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OF THE

ANCIENT LAND LAW

ON

THE ILBERT BILL NO. 2.

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HENRY BELL.

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If we except the Ilbert Bill No. 1, few measures have excited so profound a sensation in India as the Land Tenancy Bill for Bengal, which I have taken the liberty of calling the Ilbert Bill No. 2. It is in many ways a most remarkable measure. Its principles and its objects are equally startling. It is based on the somewhat uncomfortable doctrine that the Government of India, being a despotic Government can do just what it pleases with the vested rights of the people. Its avowed object is to "restore the ancient land law of the country." This ancient land law is supposed to have been destroyed during the century and a quarter of British misrule; and it is now to be revived for the benefit of the present generation. It is difficult to understand how any sane person could entertain so wild so extravagant an idea. We have in Bengal some fifty millions of people chiefly occupied in agricultural pursuits, and who can foresee what desires will be aroused, what animosities provoked by a law which will subvert all existing rights for the purpose of "restoring the ancient land law of the country?" So far as Bengal is concerned no political necessity is alleged for this stupendous

proposal. It has burst upon the landholders like a bolt from an unclouded sky. After enjoying for more than a century under British rule, their rights of property in peace and quietness, they are suddenly told that in former times there existed an ancient land law, which previous Governments had overlooked, but which must now at any cost be restored. It is, of course, impossible to find any parallel to the present measure, and it is difficult to imagine one. If we could suppose Mr. Gladstone introducing a Bill into the House of Commons to confer on the English farmer of to-day the supposed rights and privileges of the Saxon yeoman under the Heptarchy, we should have a faint idea of the scope and tendency of Lord Ripon's measure.

The justification put forward by the Government for this extraordinary Bill is that the land owners of Bengal have no right of property in their land. "The expression 'right of property,'" said one of the Government members of the Legislative Council, "when used in such a connection and employed in its modern and European sense, is altogether misleading, and connotes an idea entirely foreign to the age and country. There are two great principles which underlie the question of agricultural tenancy in these provinces, principles which took their rise in a most remote antiquity, which, though they may not be embodied in any statute, are written in the hearts of the people, and have survived the lapse of years, and the rise and fall of dynasties."

The point at issue is here stated plainly and without disguise. It is a startling proposition that, after more than

a century of British rule, there is no such thing in India as a right of property in land, that the expression connotes an idea foreign to the age and country. No doubt we live in a Communistic age, and we must therefore, I suppose, adopt suitable principles of legislation. Statutes and precedents are no longer to be regarded, the golden age has dawned, and we must now enact the law as written in the hearts of the people.

When doctrines of so alarming a tendency are openly avowed in the Legislative Council, it becomes a matter of general concern to see whether this remarkable measure can be justified on the ground that the landed proprietors of India have no "right of property" in their land. The subject fortunately is not a new one. It was discussed more than a century ago, when the English Government first acquired possession of Bengal. In those days, as in these, there were not wanting men of extreme views, who urged the Government to confiscate the whole of the landed property of the country on the very same plea that the zemindars or landholders had no right of property in their land. The controversy was carried on for years, and many of the leading personages of the last century—Warren Hastings and Francis, Pitt and Fox, Burke and Dundas, Lord Teignmouth and Lord Cornwallis—took a prominent part in the discussion. The very questions which are now re-opened were then considered, and to all appearance finally determined.

It is a matter of history that when the East India Company obtained possession of Bengal in 1765, the

greatest anarchy and confusion prevailed throughout the country. The central authority of the Emperor of Delhi had been shattered, and the Muhammadan Viceroys who governed in his name, having no object in view but their own aggrandizement, indulged in a general system of spoliation and pillage. It is hardly an exaggeration to say, that nearly every man of property in the country had been massacred or brought to ruin As the great source of revenue was the land-tax, it was natural that the landed proprietors or zemindars would be the chief victims in a general system of plunder. In the palmy days of Muhammadan rule the land-tax was assessed with moderation and collected without oppression. The first Muhammadan assessment of Bengal was made by Akbar, shortly after his conquest of the country, in the year 1573. The principle upon which he secured his conquest was to conciliate the Hindus and to unite them as much as possible to his person and Government. The Hindu proprietors were everywhere left in the enjoyment of their lands, subject to a quit rent which each had to pay to the Government. The tax imposed upon Bengal amounted to a little more than a million sterling; and for a period of 140 years little or no addition was made to the taxation of the country.* By the moderation of his rule Akbar conciliated his subjects and consolidated his empire; agriculture was encouraged and waste lands brought into cultivation; and the zemindars lived in dignity and opulence

* Mr Shore's figures in Appendix I to his minute of September, 18th, 1789.

in the undisturbed possession of their estates and the quiet enjoyment of the profits, which an extended cultivation and an increased population produced.* But with the decline of the Mogul empire, the principles of Akbar were departed from, and from the year 1722 a system not of Government but of pillage and robbery prevailed. Between that year and 1763 an addition of more than a million sterling was added to the land tax of Bengal. Those zemindars who were either unable to pay or unwilling to submit to these exactions were treated with a cruelty revolting to humanity. They were dispossessed of their property, thrown into prison, and subjected to every conceivable torture. One tyrant of the name of Jaffir Khan is said to have dispossessed a large number of the zemindars of Bengal, and to have appropriated the whole of the rents of their estates which he collected by his own officers, leaving to the zemindars a bare pittance scarcely sufficient for subsistence.† But though subjected to these acts of tyranny and oppