person who appears to have the best right to the property shall be put in possession of it, and that his name shall be entered in the

* Land Revenue Rule 264(1).

Section 149.

Section 127 (2) (a).

jamabandi.* The disappointed claimant must be referred to the civil courts for the establishment of any right he conceives himself to have.†

Importance of prompt disposal of mutation work.

386. Mutations which have not been attested before the end of the agricultural year (15th June) are not incorporated in the *jamabandi* then under preparation. This in most cases means that they will not be brought to record till more than four years after they have taken place. This untoward result can easily be avoided if *tahsildars* and *naib tahsildars* lay out their work properly, and pay special attention to the estates for which *jamabandis* are about to be drawn up.

Jamabandi.

387. The chief work of the *patwari* between the completion of the *Rabi girdawari* and the beginning of the *Kharif* harvest inspection is the compiling of the *jamabandi*. It is drawn up in duplicate and ought to show by whom the land is held as owner or mortgagee at the end of the agricultural year and by whom it was cultivated in the *Kharif* and *Rabi* harvests of that year. All payments of rent and revenue made up to the 15th of Bhadon, which corresponds roughly to the end of August, should be embodied in it. One copy should be filed in the *tahsil* by the 7th of September, the other being retained by the *patwari*.

Jamabandi of most estates prepared quadrennially.

388. The Act contemplates the framing of an annual record of rights for each estate, but at the same time it allows the Financial Commissioner to direct its preparation at longer or shorter intervals. For many years after the Act was passed an attempt was made to compile a *jamabandi* annually for every village, the entries being curtailed to some extent for three consecutive years and given at full length in the fourth. This plan of having abbreviated and detailed *jamabandis* caused useless trouble, and the present rule is to draw up a complete *jamabandi* for each estate or part of an estate once in four years.‡ Lists are made showing what record work the *patwaris* are to do in each year. If a *patwari* has four or more small villages in his circle, it is easy to distribute the work over the different years. If the estates are fewer in number, one or more of them may have to be split up into two or more parts for this purpose. Each part should, as far as possible, consist of one or more complete sub-divisions (*parttis* or *tarafs*). In referring to the latest *jamabandi* of any particular village, the year to which the entries relate must be noted. If this is not the last agricultural year, any changes which have occurred since the *jamabandi* was compiled can be ascertained by turning to the mutation register.

* Section 36 (2). Such an order can only be passed by an Assistant Collector of the 1st grade (Notification No. 76, dated 1st March 1888).

† If he does not admit dispossession, his suit may be one for a declaration of his right under Chapter VI of the Specific Relief Act, I of 1877 (Section 42).

‡ Section 33 (1).

§ Abbreviated *jamabandis* are still prepared yearly in some districts for estates under fluctuating assessment and those subject to alluvion and diluvion rules. For the cases in which they may be dispensed with, see Director of Land Records' No. ³³⁸⁴ 1-5 dated 13th December 1901, and Circular Letter No. 7, dated 20th December 1901. Detailed *jamabandis* should be prepared for all estates in the year preceding a general re-assessment.

389. *Patwaris* must not be collected at the *tahsil* or anywhere else to write up *jamabandis*. Every man must do the work in his own circle. If it is not finished in time, and the only way to get it done is to have the *patwari* under constant observation, he can be brought into the *tahsil* for a short time in the month of September.

Jamabandis to be compiled by the *patwari* in his own circle

390. The field *kanungo's* check of the *jamabandis* while they are under preparation should be constant and systematic. He is responsible that all the mutations ordered since the last *jamabandi* was drawn up, probably four years previously, are correctly incorporated. He must attest all the entries holding by holding in the presence of the *zamindars* concerned.* This work can be carried on *pari passu* with the progress of the *patwari's* work. At each of his visits the *kanungo* can collect the landowners and tenants whose holdings have been attested since his last visit, and read out the entries in their hearing.

Attestation by field *kanungo* in village.

391. In addition to the attestation work carried out in the villages, field *kanungos* spend September at the head-quarters of the *tahsil*, and devote their attention during that time to the checking of the *jamabandis* filed by the *patwaris*. The check carried out at the *tahsil* is chiefly directed to seeing that mutations have been properly incorporated and that the statistical statements filed with the *jamabandi* are correct.

Check at *tahsil* by field *kanungo*.

392. The *naib tahsildar* or *tahsildar* in charge of the circle should satisfy himself by checking in the village at least 25 per cent. of the entries that the attestation has been carefully done, and that the *jamabandis* are correct and up to date with the possible exception of unattested mutation cases, of which with proper arrangements there should be few or none.

Check by *naib tahsildar* and *tahsildar*.

393. In the notes which they record at the end of the *jamabandi* the *kanungo* and the revenue officer must state exactly what they have done in the way of scrutiny and check, and they should each include in their note a list of any amendments which they have made. The revenue officer must include in his note a list of the holdings he has checked. The degree in which the *jamabandis* last prepared are really up to date is a matter to be tested at *tahsil* inspections.

Notes at and of *jamabandi* should show amount of check exercised.

394. The statistical returns which are based on the mutation register and *jamabandi*, and which form appendices to the latter document, will be dealt with in the next chapter.

Statistical returns based on *jamabandi*.

* This order does not apply to abbreviated *jamabandis* where such are still prepared.

CHAPTER XI.

BICSE
AGRICULTURAL STATISTICS.

Continuous agricultural statistics part of reform initiated in 1885.

395. No part of the reform undertaken in 1885 was more valuable than that which provided for a reliable continuous record of agricultural statistics.

Old system

396. Under the old system a village note-book was prepared for each estate, which contained a useful set of statistics and the Settlement Officer's remarks on its assessment.* In addition elaborate tables containing much valuable information were compiled for each assessment circle and tahsil.† But once the settlement was over no attempt was made to keep these records up to date; indeed with the agency then existing such an attempt would have been vain. This is clear from the fact that Settlement Officers found it impossible to make any use of most of the statistics which *patwaris* were supposed to collect, and could not even find statements of the results of past harvests on which they could place the least reliance.‡

Value of present continuous record to district officers.

397. Fortunately this has all been changed. If a continuous record of agricultural statistics is essential for the assessment of the land revenue, it is equally important for the success of ordinary district administration. A Deputy Commissioner who makes an intelligent use of it will walk safely where the Deputy Commissioner who neglects it will stumble. Of course no study of figures can take the place of personal knowledge and sympathy, but the latter without the former will not save an officer from ill-considered action, and will not enable him to prove to his superiors, as our system of administration with reason often requires him to do, that the action he has taken or purposes to take is right. When a man is found decrying statistics there is often ground for suspecting that he is either too lazy or too ignorant to make a proper use of them.

Village note-book.

398. For each of the estates in his circle the *patwari* keeps up a vernacular revenue register or note-book which contains the following nine tables:—

- (1) Area Statement or *Milan Rakba*.
- (2) *Kharif* crop Statement or *Jinswar*.
- (3) *Rabi* crop Statement or *Jinswar*.
- (4) Revenue Account or *Jama Wasil Baki*.

* Paragraphs 53, 67, 76, 80, 84 and Chapter XXV of the Settlement Manual should be read in connection with this Chapter.

† See paragraph 82 of the Settlement Manual.

‡ See paragraph 307 of the Settlement Manual.

(5) Statement of Transfers of Rights of Owners and Occupancy Tenants.

(6) Statement of Ownership, Mortgages, and Revenue Assignments.

(7) Statement of Cultivating Occupancy.

(8) Statement of Rent paid by Tenants-at-will.

(9) Statement of Agricultural Stock.

The forms of these statements with detailed instructions for their preparation will be found in Revenue Circular No. 80.

399. In the first five entries are made year by year, in the next three every fourth year when a new *jamabandi* of the estate is drawn up. The return of agricultural stock is prepared quinquennially, and embodies the result of a special enumeration made by the *patwari* in all the villages in his circle every fifth year in the month of February. The originals of all these statements are sent to the *tahsil* as soon as the figures have been copied by the *patwari* in the corresponding forms in his village note-book. It would be hard to exaggerate the importance of their correct preparation,* and the field *kanungo* is bound to help the *patwari* in compiling them, and is held personally responsible for their accuracy.

Remarks registers.

400. The *tahsil* office *kanungo* keeps up a note-book for each village containing the nine registers mentioned above and a tenth relating to the assessment of the estate, the figures in which are compiled once for all at Settlement. The other returns only differ from those in the *patwari's* village note-book, in so far as the headings of the registers are printed both in English and in Vernacular and the entries are made in English figures. In the 10th or assessment statement the remarks of the Settlement *tahsildar* or Extra Assistant Settlement Officer, or of both on the estate are recorded,* and it is the duty of the *tahsildar* to supplement these by brief notes on the subsequent history of the village in each year in which its *jamabandi* is drawn up,† and at other times, whenever any event occurs which seriously affects the wellbeing of the estate. Such a note should always be made when it becomes necessary to suspend the recovery of any part of the land revenue demand, and subsequent recoveries or remissions, and the reasons justifying them, should also be recorded.

Office *kanungo's* copy of village note-book.

401. The office *kanungo* also keeps up note-books for each assessment circle and for the whole *tahsil* containing these ten registers. There are blank pages at the end for the entry by the *tahsildar* and Revenue Assistant of general remarks applicable to the assessment circle or *tahsil*. Field *kanungos* are required to report

Assessment Circle and *Tahsil* note-books.

* See paragraph 428 of the Settlement Manual.

† The *tahsildar's* remarks made in the year in which a *jamabandi* is prepared may be arranged under heads corresponding with those of Statements 2 to 9, and refer to any noteworthy changes which have occurred in the four years which have elapsed since the preparation of the previous *jamabandi*. Any further general remarks, which seem necessary, may be added. As to remarks by qualified *naib-tahsildars* see paragraph 54 of Revenue Circular 80.

the prices of produce prevailing at harvest time at selected centres in each assessment circle for entry in the circle note-books. The centres and the dates of report have been separately determined for each district. The prices should be those at which the produce of each harvest was actually disposed of. The field *kanungos* should fix the rates after careful enquiry from *zamindars*, *sahukars*, &c., and his entries should be carefully checked by the *tahsildar* and Revenue Assistant. The rates given by the field *kanungos* for each circle should be compared with each other and large discrepancies enquired into. In the case of rice and cotton the prices of "unhusked rice" and "unginned cotton" should be quoted.

Importance
of regular
record of
notes on
villages by
tahsildars.

402. *Tahsildars* should be encouraged to record such remarks regularly. The Deputy Commissioner and the Commissioner should discuss with him the contents of such notes at their *tahsil* inspections. This is a very practical way of testing his knowledge of his *tahsil* and, provided the notes are good ones, of adding to one's own. Any tendency to diffuseness must be discouraged, but one should not be too impatient with that common fault of native officials, if the remarks show that the writer has a real grasp of his subject.

Assessment
Circle, *tahsil*
and district
note-books
kept up by
district
kanungo.

403. The district *kanungo* keeps up, for each assessment circle and *tahsil*, and for the district as a whole, registers in the same form as those maintained by office *kanungos* at *tahsils*.

English
Village Note-
book drawn
up at
Settlement.

404. A copy of the English village note-book as drawn up at the last settlement containing the remarks of the Settlement Officer on the estate and its assessment is kept at head-quarters. It is unnecessary to maintain the registers in this copy up to date. When he wishes to study the agricultural statistics of the estate for the years during which the current settlement has been in force, the Deputy Commissioner can always send for the *tahsil* copy of the village note-book. The original idea was that the Deputy Commissioner should record his own remarks from time to time in the English note-book kept at head-quarters. But a more convenient place for recording them is the Abstract Village Note-book introduced in 1896, and it is now the rule for Settlement Officers also to enter their remarks in the abstract and not in the detailed note-book.

Abstract
Village Note-
book.

405. The Abstract Village Note-book of an estate is a short statement, in which its chief agricultural statistics are exhibited in a single sheet of twenty-four columns, with space for annual entries and quinquennial averages covering a period of twenty years. Spare leaves for the entry of remarks are appended to each sheet. The abstracts for all the estates of a fairly large assessment circle can be brought together in a volume of moderate size. All the figures in the abstract with a single exception are taken straight from one or other of the first six registers in the vernacular village note-book. It is an excellent plan to enter on a separate sheet at the end of the volume the totals for the assessment circle.* The volumes are kept at the *tahsil*, and

* These totals should be taken straight from the assessment circle note-book.

it is the business of the office *kanungo* to make the necessary entries in them year by year. The question whether it is desirable to modify the ordinary form to suit local conditions is considered as each district comes under settlement.

406. The bringing together of the salient features of the agricultural and fiscal history of an estate into this narrow compass has been a very useful measure. When the Deputy Commissioner or any trained Assistant Commissioner goes on tour he should take with him the volumes of abstract village note-books belonging to the tract to be visited, and should constantly refer to them. But it must not be supposed that these abstracts supersede the detailed village note-books. When any close enquiry into the circumstances of an estate is required, the officer who makes it should have both the abstract and the note-book before him. If he is in camp he can easily consult the *patwari's* copy of the latter, and, if he wishes to see the assessment statistics embodied in Statement 10, and the remarks of the *tahsildar* and the Revenue Assistant, he can call for the office *kanungo's* copy.

Use of
Abstract
Village
Note-book.

407. It is the duty of the Deputy Commissioner to enter remarks about any village in which circumstances arise that are worth recording. * The ideal to aim at is the maintenance of a continuous revenue history of each estate to which the Deputy Commissioner of the day and the Settlement Officer of the future can refer to with confidence. Clear and concise contemporary notes by an experienced revenue officer who has inspected an estate and enquired into its circumstances either as part of the ordinary routine of a tour or for any special reason cannot fail to be valuable. Such notes may be written by the District Officer himself, or by the Revenue Assistant, if he knows English, or by any Assistant whom the Deputy Commissioner considers to possess sufficient experience.

Entry of
remarks by
Deputy Com-
missioner.

408. Revenue administration, as remarked already, depends very largely on the success with which the records to which this chapter relates are kept up and made use of, and there is no subject to which Commissioners ought to give more attention during their inspection tours.

Duties of
Commis-
sioner with
reference to
agricultural
statistics.

* The XXVth Chapter of the Settlement Manual may usefully be referred to in this connection.

CHAPTER XII.

RIVERAIN LAW AND REASSESSMENT OF LANDS AFFECTED BY RIVER ACTION.

Meaning of riverain law.

409. Riverain law is concerned with the effect on rights in land of river action, which is usually qualified according to its nature by the terms erosion, accretion, and avulsion.

Alluvion and Diluvion.

410. The two former are applied to the process by which land is sucked into the channel by the inset of a river at one place and fresh land exposed at another by its retirement. The loss and gain thereby caused are respectively described as diluvion and alluvion.*

Avulsion.

411. The word avulsion is an unhappy one to describe what takes place in the Panjab when part of an estate is transferred in a recognizable condition from the right to the left bank of the main channel of a river or *vice versa*. It suggests that a cantle of land is torn bodily away from one bank and carried to the other bank or to a different part of the same bank. The Roman law provided for such cases, and presumably they are occasionally met with in small and rapid European streams, but they are unknown in the plains of the Panjab.† There a large river after it has penetrated some way from the hills has usually a wide valley bounded on either side by old banks or by broken land with a strong upward slope. These banks or slopes indicate the extreme limits of the wanderings of the stream. The valley is seamed with channels, some now dry all the year round except in heavy floods, some dry in the cold weather and running in the hot, and some in the case of the largest rivers containing water throughout the year. The main channel (*dhār kalān* in the vernacular of revenue officials) gradually gets silted up, and the force of the stream is diverted into some other bed, which in its turn becomes the principal one. This shifting of the stream from one bed to another may leave much of the land between them unaffected. Avulsion means, not the movement of land, but that of water.

Regulation XI of 1825.

412. These various kinds of river action are all provided for in Regulation XI of 1825, which was the law on the subject with which the first administrators of the Panjab had been familiar in the North-West Provinces. The new province was not subject to the Bengal Regulations, but twenty-three years after annexation Regulation XI of 1825 was expressly extended to it by the third section of the Panjab Laws Act, IV of 1872, and it is still in force.‡

* These terms are borrowed from the Roman law. See the Institutes of Justinian, Book II, Tit. I, Section 20.

† See Institutes of Justinian, Book II, Tit. I, Section 21, and compare the provision as to avulsion in Section 6 of the Indian Alluvion Bill of 1878—"If a river carries away by sudden violence a considerable and distinguishable part of a bank, and bears it to the opposite bank or to another part of the same bank," etcetera, as to which Mr. (now Sir James) Lyall remarked: "I do not believe that avulsion of the nature described in Section 6 really occurs." (Selections from the Financial Commissioner's Records, New Series No. 9, page 705).

‡ As amended by Section 4 of Panjab Act No. 1 of 1899. See paragraph 426.

413. The Regulation makes custom the rule of decision in all "disputes relative to alluvial land" between private owners, "whenever any clear and definite usage . . . may have been immemorially established."* As an example of such a usage it cites the deep-stream rule pure and simple, by which the main channel, wherever it may happen to be for the time being, forms the boundary between estates on opposite banks of a river, and property in land changes hands with every alteration in its course.

Custom primary rule of decision.

414. In the absence of well established local usages† two rules of decision are laid down:—

Rules of decision in absence of custom.

- (1) Land added gradually owing to the "recess" of a river is to be considered an increment of the property of the person to whose holding or estate it has become annexed,
- (2) When a river—
 - (a) by a sudden change in its course breaks through or intersects an estate, or
 - (b) by the violence of its stream separates a considerable piece of land from one estate and joins it to another, "without destroying the identity and preventing the recognition of the land so removed" the land is to remain the property of the original owner.‡

This may be called the deep-stream rule modified to meet the case of avulsion.

415. Islands thrown up in large and navigable rivers, the beds of which do not belong to private owners, are to be at the disposal of the Government, if the channel between the island and the river bank is unfordable throughout the year. If the channel is fordable the island is to become an accession to the estate on the nearer of the two banks. In the case of small rivers, the property in whose beds and the right of fishery have been recognized as belonging to a private owner, the island is also to belong to him.§

Islands.

416. In other cases not governed by the rules the Courts are to be guided by the best evidence obtainable as to local custom, or, in default of such evidence, by general principles of equity and justice.||

Cases not governed by the rules.

417. The extent to which "clear and definite" and "immemorially established" local usages as to the effect of river action on property in land existed in the Panjab at the time of annexation seems open to doubt. Where disputes had arisen, probably the victory had generally fallen to the party which could muster most clubmen, or could pay the biggest bribe, decorously veiled under the name of *nazrana*, to the ruler of the day. In some cases the usages recorded in the first settlements may have had a traditional basis, in others they no doubt represented what the headmen assisted by the officials considered ought to be enforced for the future.

Probable absence of definite customs in the Panjab.

* Section 2.

† Section 3.

‡ Section 4 (1) and (2).

§ Section 4 (3) and (4).

|| Section 4 (5).

See also paragraph 192 of the Settlement Manual.

Deep-stream
rule pure and
simple.

418. The "deep-stream rule" is expressed by various vernacular terms, *hadd sikan dri, kach mach, daryabanna, kishki banna, machhi sim*. It probably existed in its most rigid form in some parts of the province before 1845. Even where no such usage was of great antiquity, it would naturally spring up whenever the opposite banks of a river came to be held by rival chiefs each eager to support the claims of his own subjects. It was recorded as the prevailing custom on the Bias, where it forms the dividing line between the Gurdaspur and Hoshiarpur districts.

Deep-stream
rule modified
to meet case
of avulsion.

419. As a rule regulating the ownership of land it is so harsh in its working that it was universally condemned by British Officers. It may be partly on this account that in the vast majority of estates elsewhere in the Panjab, which are recorded as following the deep-stream rule, it is declared to be subject to the qualification that the transfer of land in an identifiable state by avulsion from one bank of a river to another involves no change of ownership.

Rule of fixed
boundaries.

420. In some cases, for example, on the upper Ravi in the Gurdaspur and Lahore Districts and on part of the Jehlam in the Jehlam district, the rule of fixed boundaries, known as *war par*, prevails.* If it is really ancient it can only have been carried out in a rough and ready fashion under native rule and for many years after annexation. It is the only rule worthy of a civilized administration, but for its successful working it is necessary that the channel should have been mapped, and that the *patwaris* should be sufficiently skilful to relay boundaries obliterated by river action. In most of the older settlements of districts separated by large streams surveys were not carried across their beds, and it is only in recent years that a really competent staff of *patwaris* has been formed.

Panjab River-
ain Pound-
aries Act No.
1 of 1899.

421. As long ago as 1867 Mr. (now Sir James) Lyall proposed the adoption of fixed boundaries everywhere,† but the Financial Commissioner of the day regarded the proposal as impracticable because of the lack of skill in survey work among the subordinate revenue staff‡. This objection has ceased to be valid, and the first Act passed by the Panjab Legislative Council§ was one enabling Government to order the substitution of fixed for varying boundaries in estates subject to river action. It added six sections, 101 A to 101 F, to the Panjab Land Revenue Act, XVII of 1887, and made additions to Section 158 of the same Act, and to the second and third sections of Regulation XI of 1825.

Boundary
how fixed

422. The Act requires that the "boundary line shall be fixed with due regard to the history of the estates and the interest of the persons respectively owning them or possessing rights therein, in such manner as may be just and equitable in the circumstances of each

* See pages 1235, 1236, 1240 and 1241 of Selections from the Records of the Financial Commissioner, New Series, No. 15. This volume contains much information on riverain law in the Panjab.

† Selections from the Records of the Financial Commissioner, New Series No. 15, page 1203.

‡ Selections from the Records of the Financial Commissioner, New Series, No. 15, paragraph 16 of Memorandum by Mr. (now Sir Robert) Egerton on page 1227.

§ Panjab Act No. 1 of 1899.

case.* The instructions issued by the Financial Commissioner regarding the carrying out of this provision of the Act provide that "the Collector should in the first place try to get the villages concerned to come to an amenable agreement." Failing that he "must himself fix a line . . . and in doing so should aim at putting each party in as good a position on the whole as he would have been, taking a long series of years together, if matters had been allowed to continue under the existing law or custom. Among other things he would have to bear in mind that a bird in the hand is worth two in the bush. If, for example, the river were making a dead set upon its right bank, which it was in a high degree likely would continue for some years, some allowance would have to be made for the fact that the riparian owners on the left bank would by our taking action under the Act be deprived of land which would be pretty certain to have accrued to them for some years if we had left matters alone. On the other hand, it should be borne in mind that in all probability after some years the river would begin to work back again, and whatever was reasonable should be allowed *per contra* on this account in fixing the line. The object should be to draw the line as far as possible so that neither party should feel that the other had obtained a very clear advantage by our intervention."

423. If the line adopted transfers land from one estate to another the proprietary rights in the land are also transferred. But in the case of land which is "under cultivation, or reasonably fit for cultivation, or (which) yields any produce of substantial value," it is the duty of the Collector to pass an order suspending the transfer of private rights "unless and until the land . . . ceases to be reasonably fit for cultivation or to yield any produce of substantial value." When any part of the land answers the latter description the transfer becomes complete.† The effect of action taken under the Act is to create a fixed boundary which will at once define the limits of estates, and ultimately in the majority of cases those of private property also.

Effect of relaying of boundary on private property.

424. The land-owners or any of the land-owners of an estate in which has been included land whose transfer *quâ* proprietary right has been suspended by order of the Collector may apply to him to cancel his order and award compensation for the loss of their rights to the existing land-owners. It is within the Collector's discretion to accept or reject such an application.§

Immediate transfer of ownership on payment of compensation

425. By an addition to Section 158 of the Land Revenue Act questions connected with proceedings for the determination of boundaries under Punjab Act No. 1 of 1899 are excluded from the jurisdiction of the Civil Courts.||

Exclusion of jurisdiction of Civil Courts.

426. The boundary in each case is laid down by the Collector. In practice the work has been done by Settlement Officers or special officers invested with the powers of a Collector and working under

Procedure.

* Section 101 A (3).

† Punjab Government Revenue Proceedings, General—No. 29 of January 1900.

‡ Section 101 B (1).

§ Section 101 C.

|| Section 158 (XVIII a).

the orders of the Settlement Commissioner. No boundary line is deemed to have been permanently fixed till it has been approved by the Financial Commissioner.*

Amendment
of Regulation
XI of 1825.

427. Additions made to Sections 2 and 3 of Regulation XI of 1825 make that enactment of no effect after a fixed boundary has been laid down.†

Progress of
work.

428. Already great progress has been made in the work of relaying the boundaries of riverain estates with fluctuating limits. In a year or two the work will be complete, and a constant source of interminable disputes will have disappeared.

Jurisdiction
boundaries.

429. In theory there is no necessary connection between the boundaries of private property and those of jurisdiction. In the case of the latter three kinds of riverain boundaries may be distinguished—

(a) between districts in the same administration,

(b) between two administrations,

(c) between British Administrations and Native States.

Official opin-
ion formerly
favoured
deep-stream
rule pure and
simple.

430. The recognition of the iniquity of the deep-stream rule pure and simple as applied to the ownership of land was quite compatible with the emphatic assertion that it ought to be enforced as between district and district, and between the Panjab and Native States.‡ The reason urged was that the boundary of jurisdiction must be one that could be quickly determined§ and easily recognised, conditions that were only satisfied by adopting as the line of demarcation the main channel for the time being.

The deep-
stream
declared to be
the jurisdic-
tion boundary
along the
Sutlej in
1869.

431. A notification published in 1869 declared the deep-stream of the Sutlej to be the boundary between adjoining districts along its whole course.|| No similar notification has been issued as regards any of the other rivers in the Panjab. The tendency in most places probably was to apply the same rule to the determination of ownership and jurisdiction.

Assimilation
of boundaries
of ownership
and jurisdic-
tion.

432. The view that the deep-stream rule pure and simple was the only suitable one for the determination of district boundaries gained force from the difficulties and delays besetting the decision of boundary disputes between the landowners of riverain estates situated in different districts. But it overlooked the inconvenience land-owners were bound to suffer from having to pay part of their revenue in one district and part in another, and from being at the beck and call of two sets of judicial, revenue, and police officials. The Panjab Government therefore in 1889 accepted a proposal made

* Section 101 A (2) and (4).

† Section 4 of Panjab Act No. 1 of 1899.

‡ See opinions of Messrs. Lake, Barnes, Melvil, and Cust on pages 1191, 1194, 1195, and 1200 of Selections from the records of the Financial Commissioner, New Series, No. 15. Other able officers, however, were in favour of the deep stream rule modified in case of avulsion.

§ The difficulty arising from cases of doubtful jurisdiction has been lessened by Section 16 A added by Act VII of 1888 to the Civil Procedure Code.

|| No. 344, dated 6th March 1869.

by Colonel Wace to declare by notification that the boundaries of districts separated by rivers followed the boundaries of ownership in the boundary villages, the deep-stream being adopted where that was the practice followed for regulating proprietary rights, and the rule of fixed boundaries being observed where the estates on opposite banks defined their rights of ownership thereby.* To the notifications relating to the different rivers schedules were annexed giving the names of the boundary estates on their right and left banks.† When such a notification has been published action taken under Panjab Act No. 1 of 1899 to lay down fixed boundaries for riverain estates also establishes permanent boundaries between the districts in which they are situated.

433. The boundary along the course of the Jamna between the Panjab and the United Provinces is regulated by the deep-stream rule pure and simple in Gurgaon, Delhi, and the Panipat and Karnal *tahsils* of the Karnal district.‡ But the boundary between the Thanesar *tahsil* of Karnal and the Jagadhri *tahsil* of Ambala on the right bank and the Saharanpur district on the left is fixed.§

Boundary between Panjab and United Provinces.

434. The boundary on the Ravi between the Panjab and the Jammu State has always been a fixed one. Till recently that on the Jehlam was partly fixed and partly shifting. It has now been agreed to have a wholly fixed boundary. ||

Boundary of Panjab and Jammu.

435. But elsewhere the reasons which were held to require the adoption of the deep-stream rule pure and simple for the demarcation of district boundaries applied with double force to the boundaries of the province and Native States. Assuming that the plan of fixed boundaries was impracticable, it was the only rule which made it possible to settle the boundaries in which Native States are concerned without endless trouble and interminable delays. But, on the other hand, the hardships to which land-owners were subjected by a divergence between the rules governing the limits of jurisdiction and private ownership were much increased when the land was transferred, not from one British district to another, but from the Panjab to a Native State.

Advantages and defects of deep-stream rule pure and simple.

436. At first the deep-stream rule in its extreme form prevailed. In accordance with it eight estates were transferred in 1857 from the Ferozpur district to the Kapurthala State. But Lord Canning refused to accept Sir John Lawrence's suggestion that the rule adopted in that particular case should be accepted as a general one.¶ In 1860 the Governor-General in Council, in dealing with a case which con-

Deep-stream rule in extreme form given up.

* See pages 1343--1365 of Selections from the Records of the Financial Commissioner, New Series, No 15.

† The notifications issued up to September 1895 will be found on pages 106--118 of Selections from the Records of the Financial Commissioner, New Series, No. 19. There are later notifications,—see, for example, Appendix H. to Mr. Diack's Settlement Report of Dara Ghazi Khan.

‡ Government of India Home Department, Proclamation No. 4, dated 3rd January.

§ Government of India Notification No. 1501, dated 11th September 1884.

|| Panjab Government Political (Native States) Proceedings, No. 1—3 of December 1901.

¶ See page 1249 of Selections from the Records of the Financial Commissioner, New Series, No. 15.

cerned Bahawalpur, rejected a proposal to apply the deep-stream rule pure and simple, and declared that "it was incorrect to assume that as between Sovereigns the only safe rule of practice is that the main river should be the boundary irrespective of all other considerations. The rule is such only in cases of alluvion, and not in those of avulsion. . . . When a boundary river suddenly quits its bed and cuts for itself a new channel, it ceases to be the boundary, and the Government which ruled over the territory cut off by the change in the river continues to rule it." This decision was approved by Her Majesty's Secretary of State,* and was declared to govern all cases which had occurred after the date, August 1860, at which it was given.†

Fixed boundaries adopted in cases of Kapurthala and Bahawalpur.

437. The boundaries of Native States cannot be legally affected by Panjab Act No. 1 of 1899. But since it was passed a fixed boundary has been laid down by consent between British territory and Kapurthala along the course of the Bias and Sutlej, and a similar line is being demarcated between the Panjab and Bahawalpur along the Sutlej and the Indus. On its being sanctioned a constant source of trouble will be removed.

Special revisions of assessment in riverain villages.

438. The action of the seven great rivers of the Panjab and of the numerous torrents which issue from the hills render the assets of the estates on their banks very unstable. It is therefore imperative that some means should exist by which the land revenue demand of such villages can be revised from time to time. It was ultimately found that in some large tracts the changes caused by the rivers were so frequent and so extreme that nothing would serve but the abandonment of a fixed assessment altogether in favour of a fluctuating one, which involved the reassessment of the whole demand harvest by harvest. But elsewhere it has been possible to retain the fixed demand, providing for its annual revision as regards those parts only of villages which have been lost or gained, been injured or been improved by river action. This latter system prevailed throughout the province for many years, after annexation, and it is still in force in a large part of it.

Three systems in force in 1860.

439. In 1860, when Mr. Cust consolidated the early rules on the subject,§ he noted that three systems were in vogue in different parts of the Panjab—

- (a) the plan current in the United Provinces of taking up those cases only in which the gain or loss of productive land amounted to 10 per cent. or more of the cultivated area.||
- (b) that of taking up every case of gain or loss,
- (c) the *chak* system, under which in each riverain estate the part of the area subject to river action was formed at settlement into an alluvial sub-division or *chak*, and the yearly enquiry was confined to the increase or decrease in that sub-division.

* Despatch No. 3, dated 16th January 1861. For the correspondence see pages 1249-1250 of the Selections from the Records of the Financial Commissioner, New Series, No. 15.

† Financial Commissioner's Book Circular No. 1 of 1874.

‡ See Chapter XXVII of the Settlement Manual.

§ Financial Commissioner's Book Circular No. XLII of 1860.

|| For an exact description of this plan see Appendix XXII to Thomason's Directions for Collectors, Edition of 1850.

440. The last system was enforced in the old Lahore and Amritsar divisions, where it was naturally suggested by the fact that in many riverain estates part of the area lies outside the influence of floods and above the bank or slope defining the limits of the river valley. Where all or nearly all the land was liable to inundation, the whole estate was classed as an alluvial *chak*. The plan, which was devised by Mr. R. H. (afterward Sir Henry) Davies, is an interesting one as foreshadowing the system of fluctuating assessments. The first intention was that the whole of the area of alluvial *chaks* should be annually remeasured and reassessed. But this was given up as being beyond the powers of the revenue staff of that day, and in actual practice there was no material difference between the second and the third of the systems mentioned by Mr. Cust.

The *Chak* system.

441. In the rules under the first Panjab Land Revenue Act, XXXIII of 1871, it was provided that of the above three systems that one should be followed in each estate which was entered in the settlement engagement* or in the village administration paper.† The two rules dealing with reassessments due to river action may be quoted—

Rules under first Panjab Land Revenue Act, XXXIII of 1871.

18. "When reduction is claimed on account of diluvion, the whole estate or the whole alluvial sub-division is liable to reassessment on its existing assets. The proprietors will therefore not be entitled to a reduction of revenue if the assets be found to be from any cause larger than or as large as they were computed to be at time of Settlement. If they be less, a proportionate reduction will be allowed, the revenue being calculated on the existing assets in the same manner as when the Settlement originally took place."

19. "In ordinary cases, however, only the actual increment or decrement will be considered. The rates fixed at Settlement on lands which have not been affected by the river will not be enhanced, nor will culturable waste which was not assessed at Settlement be brought under assessment. But lands previously unculturable, and therefore unassessed, will be liable to assessment if by alluvial deposits they become culturable, and lands assessed in previous years below the full Settlement rate may have their assessment increased up to that rate or to any lower rate, which with reference to the capabilities of the soil may be thought applicable."

The first of these two rules was not enforced in practice.

442. The rule regarding alluvion and diluvion assessments issued under Section 59 of the present Land Revenue Act, simply provides that—

Rules under the second Panjab Land Revenue Act, XVII of 1887.

- (i) "Where land of an estate paying land revenue is injured or improved by the action of water or sand, the land revenue due on the estate under the current assessment shall be reduced or increased in conformity with the instructions issued from time to time in this behalf by the Financial Commissioner with the sanction of the Local Government."
- (ii) "And in every such case the distribution of the land revenue over the holdings of the estate shall be revised, so as to similarly reduce or increase the sum payable in respect of the holding in which the land that has been injured or improved is situated."‡

* See paragraph 270 of the Settlement Manual.

† Rules under Act XXXIII of 1871, Chapter D. II, 14—16.

‡ Land Revenue Rule No. 217.

Supersession
of general by
special local
rules.

443. The defects in the old assessment rules are pointed out in the 455th paragraph of the Settlement Manual. These defects have led to their supersession in districts settled during the last twenty years by special rules suited to the circumstances of each locality. The main features of these new rules are described in the paragraph of the Settlement Manual cited above.* In the 33rd of the Revenue Circulars issued in 1891 the rules under the Act of 1871 were reproduced as instructions of the Financial Commissioner to be followed where no special local rule had been sanctioned. They are being superseded as fresh districts come under Settlement, and will ultimately drop entirely out of use.

Close supervision of
alluvial assessments
required.

444. The special local rules not only prescribe rates of assessment, but also explain the procedure to be followed in bringing to record the loss and gain due to river action. But, however perfect the system on paper, its working in practice must always remain a delicate matter, in which the work of the *tahsildar* and his subordinates must be closely supervised by the superior revenue staff of the district.

General instructions.

445. The measurements on which these yearly revisions of assessment must be based occupy a good deal of time, and must be started in riverain circles as soon as the *patwari* has finished the *kharif* crop inspection, written up the mutations which have come to light in the course of it, and prepared the annual *bachh* papers.† Every village in which any change of assessment is required must be inspected by the Deputy Commissioner or by one of his Assistant or Extra Assistant Commissioners. Of course the bulk of this work falls to the Revenue Assistant, but, where it is heavy, part of it should be made over to some other member of the head-quarters' staff. The final order as to each estate must be passed by the Collector.‡

Annual
returns.

446. An abstract statement of the changes due to alluvion and diluvion is sent to the Commissioner in the middle of April. A divisional abstract compiled from these district returns is submitted to the Financial Commissioner. The orders passed on it are the authority for making the necessary changes in the land revenue roll.

* See also Selections from the records of the Financial Commissioner, New Series, Nos. 4 and 19.

† Land Revenue Rule 41.

‡ Land Revenue Rule 274.

CHAPTER XIII.

PARTITIONS.

447. It is an essential feature of the village community, at least in its original form, that the proprietary body should possess part of their lands in common. The village site, the grazing lands over which the cattle wandered, and sometimes the wells from which the people drew their drinking water, were held in joint ownership. Often each sub-division (*taraf*, *patti*, or *pana*) of the estate had also its own common land in addition to its share in the common land or *shamilat* of the whole community. This feature of communal village property was reproduced by our revenue officers in those parts of the province in which the village system was forcibly engrafted on a tenure of a very different character. *

Common land of village communities.

448. But besides the large joint holdings in which all the landowners in an estate or a sub-division of an estate have an interest, it constantly happens that many of the other holdings are jointly owned by several shareholders. According to native ideas land in North-Western India, at least wherever real village communities exist, belongs rather to the family than to the individual. † What may be called family holdings were very common when our first records-of-rights were framed. The tendency of our legal and revenue system has been to substitute individual for communal holdings. But holdings of the latter type are still numerous. And holdings owned by individuals are constantly reverting to the condition of joint holdings under the law of inheritance which gives to each son, or failing sons to each male collateral in the same degree of relationship, an equal share in the land of a deceased proprietor. A joint holding is also created whenever a landowner sells or mortgages with possession a share of his holding instead of particular fields included in it.

Other joint holdings.

449. The increase of population and of the profits derived from agriculture leads in time to large portions of the common waste of the village or *patti* being broken up by individual shareholders, with the result that in the end a demand arises for its partition. Family quarrels and the restraints and inconveniences which spring from common ownership constantly make those who are interested in other joint holdings anxious to divide the land.

Tendency to divide joint holdings.

450. The custom of *vesh* or the periodical redistribution of village or tribal lands, which is an interesting feature of primitive landowning tenures both in the East and West, is now nearly extinct in the Panjab. But the Land Revenue Act provides for its enforcement where the custom still prevails. ‡

Vesh.

* See paragraph 166 of the Settlement Manual.

† See paragraph 120 (d) of the Settlement Manual and paragraph 14 of this book.

‡ See paragraph 158 of the Settlement Manual.

Private partitions.

451. Private partitions are frequently made, but there is always a risk that some shareholder will become dissatisfied and allege that the division was only one for convenience of cultivation, and was not intended to be of a permanent character. Landowners, therefore, especially when the area held in common is large and the shareholders numerous, usually apply to the revenue authorities to make the partition for them. A private partition may also be affirmed after due enquiry by an Assistant Collector of the 1st Grade on the application of any of the persons interested in it.* Although no formal application has been lodged the *patwari* is bound to record voluntary partitions for orders in the mutation register as soon as they have been acted on. In passing orders on such cases care must be taken not to treat as partitions of proprietary right arrangements which the parties did not intend to be permanent. Shareholders may be content for years to have in their cultivating possession less than their full share of a common holding without intending to give up any part of their rights of ownership. If any of them objects to the record of the alleged partition, and the attesting officer considers the objection valid, he should refuse mutation of names, and refer the party seeking it to proceedings under Section 123 of the Land Revenue Act. But if he finds that the objection is vexatious or frivolous, and that a fair private partition has actually been carried out, he should record the objection and his proposed order disallowing it, and submit the proceedings for confirmation to the Revenue Assistant or any other Assistant Collector of the 1st Grade authorized by the Deputy Commissioner to deal with these cases.

Complete and incomplete partitions.

452. Partitions are of two kinds, complete and incomplete. Where a complete partition is made there is a total severance of rights and liabilities. In fact each divided share becomes a separate estate. In Thomason's Directions for Collectors the term *batwara* is used to signify complete partitions, though it is merely the Hindi equivalent of the Arabic *taksim*.† Complete partitions have been freely allowed in the United Provinces with the result that many villages have been split up into a number of small estates. But they have always been looked on with much disfavour in the Panjab, where they cannot be carried out without the express consent of the Financial Commissioner.‡ Incomplete partitions do not affect the joint liability of the shareholders for the revenue of the divided holding, and still less do they operate to create new estates.§ The former fact is not of much practical importance. The officer who makes the partition is required to distribute the revenue of the divided land over the new holdings which have been created.|| If in the case of a complete partition a fraudulent or erroneous distribution takes place, the Local Government may at any time within twelve years after the discovery of the mistake order a fresh distribution. For this purpose the best estimate possible must be made of the assets of each estate at the time of its formation.¶

* Sections 123 and 126 of Act XVII of 1887. All references to sections in the notes to this Chapter are to sections of the Land Revenue Act.

† See Directions for Collectors, Edition of 1850, paragraph 168. The same term is employed for complete partition in the rules under the 1st Land Revenue Act, XXXIII of 1871.

‡ Section 110 (1).—Cf. paragraph 1 of Financial Commissioner's Book Circular XLVIII of 1860 and paragraph 1 and 2 of Chapter XIII of Rules under Act XXXIII of 1871.

§ Section 110 (1).

|| Section 120 (1).

¶ Section 120 (3).

453. The village site, unless in the very rare case of its being assessed to land revenue, cannot be partitioned by proceedings under the Land Revenue Act.* Even if it is assessed the Assistant Collector may refuse partition,† and this discretionary power may properly be held to extend to the uncultivated land round a village which is used as standing ground for cattle or occupied by enclosures for fodder and manure. Places of worship and burial grounds cannot be partitioned, unless the parties record and file an agreement assenting to their division.‡ Any embankment, water-course, well, or tank, and the land by the drainage of which a tank is filled, and any grazing land, may be excluded from partition.§ In arid tracts, where the people depend on tanks for their own drinking water and for the watering of their cattle, it may be a matter of importance to keep the waste area which feeds a tank free from cultivation, though the land hunger is now so great that many of the owners may clamour to have it divided. Where pasture is scarce or likely to become so, especially where a supply of fodder crops is not assured by abundant artificial irrigation, the power of setting aside part of the village common as a grazing ground may often be usefully exercised. If any of the joint owners afterwards encroaches on the reserved land, he may be ejected from it on the application of any other co-sharer.|| In deciding whether to use the discretion given by Section 112 (2) of the Act one must think not only of the wishes and interests of the landowners, but also of the likelihood of the partition causing inconvenience to other residents of the village as, for example, the menials who have been accustomed to use the common property. When any of it is excluded from partition the Assistant Collector "may determine the extent and manner to and in which the co-sharers and other persons interested therein may make use thereof, and the proportion in which expenditure incurred thereon, and profits derived therefrom, respectively, are to be borne by, and divided among, those persons or any of them."¶

Property which must, and property which may, be excluded from partition.

454. A discretion is also left to revenue officers as regards holdings of occupancy tenants. If tenants who have a joint right of occupancy in a holding wish to partition it, any objection that the landlord may urge must be carefully considered, and, if it is a reasonable one, partition may be absolutely disallowed.** Even when such a tenancy is divided the former co-sharers do not, except with the express consent of the landlord, cease to be jointly liable for the rent of the original holding.†† Again an occupancy tenant may well be unwilling to see his holding split up among three or four landlords, to each of whom he must pay a separate rent. The law therefore provides that such a severance of a tenancy may be a sufficient reason for

Holdings of Occupancy Tenants.

* Section 4 (1).—A civil suit can be brought to divide the *abadi*, but it can only succeed as regards those parts of it which consist of "empty sites in or about the village unoccupied by any individual and not used by the community for any purpose." The law on the subject is explained in Civil Judgment No. 117 in Panjab Record of November 1894.

† Section 112 (2) (c).

‡ Section 112 (1).

§ Section 112 (2) (a) and (b).

|| Section 150.

¶ Section 119.

** Section 112 (4).

†† Section 112 (2).

disallowing a claim on the part of landowners for partition, so far as it would affect the holding of the tenant, unless the latter gives his assent to the proposal.*

Who may apply for partition.

455. Any joint owner and any joint tenant, who has a right of occupancy in his holding, may apply for partition if—

- (a) his share is entered in the last *jamabandi*, or
- (b) his right to a share has been established by decree of court, or
- (c) his title has been admitted in writing by all persons interested in the admission or denial thereof.†

The mere fact that a man is a landowner as defined in Section 3 (2) of the Land Revenue Act does not entitle him to apply unless he fulfills one or other of the above three conditions.‡

Conduct of partition cases.

456. Partition cases are decided by revenue officers of a class not below that of Assistant Collector of the First Grade, and usually by the Revenue Assistant. No officer who is not himself empowered to settle the case should receive an application for partition. A qualified officer to whom an application has been presented can either conduct the whole enquiry himself, or refer it for report to an Assistant Collector of the second grade, that is as a rule to a *tahsildar* or *naib tahsildar*. The latter course is generally the best to follow. But the officer before whom the case has been instituted is responsible for its proper conduct throughout, and should exercise close supervision over the proceedings of the official to whom he has referred it for investigation. An Assistant Collector, who in a disputed partition case is content to pass orders on reports received from the *tahsildar* without ever having the parties before himself, and without, if need be, inspecting the land to be divided, certainly fails in his duty.

Common defects in partition procedure.

457. No branch of revenue work used in former days to be worse done than partition cases. Scandalous delays were allowed to occur. No proper care was taken to lay down clearly the mode of partition or to define accurately the limits of the land assigned to each shareholder, or to point these out on the spot to the parties interested. Years after an elaborate partition had been made on paper it was not infrequently found that the existing facts of possession in no way agreed with the allotments shown in the file. Matters have improved of late years, but much watchfulness on the part of the Revenue Assistant and the Deputy Commissioner is required to prevent undue delays, and to secure that partitions are fairly carried out and given effect to fully and promptly. The points on which it is most essential to insist are that the cases are dealt with by the investigating officer as far as possible in or near the village where the land is situated,§ that the proposed mode of partition is clearly explained by

* Section 112 (3).

† Section 111.

‡ The circumstances under which a mortgagee in possession can claim partition of a joint holding are discussed in Revenue Judgment No. 4 of 1903.

§ See paragraph 247.

him, and that the orders passed by the Revenue Assistant are distinct and enter into sufficient detail to enable the actual division to be carried out without any opportunity arising for further dispute. In cases in which many shareholders are concerned the first hearing should invariably be in or near the village where the land is situated. A visit to the village is equally necessary after the partition papers have been prepared and objections to the partition are to be heard. All the sharers in the common land of a large village cannot be expected to attend at the *tahsil* on the same days, nor can objections against the partition be decided without seeing the plots allotted to each shareholder.

458. The failure to ascertain from the first what is the actual contention of those who oppose the partition is a fruitful cause of delays and wrong decisions. An officer who begins by carefully examining the parties on the spot is not likely to fall into this mistake. That complicated partition cases should remain pending for a considerable time is of course inevitable. The best way to check any tendency to procrastination is for the Deputy Commissioner from time to time to examine a few of the pending files in each *tahsil*.

How delay may be prevented.

459. Officers are too ready to pass orders of a general character, for example, "that division shall be made having regard to the character of the land (*ba lihaz nakis wa kamil*)." If land described by the same name in the *jamabandi* really differs much in value, a further classification is a necessary preliminary to a first decision, and it should be made before the mode of partition is determined. On the other hand it is not always equitable to give each man his exact share of each class of land. While the holding was joint one shareholder may have brought part of it under irrigation by sinking a well or digging an irrigation channel, or may have raised its value by embanking it. He ought, as far as possible, to be allowed to retain the land whose present value is due to his enterprise. A suitable arrangement often is to allot to him the land he has improved, giving to his co-sharers a larger area of unimproved land.

Care required to make equitable division.

460. Certain special cases in which a revenue officer has a discretionary power to refuse partition have been referred to above. But in addition a general discretion to reject applications is given by Section 115 of the Act, which provides that "after examining such of the co-sharers and other persons as may be present, the revenue officer may, if he is of opinion that there is good and sufficient cause why partition should be absolutely disallowed, refuse the application, recording the grounds of his refusal."

General discretion to refuse partition.

This discretion should not be exercised in an arbitrary way. Ordinarily the ground for refusal should be one of those already mentioned in the 454th and 455th paragraphs. But the Assistant Collector is not debarred from rejecting an application on other grounds if a sufficient case is made out by the opponents of partition.

461. The claim of widows for partition are often strongly opposed by the other co-sharers. Among agricultural tribes in the Panjab widow who has no sons inherits as a rule a life interest in her

Claims by widows.

deceased husband's land. Her right is indisputable, but it is one that is viewed with great jealousy by the ultimate heirs. Where her property consists of a share in a joint holding they are very loath to allow her separate possession from a fear, often well founded, that she will manage it badly, and probably in the end attempt to alienate it. At the same time, so long as the holding is undivided, the widow often finds it difficult to obtain her fair share of the produce. If the records of tribal custom (*riwaj'am*) prepared at settlement are examined it will generally, though not invariably, be found that the widow's right to claim partition is admitted, and it is clear that under the provisions of the Land Revenue Act she is entitled to apply for it. But, if satisfactory arrangements can be made to secure for her the due enjoyment of her life interest without partition, it should be disallowed.*

Questions of title.

462. The officer to whom an application has been sent for report sometimes finds himself confronted at the outset by an objection which disputes the title of the applicant to ask for partition. For example, the respondent may deny the correctness of the record-of-rights, or he may admit its correctness, but assert that the applicant is not in possession of his share, and is therefore not entitled to claim partition at all, or is not entitled to do so till he has had a settlement of accounts with the respondent. In such cases all that the *tahsildar* can do is to record clearly what the points in issue are, and return the case to the officer who is empowered to dispose of it. After hearing the parties the latter must determine whether he will refer one or other of them to a suit in a Civil Court, or himself, as a Court decide the question of title raised.† On the one hand the Assistant Collector may find that the applicant, believing that the partition proceeding will give him an advantage over the opposite party, has asked for partition in order to evade direct resort to the Civil Court regarding a question of title which he knows to be disputed. In that case he should file the proceedings with leave to either party to apply to have them reopened, on showing that the point at issue has been decided by a competent Civil Court. But if it appears that the applicant is acting in a straightforward manner the revenue officer should invariably, unless there is some special reason to the contrary, deal with the dispute himself. Generally speaking, where landowners are concerned the question at issue will be one over which a Civil Court has jurisdiction. If it is so, the procedure of the revenue officer must exactly follow that applicable to the trial of an original suit in a Civil Court, and the decree will for purposes of appeal be treated as if it had been passed by a District Judge. If, however, the question is one over which a Revenue Court has jurisdiction, the revenue officer must proceed as a Revenue Court.‡ The neglect of these provisions by revenue officers often causes much trouble.

Appeals.

463. The law regarding appeals in partition cases is a little complicated, and forms a partial exception to the general rule that appeals from an Assistant Collector of any grade lie to the Collector.§ An

* Revenue Judgment No. 11, Panjab Record of October 1895. Compare the remarks of Mr. T. Gordon Walker on pages 78-79 of Panjab Customary Law, Volume V, Ludhiana.

† Section 117 (1).

‡ Section 117 (2).

§ See paragraph 262.

order under Section 115 of the Land Revenue Act absolutely disallowing a partition is appealable to the Collector. But if he does not reject the application *ab initio*, the Assistant Collector must proceed to ascertain the questions in dispute, distinguishing between—

- (a) questions as to title in the property, and
- (b) questions as to the property to be divided or the mode of making the partition.*

The procedure in cases in which a question of title has to be settled has been explained in the preceding paragraph. If the Assistant Collector has acted as a Civil Court, an appeal will lie to the Divisional Judge; if as a Revenue Court, to the Collector. But appeals from any order he may pass "as to the property to be divided or the mode of making a partition" are heard by the Commissioner.†

* Section 116.

† Section 118 (1) and (2).

CHAPTER XIV.

ACQUISITION OF LAND FOR PUBLIC PURPOSES.

Advantages
and disadvan-
tages of
acquisition by
private agree-
ment.

464. Land which is required* for public purposes must be taken up through the Collector, if the provisions for compulsory acquisition contained in Act I of 1894 are put in force.* But engineers or other officers of Government, who have obtained permission from the head of their own department, can endeavour to arrange for the purchase of land by private agreement, and in such cases Deputy Commissioners ought to supply them with preliminary estimates of value just as they would do in a case in which it was proposed to make use of the Act. But they must not themselves undertake private negotiations with landowners on behalf of other departments without the consent of the Financial Commissioner. The advantage of a voluntary agreement is that the addition of 15 per cent. to the market price, which the Act allows as a *solatium* for the compulsory nature of transaction,† is saved. On the other hand, under the statutory procedure there is perhaps less risk of an extravagant valuation, and compliance with the necessary formalities ensures the vesting of the land "absolutely in the Government free of all encumbrance."‡ Where there is the faintest doubt regarding the title of the person in possession, or where there is any reason to fear that the land may be encumbered to an unknown extent, private negotiation is out of the question. But with the accurate record-of-rights now maintained in the Panjab there is often no danger, at least in localities where the land tenure is of a simple nature, of latent defects of title. Where this is the case resort may be had to purchase by private agreement, if it is likely to result in any appreciable saving of time or money.

Plan and
preliminary
estimate of
cost.

465. Whatever be the procedure proposed the first step to be taken is the preparation of a proper plan of the land by an officer of the department which wishes to acquire it. Ordinarily the landowners will raise no objection to his entering on their land, and doing whatever is necessary for that purpose. But if they do, a notification stating that the land is likely to be required for public purposes must be issued in the Gazette.§ When this has appeared, and the Deputy Commissioner has published it locally, any officer authorized by Government may enter on the land and survey it.|| If any damage is done to the land or the crops in the process, he must offer compensation to the landowners. If it is not accepted he must refer them to the Deputy Commissioner, whose decision is final.¶ Having made his plan, he must obtain from the Deputy Commissioner *data*

* Section 7. All references to sections in this chapter are to sections of Act I of 1894.

† Section 23 (2).

‡ Section 16.

§ Section 4 (1).

|| Section 4 (2). The officer may measure, survey, dig so far as necessary, and mark boundaries.

¶ Section 5.

for a preliminary estimate of the cost of acquiring the land. All that the district officer is expected to give at this stage is the ordinary rate per acre which land of the description fetches in the neighbourhood, and a rough valuation of trees, buildings, *etcetera*.

466. The procedure to be followed after the preliminary estimate has been sanctioned by competent authority in cases in which purchase by private agreement is preferred to compulsory acquisition is described in Revenue Circular No. 54.

Procedure in case of purchase by private agreement.

467. If the better course appears to be to proceed under the Act, a notification is published in the Gazette stating that the land is required for a public purpose, and directing the Deputy Commissioner to take order for its acquisition.* If the area is very large a special officer is usually invested with the necessary powers† and employed instead of the Deputy Commissioner.

Preliminary action in case of compulsory acquisition.

468. The enquiry which the Collector has to make in these cases relates to three points, each of which must be dealt with in his award. He must determine—

Nature of enquiry made by Collector.

- (a) the true area of the land of each class,
- (b) the amount of compensation due, and
- (c) the apportionment of the compensation among the persons interested.‡

469. The first step is to have the land marked out and measured through the *tahsildar*. The existence of small discrepancies between the areas and the descriptions of land as found by the *tahsildar* and as stated in the notification is no reason for staying proceedings.

Demarcation of land.

470. A general notice is next given to all persons interested§ in the land to appear before the Collector on a certain date, and to state the nature of their respective interests, and the amount of compensation which they claim.||

Notice to parties interested.

471. Before the time fixed for the hearing the Collector should receive from the *tahsildar* a *khasra* or field register and a statement of holdings. In these statements particulars are given as to the areas, the rent, and the revenue of the land, and the trees, crops, wells, and buildings on it and the estimated value of the last four items. The *tahsildar* also furnishes a report giving the chief data from which the market value of the land can be deduced, and his own opinion as to its proper price. The data of course include figures relating to any recent purchases of land by Government or private persons in the same village or neighbourhood. Information regarding the latter can be obtained from the mutation registers and from the books in the office of the sub-registrar, who is usually either the

Tahsildar's report.

* Section 6.

† Section 3 (c). In the remainder of this chapter the word Collector means either the Collector of the district or a special officer invested with the functions of a Collector under the Act.

‡ Section 11.

§ For the definition of "persons interested" see Section 3 (b). In the rest of this chapter such persons will usually be described as right-holders.

|| Section 9.

tahs
tahsildar himself or a non-official working at the head-quarters of the *zemindar*. In using the prices stated in deeds of sale, it must be remembered that they are often exaggerated.* The *tahsildar* must also call for reports from *patwaris* or *kanungos* as to the value of the *maul*. In forming his own opinion he must take into account the matters which the Act requires the Collector to consider in fixing the amount of compensation, and must disregard those which it directs the Collector to disregard.†

Representations by departmental officer.

472. It is important that the local officer who represents the department for which the land is being acquired should have ample opportunity to make any representation he thinks fit as to its market value. The instructions in Revenue Circular No. 54 provide for this. Any representation he may make personally or by agent or in writing should receive careful consideration. But the Collector must avoid all correspondence with him on the subject of the award, and must not inform him of the compensation he proposes to assess until the award has been pronounced.

Preparation for hearing of case.

473. Before the hearing of the case the Collector ought to have studied the *tahsildar's* report and to have estimated the compensation which appears to be suitable. The *tahsildar's* data as to the prices paid for other land acquired by Government can be checked by referring to the register of lands taken up for public purposes maintained in every district office. If the last settlement of the district is at all recent, valuable information as to the market value of land of different kinds is sure to be found in the *tahsil* assessment report.

Examination of parties.

474. A little trouble taken before the rightholders appear before him will put the Collector in a position to deal promptly with their objections, and by questioning them to clear up any points which the *tahsildar's* report has left in doubt. A brief enquiry regarding any claims for compensation which they present will usually be enough to show in what respects, if any, his own preliminary estimate of compensation requires to be modified.

Award.

475. The next step is to record and announce the award. All possible care must be taken in framing it, for, as far as Government is concerned, it cannot be questioned. The record will as a rule enable the Collector to determine at once the first matter for decision, namely, the true area of the land of each class to be acquired.

Market value of land.

476. In deciding the next point, the amount of compensation due, he has in the first place to settle what the market value of the land is and to add to it 15 per cent. on account of compulsory acquisition.‡ If he finds the amount to be much in excess of the preliminary estimate referred to in paragraph 465, he should refrain from making an award and ask for further instructions.

* See paragraph 380 of the Settlement Manual.

† See paragraphs 476—479 below.

‡ Section 23 (1), first sub-head, and (2). Fifteen per cent. is not added to the amount, if any, awarded on account of consequential damages.

477. He must also consider whether the persons interested in the land to be taken up have any claim for consequential damages, which fall chiefly under two heads—

Consequential damages.

(a) loss of standing crops or trees,*

(b) damage to other land of the rightholder by the taking of the land required. †

As the owner will be relieved of the obligation to pay land revenue and cesses the demand of the harvest under these heads should be deducted from any compensation awarded for crops.

478. Under the second head difficult questions arise. If, for example, a canal is carried through the heart of a village, the fields on one side or the other are cut off from the homestead. To reach land which in a direct line is only distant a few hundred yards may involve the taking of ploughs and cattle three or four miles round. It is not always feasible to build a second *abadi* across the canal. The land may all be cultivated, or none of it may be common property. Again, if an embanked road or a railway or a canal distributary is carried through the fields attached to a well and the area which it can command is thereby diminished, the capital sunk in its construction may cease to yield any return to the landowner. It is difficult for the people who suffer to believe that a slight deviation from a straight line, which would have saved themselves much trouble, could not have been made. No wise man will do anything to foster the idea that the administration works with the unsympathetic rigour of a piece of machinery. For this reason and to avoid the expense of consequential damages Government has made Consulting Engineers and the local revenue officers responsible that in acquiring land for railways the fullest consideration is given to the convenience of the landowners, and has ordered slight alterations in the alignment to be made, where this is feasible, if annoyance to the people can be thereby obviated. ‡ Strict orders exist in the Irrigation Department forbidding the excavation of canal watercourses through land belonging to a well "until a suitable pipe, culvert, or syphon is completed, and the cultivator's watercourse is connected at both ends with the same at Government cost." § This principle applies equally to other public works, and a Deputy Commissioner is quite justified in asking the departmental officer whether a modification of the alignment, which would be convenient to the proprietors, would diminish the usefulness or seriously increase the cost of the work. It is the more desirable to avoid claims for consequential damages where possible, because it is a matter of great difficulty to calculate the compensation which is fairly due. ||

Damage to other land of rightholder.

* Section 23 (1), second sub-head.

† Section 23 (1), third and fourth sub-heads.

‡ Government of India Circular No. IV Railway, dated 4th September 1897.

§ Panjab, Irrigation Branch, Circular No. 46-I, dated 6th January 1904.

|| If unreasonable claims are made under the head of severance, Government may direct the Collector to acquire the whole of the objector's land [Section 49 (2)].

Matters to be excluded from consideration in estimating market value.

479. In estimating market value the condition of the land as it was at the time the notification was issued declaring it to be required for a public purpose must alone be taken into account.* The urgency of the need Government has to get the land, and the reluctance of the owner to part with it, have nothing to do with the question.† The latter, whether it is great or small, must be taken as paid for by the grant of fifteen per cent. over and above the market value.‡ The fact that the use to which the land is to be put will increase the value of other land belonging to the rightholder is quite immaterial.‡ And so is any damage he may sustain which, if caused by a private person, would not be a ground for a civil action.§

Rise in value of land,

480. It is a curious evidence of the increase of the value of land under British administration that, while forty years ago it was considered a fair general rule to pay for land taken up for the State $3\frac{1}{2}$ times the land revenue,|| no officer would feel any surprise at having to give forty or fifty times the assessment at the present day.

Compensation other than in money.

481. Persons who are being deprived of their land for public purposes would often prefer to take other land in exchange rather than money compensation. The Act allows an arrangement of the sort to be made with the sanction of the Local Government. But in the first instance the compensation must be assessed by the Collector in money, and no one can be compelled to take land instead of cash. Another form in which compensation may be given with the approval of the Local Government is the reduction or remission of the land revenue payable on the remainder of the rightholder's land.¶ An objection to this plan is that it introduces some complications into the revenue accounts, and it is not desirable that it should be largely adopted.

Apportionment of compensation.

482. If the rightholders agree among themselves as to the division of the compensation, their agreement must be accepted and embodied in the award. Where the rightholders are of different classes, e.g., superior owners, inferior owners, occupancy tenants, the Collector will usually have to apportion it himself. To do so is not always easy. The share of an occupancy tenant would properly be measured by the proportion between the price at which he could sell his tenant right and that at which the landowner could sell the land, if unencumbered by any subordinate title. Another way of approaching the question is to try to find out how the profits derived from the land are divided. The land revenue is supposed to be equal to half the rent paid by an ordinary tenant-at-will, but as a matter of fact it is usually much less. In considering cash rents paid by occupancy tenants in connection with the apportionment of

* Section 24, fourth, fifth and seventh heads. In connection with the determination of market values see Panjab Record Civil Judgment No. 44 of May 1904.

† Section 24 first and second heads.

‡ Section 24, sixth head.

§ Section 24, third head.

|| Cust's Revenue Manual, page 100. Rupees 375 for each Rs. 100 of revenue were taken as equivalent to the landowner's profit for fifteen years.

¶ Section 31 (3).

** Section 29.

compensation between them and their landlords, the most favourable assumptions to adopt, as far as the latter are concerned, are that the assessment is up to the theoretical standard, and that the rents are the highest allowed by law for tenants of the class concerned. If an occupancy tenant belongs to the most favoured class, whose rent is limited to the land revenue and cesses plus a *malikana* equal to one-eighth of the land revenue,* it might be argued that the tenant should receive seven-eighths of the compensation. But if he belongs to a class which may be required to pay a *malikana* equal to three-fourths of the land revenue, his share of the compensation, as measured by the rent he pays, would be one-fourth. It will probably be found that calculations based on the rents paid by occupancy tenants, at least in cases where the *malikana* is low, would give the landlord less than village opinion generally would hold to be his due. Entries as to the division of compensation between landowners and occupancy tenants are sometimes to be found in village administration papers. Where the allotment there stated is not palpably unjust, it is well to adopt it without further question. But it is clear that, where all the administration papers of the district contain an identical entry without any discrimination between different classes of occupancy tenants, it cannot be accepted without further enquiry.

483. Rightholders who object to the award of the Collector as regards any of the matters which it determines may require him to refer their objections for decision to the Divisional Judge.† As soon as the award is announced the Collector should proceed to pay the compensation to all who are prepared to accept it, either willingly or under protest.‡ A rightholder who receives the money without protest cannot afterwards demand a reference to the Civil Court.§ A list must therefore be made of those who refuse to accept it or accept it under protest. Immediate notice of the award must also be given to all the rightholders who have not appeared before the Collector, so that no delay may occur in making any references to the Civil Court which their objections may render necessary.||

References
to the Civil
Court.

484. As soon as the award has been made the Collector should ordinarily take possession of the land, "which shall thereupon vest absolutely in the Government free from all encumbrances."¶ He need not delay doing so merely because some of the rightholders refuse to accept his award. But if the amount of the claims to compensation put in much exceed the sum awarded, possession should not be taken without first referring to the authority sanctioning the work until the period within which applications for a reference to the court has elapsed without any application being lodged.**

Taking of
possession.

* See paragraph 218 of the Settlement Manual.

† Section 3 (d) and Panjab Government Notification No. 1791, dated 26th February 1883, Section 18.

‡ Section 31 (1).

§ Section 31 (2).

|| Section 12 (2). For the period within which applications for a reference to the court must be lodged, see proviso to Section 18 (2).

¶ Section 16.

** Government of India letter No. 503 C. W. B. dated 19th September 1898.

Once possession has been taken Government is bound to complete the acquisition of the land, whatever it may cost to do so. The fact that compensation has been paid does not entitle the departmental officer to enter upon the land; he must receive possession of it from the Collector.

Immediate possession in urgent cases.

485. The 17th section of the Act makes it lawful for the Collector in cases of urgency to take over land without the assent of the owners and without waiting for the completion of the legal formalities. But before doing so he must tender to the rightholders compensation for standing crops and trees and for any damage suffered by them on account of sudden dispossession. Legal requirements may also of course be waived by agreement with the proprietors. But the Collector must satisfy himself that the agreement is really a voluntary one, and that the getting of immediate possession is a matter of great importance.* For when land is taken up in this way, it is difficult afterwards to assess compensation for standing crops and trees, and it is hardly possible to refuse to complete the acquisition, even though it becomes evident that Government runs a risk of having to pay an extravagant sum as compensation.

Representation of Government before Civil Court.

486. When he makes a reference to the Divisional Judge the Collector must inform the departmental officer that he has done so and must supply him with a copy of the rightholder's application stating the grounds of his objection to the award. The proceedings before the Civil Court are of a judicial character.† Facts must be proved in a legal manner, and all evidence, whether oral or documentary, on which the award is based, must be produced. Unless the objection merely relates to the apportionment of the compensation, its amount not being in dispute, the Divisional Judge gives the Collector notice of the date of hearing, and the Collector must arrange for Government being properly represented in court either by one of his own subordinates or by the departmental officer.‡ The latter must in any case receive a copy of the notice served on the Collector, so that he may have an opportunity of being present at the hearing of the case.

Appeal.

487. An appeal lies to the Chief Court from decisions in land acquisition cases passed by a Divisional Judge.§

Reduction of revenue.

488. The reduction of the land-revenue assessment consequent on the taking up of land has effect from the harvest succeeding the last one in which the owners have been able to garner their crops.

Compensation to assignees.

489. If the revenue is assigned the capitalized value of the demand may be paid to the *jagirdar* or *m'afidar*. But the loss of the position of assignee or even the diminution of the income derived from an assignment is so unpalatable that, where possible, the necessary reduction should be made from *khalsa* revenue. It is usually

* Detailed instructions on this subject will be found in Revenue Circular No. 54

† Section 53.

‡ See in this connection the 82nd of the rules about Government litigation in Appendix A to Revenue Circular 45.

§ Section 54.

feasible to arrange for this being done where only part of the revenue of an estate is assigned. In other cases where the loss of revenue is very small, the *jagirdar* or *ma'afidar* must be content to accept a lump sum for compensation. But when it exceeds Rs. 100 or amounts to one-fifth of the total land revenue enjoyed by the assignee, the Deputy Commissioner may make a proposal for the grant of a pension or of a new assignment. Such a proposal should not be made as a matter of course, but only in favour of a deserving assignee, who feels keenly the loss of his *jagir* income.*

490. The Local Government may direct the Collector to take Temporary up land for any period not exceeding three years. In cases of Occupation of land temporary occupation of this kind, no notification is published in the Gazette. The Collector calls the rightholders together and endeavours to come to an agreement with them as to the rent to be paid. In fixing the amount it must be remembered that the landowners will remain liable for the land revenue. If the Collector cannot come to an agreement with the rightholders, he must refer the matter in dispute for the decision of the Divisional Judge.†

491. At the expiry of the term of occupation the Collector must offer compensation for any damage done to the land not provided for by the agreement, and the rightholders may require Government to buy it outright, if it has become permanently unfit for the purpose for which it was used immediately before it ceased to be in their possession. ‡ Any dispute as to the condition of the land must be referred to the Divisional Judge. §

492. What has been said above about the acquisition of land for the State applies equally to the taking up of land for a Company under the provisions of Part VII of the Act. ||

493. Where land in the permanent occupation of any department is no longer required it should be handed over to the Deputy Commissioner of the district, who becomes responsible for the disposing of it under the orders of the Financial Commissioner. There is no legal bar to its being put up to auction. But as a matter of grace Government is usually willing to restore agricultural and pastoral land to the persons from whom it acquired it or to their heirs on their refunding the amount paid as compensation less the 15 per cent. granted for compulsory acquisition. ¶ The price may be lowered, if necessary, on account of deterioration, or enhanced in the rare case of land having been improved by the use to which Government has put it. The improvement must be one affecting the quality of the land. The fact that land, which was unirrigated at the

* Panjab Government No. 549, dated 4th September 1890. For the scale of compensation in case of *jagir* revenue see paragraph 34 of Revenue Circular 54.

† Section 35.

‡ Section 36.

§ Section 37.

|| Sections 38—44.

¶ Government of India Resolution No. 16—14—130, dated 30th October 1896. If the rights of occupancy tenants were acquired as well as those of landowners, the proprietary rights restored should be made subject to the occupancy rights under the provisions of the Crown Grants Act, XV of 1895.

time of acquisition, can, when relinquished, be watered by a canal, is not an improvement of this sort. Considering how great the rise in the market value of land has been, the terms stated above are very liberal. It is not necessary to adopt them in their entirety where the persons concerned are remote descendants or relations of the original holders. And, where the circumstances of the case are at all out of the common, when, for example, no price or merely a nominal price was paid to the owners in the first instance, or when the rise of the value of land, in the neighbourhood, has been exceptionally large, the Financial Commissioner should be consulted before any terms are offered to the heirs of the persons from whom that land was acquired.

Case in which preference should be given to owners of adjoining fields.

494. In the case of plots which from their size or shape are practically of no value to any one but the owners of the adjoining fields, the option of purchasing at the market value should be given to them. The mere fact that an outsider is prepared to outbid them should not deter the Deputy Commissioner from accepting any fair offer which they may make.

Action when the heirs and neighbouring proprietors do not wish to purchase.

495. If the heirs of the original owners cannot be traced, or if they or the proprietors with a claim on the ground of vicinage decline to accept the terms offered to them by the Deputy Commissioner, the land may be put up to auction or dealt with as may appear advisable under the orders of the Financial Commissioner.

Report to Financial Commissioner.

496. In negotiations for the disposal of land no longer required the Deputy Commissioner must make it plain that any terms he proposes are not binding on Government till they have been sanctioned by the Financial Commissioner. In ordinary cases it is enough for him to note his proposals in the last column of the statement proposing the addition to the land-revenue roll which will follow on the reversion of the land to private ownership. But if the area relinquished is large, or if any doubtful questions arise in connection with its disposal, it is better to deal with the case in a separate report.

Book IV.—Collection of Land Revenue and Local Rate.

CHAPTER XV.

COLLECTION OF LAND REVENUE.

497. There is nothing on which the happiness of subjects and the stability of Governments more depends than the way in which revenue is assessed and collected. The old monarchy in France, which at one time had conferred great practical benefits on that country, was gradually undermined by its failure to limit the amount of its taxation, to distribute it fairly over the different classes of the community, and to collect it without oppression, and at last fell with a crash which shook the whole of Europe. The measures adopted by the British Government in India to secure an equitable assessment of the land revenue have been described elsewhere. We are here only concerned with the regulations for its collection, a matter of equal importance, and sometimes of even greater difficulty.

Taxation the touchstone of good or bad administration.

498. The income of Indian Governments whether native or foreign has always been mainly derived from the share of the produce of the soil which the State claims as its own.* It is one of the chief duties of the head of a district to collect the land revenue and the local rate.† The second charge is levied as a percentage on the land revenue, and for practical purposes is hardly distinguishable from it. The Deputy Commissioner is also the Collector of the various taxes imposed by the Government, but with these this hand-book is not concerned. It will be necessary, however, to notice briefly his duties in connection with the realization of the rates levied in many districts for the use of canal water.

Deputy Commissioner responsible for collection of land revenue and local rate.

499. In some States under native rule a feeling of kinship between the chief and his people or a sense of weakness on the part of the former produced a certain measure of moderation in land revenue collection. But if the ruler and his subjects were of different races or religions extreme severity was often shown, and a governor who remitted his quota regularly to the King's treasury had little to fear from inquiries as to his methods of administration. Jafir Khan, whom the Emperor Aurangzeb made *Subadar* and *Diwan* of Bengal and Orissa, is praised by his Muhammadan biographer for his "rigid and impartial justice," and his whole administration

Native methods of collection.

* See Chapter I of the Settlement Manual.

† For the local rate see paragraph 91 of the Settlement Manual. No part of the village officer's cess (paragraph 281) is now paid into the treasury. For the *malba* and village cesses see paragraphs 92—97 of the Settlement Manual. The Deputy Commissioner has no direct concern with their collection.

is stated to have "tended to the benefit of mankind and the glory of the Creator."^{*} Yet the same author tells us that this admirable ruler, besides having defaulters bastinadoed and in winter stripped naked and sprinkled with water, forcibly converted them with their wives and children to the Muhammadan faith. But the husband of Jafir Khan's grand-daughter, Saiyyid Raza Khan, who was *Naib Diwan* of Bengal out-heroded Herod. The infernal pit, mockingly called "*Baikunth*" or Paradise, into which he thrust defaulting Hindu *zamindars* and officials, is graphically described in a Persian narrative translated by Mr. Gladwin and quoted in the second volume of Harington's "*Elementary Analysis of the (Bengal) Laws and Regulations*."^{*} Of course everything depended on the character of the governor for the time being, and all were not of above type. Governors had a direct interest in extending cultivation, and men like Diwan Sawan Mal, the great revenue farmer and governor of the South-Western Panjab under Maharaja Ranjit Singh, who combined self-interest with intelligence and resolution, could become rich themselves by promoting the development of the territories under their control. But while the *Diwan* was fostering agriculture in one part of Gujranwala, Raja Gulab Singh of Jammu was ruining the people in another, and the beneficent governorship of Misr Rup Lal in the Jalandhar Doab was preceded and followed by the short-sighted oppression of the Shekhs.

Grave defects
of early
British
methods of
collection.

500. Native rulers were more prone to screw the revenue out of landholders by personal indignities or bodily torture than by the threat of depriving them of their lands.[†] If the cultivator was driven away there was no one to take his place, for the possession of land was not coveted by those who did not depend on it for their livelihood or were not attached to it by the ties of long possession. When the East India Company became responsible for the Government of Bengal and of the Upper Provinces the regulations issued regarding the collection of land revenue were dominated by the feeling that it was at once more logical and more humane to recover arrears by proceeding against the land than against the person of the landholder. The power given to the Collector of confining defaulters was carefully guarded and limited, but public sales of land were extremely common and the law in its actual working involved the greatest hardship to the landowners of the country.[‡] These evils had been laid bare and remedied before the annexation of the Panjab, and the collection of revenue in this province, while often too rigid and mechanical, has rarely been open to more serious reproach.

^{*} Pages 352—354. Harington was President of the Council of the College of Fort William and an officer of large administrative experience. The second volume of his book was published in 1815.

[†] See fifth Report of Select Committee of the House of Commons, dated 28th July 1812, quoted on page 351 of the second volume of Harington's Analysis.

[‡] It was not so much the fault of the law, which did not differ widely from that at present in force, as of the officers who administered it. It is hard for us with more than a century of experience behind us to realize the difficulties of Officers who were dealing with novel conditions.

501. The land revenue of a holding or of an estate being a cash commutation of the right of Government to a share of the crops grown upon it is properly declared to be "the first charge upon the rents, profits, and produce thereof."* It is the Deputy Commissioner's business to safeguard this right. Without his consent no court can attach the "rents, profits, or produce" until the current land revenue and any arrears that may be due have been paid.† Orders issued by civil and criminal courts for the attachment of land, or any interest in land, or the produce of land, must be addressed to, and executed by, the revenue department.‡

Revenue a first charge on produce of land.

502. It seemed at one time natural to enforce the Government lien on the produce by making the instalments of land revenue fall due before the crops, from which they were to be liquidated, were cut. This plan in practice led to great abuses and was given up eight or nine years before the annexation of the Panjab. Instalments are now arranged so as to become payable shortly after the garnering of the crops. The number, dates, and amounts of the instalments are fixed at settlement with the approval of the Financial Commissioner, and are often identical for all the estates in a *tahsil*. If experience shows clearly that the arrangements originally made are unsuitable for any estate or group of estates, the Deputy Commissioner should not hesitate to ask to have them changed. §

Instalments.

503. The joint and several responsibility of all the landowners in an estate for the payment of the whole land revenue assessed upon it is emphatically asserted in the 61st section of the Land Revenue Act. Each shareholder is therefore liable not only for the demand due on his own holding, but also for any arrear that may arise in respect of another holding. If he happened to be the only solvent landholder in the estate, he could raise no legal objection to an order that he should himself pay the whole balance. In such a case the holdings of the defaulters would of course, if he so wished, be transferred to him for a term. || When an estate consists of two or more recognized sub-divisions (*pattis* or *tarafs*) the joint and several responsibility for an arrear arising in any particular sub-division should in the first instance be enforced against the shareholders in the sub-division, and not against the whole community.

Landowners jointly and severally responsible.

504. The communal bond never in fact existed in some parts of the Panjab. Where it is a mere fiction of our revenue system, and estates are only artificial groups of independent holdings, the enforcement of common responsibility, though legal, would not be just. Everywhere the tendency of our rule has been to promote individualism, and the intrusion of strangers into village communities has in many places weakened the feeling of corporate life and duties. A revenue officer in his dealings with estates should do what he

Extent to which joint responsibility should be enforced.

* Act XVII of 1887, Section 62 (1). The sections quoted in this chapter are sections of Act XVII of 1887.

† Section 62 (2).

‡ Section 141.

§ Section 63 (1). See also paragraphs 554-558 of Settlement Manual.

|| See paragraph 523.

can to check this process of disintegration. As far as possible village communities should be left to themselves. As Thomason remarked:—

"So long as the Government revenue is punctually paid, it is most important that the Collector, as a fiscal officer, should abstain from all interference . . . The great desire and object of the Government is to teach the people self-government . . . They should be instructed and encouraged thus to conduct their affairs, and by punctual payment of the Government demand to bar all direct interference on the part of the fiscal officers of the Government."* Where default occurs prompt action is of course required. If the arrears cannot be recovered from the defaulters themselves the measures adopted for their realization should be so framed as to assert the principle of common responsibility.

Headman not to be made scapegoat of the community.

505. It is the duty of the village headman to collect the revenue from the landowners and pay it into the *tahsil* treasury. But if he can show that he has done his best and failed, his responsibility for an arrear is no greater than that of the other members of the brotherhood, and he should not be made the scapegoat.

Shareholders must not be allowed to pay direct.

506. A shareholder who is on bad terms with his headman sometimes tries to pay in revenue direct either in cash or by money-order. Such payments should invariably be refused. The grant of revenue money-orders to any one but a *lambardar* is against the rules of the Postal Department.

The village *khataunis*.

507. To aid the *tahsildar* in keeping an eye on the collections for each estate a separate village account of demand and receipts known as the *khatauni* is kept up by the *tahsil* revenue accountant or *vasil-baki navis*.† One large sheet is allotted to each village, and these sheets are bound together in one or more volumes. At the top a statement of the demand arranged under various heads is entered. As it is important that the *tahsildar* should be able to see at a glance the whole of what he has to realize from each estate the demand is shown not only on account of land revenue, fixed and fluctuating, but also on account of different items of miscellaneous land revenue, such as *tirni* and *talabana*, local rates, canal water-rates, and so on. In fact everything should be put down which the estate pays into the *tahsil* treasury through its headmen. The rest of the sheet is occupied by the collection statement. Under each item of demand is shown each receipt under that head with the date of payment. At the end of the year each column should be totalled, and any unpaid balances should be noted. Such balances should be carefully shown under the proper heads in the *khataunis* of the succeeding year.

Duties of *patwari* in connection with land revenue collection.

508. It is the duty of the *patwari* after the *kharif* harvest inspection is over to give the headman a list, known as the *fard dhal bachh*, showing the demand due under different heads (land revenue,

* Thomason's Directions for Collectors, edition of 1850, paragraph 34.

† See paragraph 589.

local rate, etc.) from the owner of each holding.* This list is brought up to date and corrected, if necessary, after the *rabi girdawari*. A fresh list will always be required where the instalments for the two harvests are not equal, or where the demand is a fluctuating one assessed by the application of acreage rates to the harvested area. The *patwari* is bound to help the headmen by explaining the accounts, and by writing, if required, the receipts to be given to the share-holders.† But he is forbidden to have anything to do with the actual collection or handling of the money. He should give each headman for presentation at the *tahsil* a memorandum (*'arz irsal*) showing under the proper heads the amounts to be paid in.

509. Arrived at the *tahsil* the headman shows the *'arz irsal* to the revenue accountant (*wasil-baki navis*). Having ascertained by reference to the village *khatauni*, if necessary, the proper distribution of the amount tendered, ‡ the revenue accountant enters it under the proper heads in the foil and counterfoil of the receipt register (*dakhila bahi*). On receiving the money the *tahvildar* or *tahsil* treasurer signs both copies of the *dakhila*, with a note of any deductions for short weight or false coin that may be required. The signature of the *tahsildar* or *naib tahsildar* must next be obtained on the foil and counterfoil. The *dakhila* is then handed to the *siyaha navis* whose business it is to write up the daily cash account (*siyaha*) of the *tahsil*. The payments made should be entered under their proper heads by the *siyaha navis* in the cash account or *siyaha* and the *wasil-baki-navis* in the *khatauni*. The *tahsildar's* signature on the *dakhila* in the authority for the entries in the *siyaha*, and they must not be made till it has been obtained. The *siyaha-navis* should sign both foil and counterfoil of the *dakhila*, after which the counterfoil should be removed from the register and given to the headman. §

Payment at
outlying
tahsils.

510. *Tahsils* at head-quarters have no separate treasuries, and therefore no *tahvildar* and *siyaha-navis*. A headman bringing money to such a *tahsil* presents his *'arz irsal* to the *wasil-baki navis*, who prepares receipts (*dakhilas*) in triplicate, signing them himself and obtaining the signature of the *tahsildar* or *naib tahsildar*. The headman is sent to the district office treasury with the money and the three copies of the receipt. He presents them in the first instance to the treasury accountant, who, if there be no objection to the receipt of the money, initials the three copies. They are next presented by the headman to the district treasurer, who receives the money, enters the amount in his cash-book, and signs in full the three copies of the *dakhila* after entering in each any deduction for short weight or bad coin which may be necessary. The three copies are then brought back to the treasury accountant, who enters the amount

Payments at
head-quar-
ter's *tahsils*.

* Land Revenue Rule 53. For entries of the demand by the *patwari* in the owners' *parcha* books see Land Revenue Rules 54, 56.

† Receipt forms are included in the *parcha* books which every landowner is entitled to have—Land Revenue Rule 54.

‡ Where only part of the total demand for the harvest on account of land revenue and cesses is paid in at one time it is the rule to clear the account for cases first crediting the balance to land revenue. Subsequent payments can then be credited wholly to land revenue.

§ Accountant-General Letter No. 56, dated 28th March 1902, see also Financial Commissioner's Circular Letter No. 3858, dated 21st July 1902.

in his cash-book and completes his signature on the three copies. One copy he returns as a receipt to the headman, first obtaining in the case of sums of Rs. 500 and upwards the signature of the treasury officer, the second he forwards to the *tahsildar* when the accounts of the day are closed, the third he keeps for record in the treasury. The first, third, and last column of the *dakhila* register should be filled up by the *wasil-laki-navis* when the *dakhila* is issued, and the remaining columns when it is received back. Enquiry should be made about any *dakhila* not returned by the treasury on the same or the following day. Where the Government treasury is managed by the Bank of Bengal, a similar course is followed, the triplicate *dakhila* being presented with the money at the Bank instead of at the district treasury.* No daily cash account or *siyaha* is sent it by head-quarters *tahsils*, but a daily abstract (*goshwara*) of the entries in the *dakhila* book under each head of account is sent to the district treasury where it should be carefully examined to see that all items have been duly credited in the treasury accounts. No copy of the *goshwara* is kept at the *tahsil*.

Revenue money-orders and payment without pre-audit.

511. The headmen, when they bring in the revenue, are often expected or compelled to give small douceurs to members of the *tahsil* establishment, especially to the revenue accountant. *Tahsildars* should be made to understand that their own credit is involved in stopping this practice. Deputy Commissioners, who wish to do so, are allowed the option of introducing the system of payment of land revenue into the treasury without pre-audit by the *wasil-baki-navis*. According to this system it is essential in the first place that a correct *kist-bandi* should be supplied to every *patwari* for each of his villages. With the assistance of the *kistbandi patwari* may be expected to give correct *'arzirsals* to each headman paying in an instalment of land revenue. The persons tendering payment will then take the *'arzirsal* with the money to be paid direct to the treasurer, who will at once receive the money and sign a receipt on the back of the *arz-irsa*. This will then be taken by the headman or person paying the money to the *siyaha-navis* and *wasil-baki-navis*, by whom *dakhilas* will be prepared in the usual way. The headmen can also protect themselves by sending the money to the *tahsil* by revenue money-orders, but in some cases they are probably afraid to offend the *tahsil* staff by adopting this expedient. It is best to leave them to choose whichever mode of payment they prefer. It is a pity to discourage them from coming personally to the *tahsil*. There are some advantages in their doing so, and no hardship is involved if they are not subjected to needless delays or illegal exactions.

Payments to be credited to demand of harvest, not in liquidation of arrears.

512. After the land revenue of any harvest has become due all payments must be credited against the demand on account of that harvest. It is only after that has been fully satisfied that money received can be employed for the reduction of balances outstanding from previous harvests.

* Accountant-General's Letter No. 56, dated 28th March 19 . See also Financial Commissioner's Circular Letter No. 3858, dated 21st July 1902.

513. It was formerly the rule to allow large assignees of land revenue to take it direct from the headmen. This privilege was often abused and has been withdrawn in many cases. It can only be continued if the arrangements for receiving the money are satisfactory to the Deputy Commissioner.* It should cease where the *jagirdar* makes it an instrument for illegal exactions or for putting pressure on landowners to transfer their lands to himself. But where he acts fairly and the landowners have no valid ground of complaint it is harsh to deprive the assignee of a privilege which he greatly values. The collection must be made from the headmen and not direct from the landowners. A *jagirdar* cannot of course employ any of the coercive processes to be presently described. If the revenue is not paid to him at the proper time he can ask the Deputy Commissioner to collect it for him, † or with the assent of the Deputy Commissioner he can sue the defaulter in a revenue court ‡. Where the revenue is realized by the Deputy Commissioner for the *jagirdar* a charge of 2 per cent., known as *hkak-ul-tahsils*, is made to cover the cost of collection. §

Direct payment to assignees.

514. Failure to pay the land revenue by due date may be either justifiable or unjustifiable. Where it is justifiable the demand should be either suspended or remitted. The circumstances under which relief should be given in one or other of these ways are described in the next chapter. The rest of the present chapter deals with the action to be taken by the Deputy Commissioner to recover arrears which have not been, and in his opinion ought not to be, suspended or remitted.

Failure to pay either justifiable or unjustifiable. Action appropriate to each case.

515. It should be an invariable rule either to collect the demand punctually or to suspend it regularly. If each instalment is not taken when it falls due, the provision of the law which makes the land revenue a first charge on the produce of the harvest becomes a dead-letter. The money-lender takes from his debtors the grain which should have been sold to pay the State its share, and the landowners in the end have to contract fresh debts when they are at last pressed for payment. Every *tahsildar* must understand this, but many of them act as if mere delay in enforcing a claim which must ultimately be met were a boon to the defaulter. The means which the Deputy Commissioner possesses of detecting unpunctuality are described in the XVIIth chapter. ||

Delay in enforcing payment harmful to the land owners.

516. "Defaulter" is defined in the Land Revenue Act as meaning "a person liable for an arrear of land revenue," and as including "a person who is responsible as surety for the payment of the arrear." ¶ The definition has a wider scope than might at first sight appear. Reading it with Section 61 of the Act it is clear that

Defaulter Meaning of.

* See Section 64 of Act XVII of 1887 and Land Revenue Rules 223 (1) (c) and (ii) and 227.

† Land Revenue Rule 226 (ii).

‡ Section 77 (3) (p) of Act XVI of 1887 and Section 64 (3) of Act XV II of 1887.

§ Land Revenue Rule 228 (ii).

|| See paragraph 592.

¶ Section 5 (8).

all the landowners in an estate are defaulters if an arrear accrues in respect of any particular holding. In practice the milder coercive processes, which are all that are usually needed, are directed either against the owner of the holding in respect of which the default arises or against his headman.

Application
of headman
for process
against
defaulter.

517. A headman, who has shown proper diligence, can obviate the risk of proceedings being taken against himself by applying to the *tahsildar* or Deputy Commissioner for assistance.* Applications will not be entertained if the arrear has been outstanding for over six months unless the *lambardar* satisfies the revenue officer that the delay in realization has not been due to his own neglect. If the application is entertained, a date is fixed, a writ of demand is served on the defaulter, and he is summoned to appear.† If the existence of the arrear is proved, an order is recorded stating the amount and the person from whom it is due, and the duty of recovery is transferred from the headman to the *tahsildar*.

Personal
action by
tahsildar.

518. Such is the prescribed procedure. But when it is clear that a headman without any apparent reason finds difficulty in inducing his co-sharers to pay their quota, it is a good plan for the *tahsildar* or his *naib* to go to the village and find out what is the real cause. If he sees that the refusal is due to private enmity or jealousy he should uphold the *lambardar's* authority by convincing the defaulters that they themselves are the persons who will suffer by delay. If they assert that they suspect the headman of misappropriating the money he collects and are afraid to entrust him with it, he should realize the revenue at once through the *lambardar* and tell him to take it the *tahsil*.

Misappropriation
by headman.

519. Misappropriation by a needy headman is unfortunately no rare occurrence. Having money in his hands he finds it convenient to pacify his private creditors at the cost of plunging deeper into debt a month or two later when the *tahsildar* insists on payment of the Government demand. Whenever misappropriation is proved the headman should be dismissed and the Deputy Commissioner should consider whether it is expedient also to prosecute him criminally.

Legal pro-
cesses for
recovery of
arrears.

520. The legal processes for the recovery of arrears are—

- (a) by service of a writ of demand on the defaulter [Sections 67 (a) and 68 and Land Revenue Rules 238—241];
- (b) by arrest and detention of the defaulter [Section 67 (b) and Section 69 and Land Revenue Rules 246—248];
- (c) by distress and sale of his moveable property and uncut or ungathered crops [Section 67 (c) and Section 70];

* Section 97 and Land Revenue Rule 243.

† Land Revenue Rule 244.

- (d) by transfer of the holding in respect of which the arrear is due [Section 61 (d) and Section 71];
- (e) by attachment of the estate or holding in respect of which the arrear is due [Sections 67 (e) and 72 and Land Revenue Rule 249];
- (f) by annulment of the assessment of that estate or holding [Section 67 (f) and Sections 73-74 and Land Revenue Rules 250-254];
- (g) by sale of that estate or holding [Section 67 (g) and Sections 75-76, 79-96 and Land Revenue Rule 255];
- (h) by proceeding against other immoveable property of the defaulter [Section 67 (h) and 77].

For details of the procedure to be followed in connection with each of these coercive processes reference must be made to the sections of the Land Revenue Act and the rules above noted. A person against whom proceedings are taken for the recovery of an arrear may, if he denies his liability and pays under a written protest, sue in the civil court for a refund.*

521. A writ of demand is known as a "*dastak*." It is little more than a reminder. It shows the amount of the arrear, and requires the person addressed to pay it together with a service fee (*talabana*) of twelve annas into the *tahsil* by a certain date. Writs are served by a special staff temporarily engaged for the purpose and the issue of many *dastaks* may mean more to a village than an addition of *talabana* to the land revenue demand. A writ may be addressed to the actual defaulter, but it is usually directed to his headman, unless the latter has made an application under Section 97 of the Land Revenue Act.† It can be issued on any day after the date of the installment, but it is proper to allow a few days' grace, and this may reasonably be extended to a fortnight where, though there are two instalments, it is the custom of the estate to pay the whole demand at one time. There is no legal objection to the sending out of repeated *dastaks*, but only a weak *tahsildar* would think of doing so. A *tahsildar* can issue writs of his own authority. If he has his *tahsil* well in hand he ought not to find many necessary. Any tendency to use too freely this or the next form of coercion, which are the only two which a *tahsildar* can put in force himself, can easily be checked by the Collector, as the *tahsildar* sends in monthly statements of writs and warrants issued. Writ of demand.

522. The actual defaulter or the headman who represents him may be arrested and detained at the *tahsil* or district office for ten days.‡ He may be released on bail being given that he will not absent himself for certain hours daily during that period.§ If the arrear is not paid by the end of the term the Deputy Commissioner Detention of defaulter.

* Section 78.

† See paragraph 517.

‡ Section 69 (2).

§ Land Revenue Rule 246.

may order his further detention for a month in the civil jail.* If the *tahsildar* finds it necessary to detain the defaulter for more than twenty-four hours, he must report his action to the Deputy Commissioner. The other landowners in the estate are not liable to this form of coercion because of their joint responsibility for arrears,† nor can it be used in the case of females, minors, lunatics, or idiots.‡ The peon who executes the warrant must not receive the money, if the defaulter produces it, but must instruct the latter to take it or send it to the *tahsil*.

Of this form of coercion Thomason remarked:—"It is only in peculiar cases that the process of imprisonment is likely to be effective. When the defaulter is living in circumstances which make him fear imprisonment, and when he has resources which enable him at once to pay the demand, there may be no more efficient process. But on the poor or the embarrassed it is not likely to have any effect, whilst to the unfortunate, but honest and industrious, man it is cruel hardship. It used to be a very common practice to imprison defaulters as the first step towards the realization of the demand, but the harshness and impolicy of this have been long admitted."§

Distress and
sale of move-
able property.

523. The Deputy Commissioner or any other revenue officer of the 1st grade can distrain and sell the crops|| and the moveable property of the defaulter. But the exemptions prescribed by Section 266 of the Civil Procedure Code as regards sales in execution of decrees of court apply, and in addition so much of the produce must be left unattached as the Deputy Commissioner thinks necessary for seed grain and the subsistence of the defaulter and his family and of exempted cattle until the next harvest.|| "The process is liable to very much the same objection as the preceding. The usual defaulters are small landed proprietors, whose personal property is of little value to any but themselves and is easily removed. If it is distrained and sold, little is thereby realized, whilst they are greatly harassed and injured. If, however, the defaulter be in good circumstances, and wiffully withholds payment of the just claim of Government, there cannot perhaps be a better mode of proceeding than to distrain at once the most valuable articles of his private property. This course should be followed only when there is good reason to suppose that it will be the means of compelling payment of the whole or a considerable portion of the arrear."¶

Transfer of
holding.

524. The holding of the defaulter may be transferred by order of the Deputy Commissioner to any solvent landowner or landowners in the estate who may be willing to pay the balance due and to accept any conditions which the Deputy Commissioner thinks fit to prescribe.** He may, for example stipulate that the defaulter

* Section 69 (3).

† Land Revenue Rule 247.

‡ Section 69 (4).

§ Thomason's Directions for Collectors, Edition of 1850, paragraph 68.

|| Section 70.

¶ Thomason's Directions for Collectors, Edition of 1850, paragraph 70.

** Section 71 (1).

shall be given part of the land to cultivate at a fixed rent, say on payment of the share of the produce usually taken from tenants-at-will. If it can be arranged, there is no reason why the transfer should not be to the whole village community except the defaulter. For the period of the transfer the holding will then become part of the common land of the estate (*shamilat deh*). Under the law as it stood before 1887 the transfer might be a perpetual one, * but the term is now limited at the Deputy Commissioner's discretion to a period not exceeding 15 years or till the end of the agricultural year in which the defaulter pays to the transferee the amount of the balance on account of which the transfer was made.† A suitable condition would be one combining the two, i. e., till the end of the agricultural year in which the balance is paid or of 15 years, whichever term is shorter. The transfer of a holding to one of the landowners in no way affects the joint responsibility of the other landowners in respect of it during the period of the transfer.‡ At the end of the stipulated term the defaulter or his heir recovers possession free of any claim by Government or the transferee on account of arrears.§ Any transfer made is reported to the Financial Commissioner, who may cancel it or alter its conditions.

525. In cases in which the second and third forms of coercion fail, or are held to be harmful or useless, this is the process which it is ordinarily best to adopt. It has the great advantage of preventing the intrusion of a stranger into the community. If an arrangement can be made whereby a plot of land is left for cultivation in the defaulter's hands he can still support himself and his family in his old home, and there may be some hope that he or his sons will learn lessons of thrift in the years in which they are excluded from the rights and temptations of ownership.

Advantages
of this form
of coercive
process.

526. The Deputy Commissioner can attach the holding or estate and bring it under direct management.¶ This process is known as *kurk tahsil*. Usually the *tahsildar* should be the manager, but if the estate is large a non-official agent may be appointed and paid by a fixed salary or by a percentage on the collections. The land revenue assessment is not affected. The manager steps into the position of the defaulting owner or community, and is bound by all existing engagements between landlords and tenants.¶¶ The rents and profits received after attachment must be credited—

Attachment
of estate or
holding.

Firstly, against the cost of management,

Secondly, against the demand of the current harvest on account of land revenue and cesses.

* Clause 1, Section 17, Reg. XXVII of 1803 and Section 47 of Act XXXI of 1871. Under the latter Act a transfer till the balance was paid could be converted after 13 years into a permanent one (Section 48).

† Section 71 (2).

‡ Section 71 (4).

§ Section 71 (6).

¶ Section 72 (1).

¶¶ Section 72 (2).

Only the surplus, if any, is available for the liquidation of the balance on account of which the land was attached.* As soon as it has been satisfied, and in any case at the end of five years, the land must be restored to the defaulter, who is entitled to a full account of receipt and disbursements during the period of management.†

Use of above process.

527.^a Obviously this process is unsuited to the case of an ordinary peasant holding except as a mere temporary measure to prevent waste when the Deputy Commissioner thinks one or other of the two following processes must shortly be adopted.‡ It may occasionally be of use when the defaulter is a large proprietor of improvident habits, or where the real cause of default is a quarrel between the members of a village community as to the distribution of the burden over the different holdings. In the latter case the manager takes for the time being the place of the headman and collects from the proprietors the cost of management including his own remuneration, the land revenue and cesses, the arrear, and the village expenses. He does in fact by authority what the headman proved incapable of doing, and can, with the help of the *tahsildar* (when the latter is not himself manager), quickly settle any dispute as to the *bachh*.

Above processes may be used by Deputy Commissioner of his own authority

528. The five processes described above can be carried out by the head of the district without reference to any higher authority. He may choose the particular one he thinks most likely to succeed, and is under no obligation to try the effect of one before he employs another. The three remaining methods of coercion can only be used with the assent of the Financial Commissioner.

Annulment of assessment of holding or estate.

529. If the arrear has been outstanding for over a month, and the Deputy Commissioner, after trial or otherwise, despairs of recovering it by any of the above processes, he can issue a proclamation attaching the holding or estate and can propose to annul its assessment, and to manage it direct or lease it to a farmer.§ This process cannot be used for the recovery of an arrear of land revenue which has accrued on land which the Deputy Commissioner has already taken under his control either on behalf of the Court of Wards or in pursuance of the coercive process described in paragraph 526.|| On receipt of sanction from the Financial Commissioner a proclamation is issued declaring that the assessment has been annulled. The effect of the issue of a proclamation attaching a holding¶ or of one annulling its assessment is that thereafter no payment made to the defaulter by a tenant frees the latter from liability. A payment before publication of rent not properly due till some date after publication is invalid except with the special sanction of the Deputy Commissioner.**

* Section 72 (3).

† Section 72 (4) and Land Revenue Rule 249.

‡ Land Revenue Rule 255.

§ Section 73 O (1) and (3).

|| Section 73 (2).

¶ See paragraph 526.

** Section 74 (2) and (3).

530. The term of direct management or of the farm must not exceed 15 years. When it is over the holding or estate is reassessed in the light of the evidence as to its real assets which has been obtained. If the owners refuse to accept the new assessment the Financial Commissioner can order direct management for the remainder of the term of the current settlement of the district or for any shorter term.

Term of direct management or farm.

531. Direct management accompanied by annulment of the assessment is known as *kham tahsil*. It differs from *kurk tahsil* because the proprietary rights and obligations of the owners are for the time being in abeyance, and the land revenue settlement made with them is cancelled. If part only of an estate is under farm or direct management the joint responsibility of the landowners of the rest of the estate is suspended as regards that part only.* The Financial Commissioner may order that contracts regarding cultivation or payment of rent already made by the defaulter or by other persons under whom the defaulter claims shall not be binding on the Deputy Commissioner.† If it is part of the sanctioned arrangement that the owners shall remain in cultivating possession of their *khudkasht* lands, they will do so as tenants, and will pay such rent as the Deputy Commissioner thinks proper.

Effect of farm or direct management.

532. However profitable direct management may be to Government the defaulters cannot claim re-entry until the end of the term, and they are not entitled to any account of profit and loss when they recover possession.

Landowners cannot claim re-entry till end of term.

533. *Kham tahsil* is only suitable in the case of a whole estate or at least of a recognized sub-division of an estate. It is a punitive or at least an exemplary, measure, which it would only be right to adopt in case of contumacy on the part of a village community, which is nowadays very rare, or where the assessment has broken down on account of the gross mismanagement or idleness of the owners. Mr. Thomason's remarks may be quoted:—“When land is valuable, population abundant, and the assets . . . consist of money collections from non-proprietary cultivators, and the rent-roll shows a fair surplus above the Government demand, there should be no hesitation in holding *kham*. Ordinary care will enable the Collector to recover the balance, and probably improve the estate. But when the population is scanty, when the defaulters are a community of cultivating proprietors, when the collections are made in kind, or when the estate is deteriorated and fallen out of cultivation, *kham* management requires much caution. Its success evidently depends upon knowledge of agriculture, influence over the people, and prompt and steady action. When the Collector is conscious that he possesses these qualities himself, or can command them through means of his subordinates, he has the strongest possible hold on the people. Nothing more convinces them of the hopelessness of attempting by combination to defraud the Government of its dues, or to force a reduction of settlement, than the

Remarks on direct management.

* Section 73 (7).

† Section 73 (8).

example of a few estates successfully held *kham*, and made to yield more than the original assessment It should not, however, be attempted on any great scale because of the time and minute attention it requires, nor should it be attempted at all unless the Collector finds himself in a position where he may reasonably expect to have time and opportunity to carry his experiment fairly out.* Management should be firm, but sympathetic, the object to be kept in view being to fit the landowners ultimately to resume their old position with changed habits.

Remarks on farms.

534. Farm to a private person after annulment of the assessment is a still more drastic measure than *kham tahsil*. Paragraph 531 applies *mutatis mutandis* to this process. If the defaulters are inferior proprietors it will usually be right to offer the lease to the superior proprietors. No female, minor, or resident in a Native State can be appointed farmer. †

Rights of farmer.

535. A farm is neither heritable nor transferable. Subject to this limitation and to any other conditions expressly embodied in the lease, the farmer has for the time being all the rights of ownership in the estate, at least all the rights which Government takes into account in fixing the assessment. ‡ The lease lapses on the death of the farmer unless the Financial Commissioner thinks fit to renew it in favour of his heir. In any case the old proprietors are not entitled to resume possession on account of a lapse occurring before the end of the period originally sanctioned. For further conditions of farming leases Land Revenue Rules 250, 251, and 253 may be consulted. The case of direct management or farm rendered necessary by the refusal of the landowners to accept the demand fixed at a general reassessment of the land revenue has been dealt with in the 517th paragraph of the Settlement Manual.

Yearly statement of result of direct management.

536. A yearly statement showing the result of direct management is submitted through the Commissioner to the Financial Commissioner. §

Sale of estate of holding.

537. The sale of a holding or of an estate on account of arrears is fortunately a very rare event in the Panjab. This measure can only be adopted when all the foregoing processes are deemed to be ineffectual. The sanction of the Financial Commissioner is required, || and in order to obtain it the Deputy Commissioner would require to prove that the proprietor or the community was either hopelessly insolvent or stubbornly contumacious. Land managed by the Court of Wards cannot be sold for arrears. And no sale is allowed

* Thomason's Directions for Collectors, Edition of 1850, paragraph 73.

† Land Revenue Rule 252.

‡ The farmer should receive no share of the "village cesses" (paragraphs 94 and 356 of the Settlement Manual). His rights in connection with the village *malba* (paragraph 92, Settlement Manual) should be determined when the lease is made.

§ For form of this statement and of other statements required in case of lands under direct management see paragraph 16 of Revenue Circular 84. For form of proposal for a farming lease see paragraph 17.

|| Section 75 of Act XVII of 1887 and section 14 of Panjab Act No. II of 1903.

on account of balances accruing while land is under direct management or leased to a farmer.* As a preliminary step the Deputy Commissioner should attach the holding or estate under Section 72.

538. If sale is sanctioned the first step is to issue a proclamation.† The land is sold free of all encumbrances, and all previous grants and contracts respecting it become void as against the purchaser.‡ The justification for this lies in the paramount claim of the State on the land until its title to a share of its produce has been satisfied. But rights of occupancy not created by the defaulter, and leases of land for gardens, buildings, and certain other non-agricultural purposes, are saved, and also any rights excepted in the proclamation of sale.§ For the procedure to be followed in sales sections 79—96 of Act XVII of 1887 may be referred to. If the highest bid is evidently inadequate, and especially if it does not cover the arrears and the cost of the sale, it will usually be advisable to buy in the estate for Government. The defaulter is still liable for the balance, but except under very exceptional circumstances it would be wrong to take any further proceedings against him. He is entitled to receive any surplus.

Effect of sale.

239. The law has still further safeguarded the title of the State to its land revenue. If an arrear cannot be recovered by any of the measures described above, or if the Financial Commissioner is of opinion that their adoption is inexpedient, he can order the Deputy Commissioner to proceed against any land or immoveable property belonging to the defaulter other than the holding on which the balance has accrued. In this case no grants or incumbrances created or contracts made in good faith by the defaulter are affected.||

Proceedings against other immoveable property of defaulter.

540. In the Panjab the drastic character of the law on the subject of the collection of the land revenue is in marked contrast to the general mildness of its administration. Excluding the issue of 12,577 writs of demands, a proceeding which can hardly be called coercive, processes were issued in the year 1904-05 in 6,287 cases, classified as follows:—

Actual employment of coercive processes.

(a) Arrest or detention	...	...	4,015
(b) Imprisonment	...	...	62
(c) Sale of moveables	...	...	2,300
(d) Direct management, farm, or transfer...	...	...	6
(e) Sale of immoveables	...	...	4

541. The procedure for the recovery of land revenue is also applicable to the recovery of the local rate and of the village officer's cess.¶

Local rate and village officer's cess.

* Proviso to Section 75.

† Section 79 (1).

‡ Section 76 (1).

§ Section 76 (2).

|| Section 77 (1). For the recovery in one district of land revenue due in another district see Act I of 1890.

¶ See also Sections 97—99.

Canal occupiers' and owners rates.

542. The 5th Section of Act I of 1890 provides that "where any sum is recoverable as an arrear of land revenue by any public officer other than a Collector or by any local authority, the Collector of the district in which the office of that officer or authority is situate shall, on the request of the officer or authority, proceed to recover the sum as if it were an arrear of land revenue."*

The chief demand which Deputy Commissioners in the Panjab have to realize under the authority given by this section is that on account of occupier's and owner's rate levied under Sections 36 and 37 of the Northern India Canal and Drainage Act, VIII of 1873. It is the duty of the Deputy Commissioner in canal-irrigated districts to pay as much attention to the collection of canal dues as he does to the realization of land revenue. In some districts the income from the latter is trifling compared with that from the former.

Procedure for recovery of canal dues.

543. After the *kharif* and *rabi* harvests the Canal Executive Engineer sends to the Deputy Commissioner an English demand statement showing for each estate the amount due on account of occupier's rate and the commission payable to village headmen at the rate of 3 per cent. on the demand on condition of the collection being made by due date. If any *lambardar* fails to pay his quota in time the Deputy Commissioner may confiscate the whole or part of his commission. In the districts watered by the Western Jamna Canal a similar demand statement on account of owner's rate is received. Simultaneously with the despatch of these English statements the Executive Engineer sends to the *tahsildar* a vernacular *khatauni* for every village, showing amount due from each cultivator on account of occupier's rate, and, in the case of the Western Jamna Canal, from each proprietor, on account of owner's rate.† The Deputy Commissioner must not receive any petitions against the correctness of any demand under the head of occupier's rate entered in the *khatauni*.‡ Objectors must be referred to the Canal Officer. Any additions made to the original demand and any deductions from it due to remissions granted after the preparation of the statement are communicated by the Executive Engineer to the Deputy Commissioner, who on his part furnishes to the Executive Engineer monthly statements of collections and balances.

* The 3rd Section of this Act makes provision for the realization of land revenue and of sums recoverable as arrears of land revenue in a district other than that in which the demand has become due.

† There are special forms for the Chenab and Jehlam Canals,—see paragraph 9 of Revenue Circular No 53.

‡ For remissions of owner's rate see next chapter.

CHAPTER XVI.

SUSPENSIONS AND REMISSIONS AND SPECIAL REDUCTIONS OF ASSESSMENTS.

544. When the British Government substituted for collections in Advantages kind a fixed cash demand, and after painful experience learned the ~~and draw-~~ secret of assessing it with fairness and moderation, it conferred a ~~backs of a~~ great boon on the country. The opportunities for oppression and ~~fixed demand.~~ speculation by underlings were much curtailed, the standard of living was raised, and the value of the proprietary right in the land was enormously enhanced. But the measure was not without serious drawbacks, some of which have only been slowly recognised as evils requiring remedy.* In this chapter we are concerned with one of these evils, namely that arising from the occasional incompatibility between fixity of assessment and fluctuation of outturn, and with the measures taken to remedy it without foregoing the undoubted advantages of a demand which does not vary.

545. It was the theory of those able officers who founded the revenue system of North-Western India, that, if a moderate revenue ~~Expectation~~ of fixed amount was assessed, the landowners could be expected, to ~~that land-~~ an extent which actual experience has belied, to meet the Government ~~owners would~~ demand in bad seasons from the surplus of good years. The ~~save to meet~~ expectation was plausible, but it took too little account of two important ~~deficiencies of~~ factors, the Indian climate and the Indian people. It did not allow ~~bad seasons~~ enough for the extreme vicissitudes of the harvests in many parts of the country, and it assumed that habits of thriftlessness, the growth ~~disappointed.~~ of many centuries of misrule, would be rapidly uprooted by supplying a reasonable motive for saving. The peasant farmers of the Panjab have had the advantage of a fair fixed demand for half a century, but it is still true, that a considerable proportion of them is lazy and thriftless, a larger number hardworking and thriftless, and only a small fraction both industrious and thrifty.

546. Where the fluctuations in the crop areas from year to year ~~Fluctuating~~ are very extreme, it has in some cases been judged best to give up a ~~assessments.~~ fixed demand altogether, and to adopt in its place an assessment varying with the acreage of crops harvested. But so far these fluctuating assessments in the Panjab have been mainly confined to lands subject to river inundation and to some canal irrigated tracts, and the extension of the system to areas dependent on rainfall, in which variations of outturn are even more marked, has generally been deemed inadvisable.†

* As pointed out in Chapter II the undue expansion of credit, which followed on the rapid growth of the value of land, in large measure nullified the effect of a fixed assessment as a school of thrift.

† See Chapter XXVII of the Settlement Manual.

The rigidity of a fixed demand should be tempered by suspensions and remissions.

547. In most tracts therefore Government looks to its officers to make a fixed demand, which is popular with the people and convenient to the State, work successfully by the use of the powers they possess of suspending and remitting revenue when there is a serious failure of crops. The rigid enforcement of the demand irrespective of calamities of season is a disastrous policy which Government has clearly condemned. The folly of collecting revenue from people who by reason of severe drought have no food in their houses, and whose credit with the grain-dealer is well nigh exhausted, seems obvious, but in this matter routine has sometimes proved strong enough to overpower common sense.

Evil resulting from laxity in collection.

548. On the other hand a fixed demand must be treated as such, and the realization of no part of it should be suspended, and still less entirely foregone, without plain necessity. It is easy by laxity to demoralize the people and their headmen. But it must be confessed that until comparatively recent times there was much more danger of undue rigour than of over-leniency. It is certainly not the intention of Government to authorize anything in the shape of laxity or carelessness in the collection of the fixed demand, or to make the system of suspensions and remissions, as has been proposed, "a regular feature of the revenue administration." It is, indeed, to be adopted as an integral part of the revenue policy of the State, but it is to be recognized as a measure purely of grace and not of right, to be exercised only in exceptional cases of calamity so severe as to justify and necessitate a relaxation of the settlement contract. It is true that, even within the areas under fixed assessment, the necessity for relief will recur with greater frequency in some parts than in others; and that in tracts of great precariousness, which it has not been thought advisable to bring under fluctuating assessment, such relief may be frequently needed as a matter of administrative necessity; but, even in such tracts, Government has no intention of abandoning the general principle of 'fixity of demand' with its attendant certainty, as the basis of its revenue system. It recognizes however that it is unwise, even in the interests of its own revenue, to insist absolutely upon what has been termed 'the sacredness of the settlement contract,' or to call upon the cultivator to pay the revenue or rent in all circumstances, however unfavourable; that while it is wholesome and legitimate to expect him to take the bad with the good in years of ordinary fluctuation payment should not be enforced under conditions which would compel a cultivator of ordinary care and prudence, who has to buy food for his family on credit, to further imperil his future solvency by borrowing to meet the demand of the State.

Proper working of suspensions presupposes knowledge of agricultural economy of district.

549. No man can hope to deal successfully with the questions that arise as regards the collection of land revenue unless he has a clear grasp of the agricultural economy of his district, of the soils and the crops of its different parts, the security or insecurity of their harvests, the character of the landowners as regards industry, the size of their holdings, and the extent to which they are burdened with, or free from, debt. The best written sources of information are the assessment reports of the different *tahsils*, the district gazetteer, the settlement officer's tables and maps classifying estates as secure and

insecure, and his scheme for the working of suspensions.* But the study of these should only be an aid to the knowledge to be gained by close personal observation.

550. It should be an invariable rule either to collect the demand punctually or to suspend it regularly. Left to themselves *tahsildars* are apt, even when they know that there will be difficulty in realizing the revenue, to let matters slide, instead of making up their minds definitely whether suspensions are or are not required. If possible, proposals for suspensions and remissions should be dealt with by the Deputy Commissioner before the crops are cut and garnered. Failing that all questions regarding the grant of suspensions on account of a harvest should have been decided by the Deputy Commissioner before the instalment on account of that harvest falls due. In his tours and *tahsil* inspections he should find out what the estates are in which suspensions are likely to be needed, and should either himself inspect them at harvest time, or arrange for their inspection by the Revenue Assistant, or by some Assistant or Extra Assistant Commissioner of experience. As far as possible no suspension should be given until the estate affected has been visited by some officer of a higher grade than the *tahsildar*. Until recently this was required by the instructions in every case. But in practice, where failure of crops affected a large number of estates, the rule had to be treated as a counsel of perfection. An experienced revenue officer, who by marching through a stricken tract has gained a good general idea of the condition of its crops need not hesitate to give suspensions to villages which he has not seen himself, if he has before him the harvest *jinswar* statement and an inspection note by the *tahsildar* or his *naib*. Accordingly the following rider has been added to the rule :—" In cases of widespread distress, where the number of estates requiring suspensions is so large that all cannot be inspected by officers of higher rank, inspection by a *tahsildar* or *naib-tahsildar* may be accepted as sufficient, provided that as many villages as possible are visited by an officer of higher rank, who should, if practicable, inspect at least a few in each assessment circle affected."

Demand should be punctually collected or regularly suspended.

551. The circumstances which call for suspensions and remissions may be roughly classed as—

Classification of grounds for relief.

- (a) ordinary, which are usually widespread ;
- (b) extraordinary, which are usually local and isolated.

The distinction is one of practical importance, for the treatment appropriate to the two descriptions of cases is, as a rule, different.

552. The circumstances falling under the head of "ordinary" occasions for relief are mostly those arising from the normal vicissitudes of the seasons. Loss of crops is generally due to deficiency or excess of moisture. The rainfall in most parts of the Panjab is very capricious both as regards its total amount, and, what is quite as important, its distribution over the months of the year. According to the time at which the deficiency occurs the calamity takes the shape either of a shrinkage in the area sown or of the destruction of growing

Ordinary calamities of season.

* See paragraphs 553-54 of the Settlement Manual.

crops. In a very bad season it is but too common to find both these evils united to produce disaster.* When rain fails at seed time, the contraction of the area sown is of course most marked in unirrigated lands, but well crops are also affected. Their acreage is often reduced, and the cost of raising them is much enhanced. If the land has to be watered before it can be sown, the effect of drought on growing crops can hardly escape the most careless observer. But the mischief done by frequent heavy falls of rain to crops on light sandy soils is more likely to pass unnoticed. The case of flooded lands under fluctuating assessment will be referred to by-and-by. Where their assessment is fixed the same principles apply as in the case of other unirrigated lands. But it must not be forgotten that a flood which ruins the autumn crops may be of the greatest value for the much more important spring harvest.

Fluctuations
of yield
allowed for in
assessment.

553. The calamities of which we are now treating being due to the ordinary changes of the seasons ought in some measure to have been foreseen and allowed for by the Settlement Officer. His final settlement report and his scheme for the working of suspensions should throw light on this point. Assessments nowadays are ultimately based on the application of a rate to the average area of successful crops for a series of years, and not to the cultivated area of the year of measurement, which may or may not have been normal.†

In so far as fluctuations of yield have really been allowed for by lowering the rate on the cultivated area, the doctrine that the land-owners must meet the shortage of a bad year from the surplus of good seasons should be kept in view. But great watchfulness must be shown if there is a succession of poor harvests, otherwise an unfair burden may be laid on the people. If the Collector is satisfied that distress really exists, and that the profits of the land injuriously affected have fallen much below what were anticipated at the time the assessment was made, the suspension of a portion of the current demand will be appropriate.

Insecure dry
tracts in South
Eastern
Panjab.

554. In very insecure tracts it will probably be found that the Settlement Officer has himself clearly stated that there was no demand which he could with justice to the State impose which could be paid alike in good and bad years, and that he regarded the grant of suspensions from time to time as essential to the smooth working of

* See paragraph 373 of the Settlement Manual.

† The crop statistics of Hissar, the most insecure of Panjab districts, for the years 1899-1900 and 1900-01, illustrate this in a striking way. The figures represent thousands of acres.

Year.	Cultivated area.	CROPS.		
		Sown.	Failed.	Balance matured.
1899-1900... ..	2,581	1,561	1,363	198
1900-01	2,617	2,451	437	2,014

his settlement. This is a position which no one who has had experience of the rain lands in the south-east of the Panjab will dispute, and it has been fully accepted by Government. In the orders of the Panjab Government on the settlement of the Rohtak District, passed more than twenty years ago sanction was given to the assessments "on the understanding that in the case of all unirrigated lands the revenue assessed is one which is to be paid in full in ordinary years, but which the Government does not expect to realize at once during severe or long continued droughts. In such seasons suspensions will be freely given."* An object lesson was soon after furnished by the breakdown of the revised settlement of Gurgaon, which was aggravated, if it was not caused, by bad revenue management. In explaining the conditions on which the reduced assessments proposed were accepted Sir James Lyall remarked —

"These conditions are that the full revenue of insecure tracts shall not be realized in years of severe or long continued drought, but that such relief shall be given by way of suspensions, and, when necessary, by way of advances for the purchase of bullocks, etc., as may be called for by the actual circumstances of the case when carefully considered by the light of the continuous record of agricultural conditions which is now . . . maintained.

"It is impossible not to feel that the necessity for a general revision of the original assessment . . . would probably never have arisen but for the neglect of these principles. It is equally impossible . . . to believe that any adequate assessment could ever be devised for the insecure tracts of this district which could be safely realized without suspensions in years of severe and long continued drought . . . The variations in the rainfall, and especially in the seasonableness of the rains; the consequent fluctuations in the area sown and the still greater fluctuations in the area harvested; the liability of the people to terrible losses of cattle in years of drought; the great mortality from fever which is apt to follow upon abnormal seasons; and the character of the population most liable to suffer from the effects of such seasons, — all these circumstances constitute a marked condition of things which demands special and exceptional treatment".†

555. These principles are clear enough, and while they apply in the fullest degree to the south-eastern districts of the province, where the rainfall in good years is sufficient to mature an immense area of unirrigated kharif crops, but where the variations from the normal are extreme, they apply less or more to all parts of the Panjab plains in which the rainfall permits of *barani* cultivation except a few specially favoured tracts close to the hills. It is easy moreover to exaggerate the security of sub-montane lands. In the low hills and the broken country sometimes found near the outer spurs of the Himalaya the harvests are often very precarious. An instance of the former is the Hill Circle of Gurdaspur, and examples of the latter are the Bharrari of the same district and the Kandi Circles of Ambala. Sub-montane tracts are only secure where the surface is flat, otherwise

Other rain
lands in the
Panjab

* Paragraph 11 of Review of Settlement Report of Rohtak by Mr. H. C. Fanshawe.

† Paragraph 22 of Panjab Government Orders on Mr. Channing's Settlement Report of Gurgaon.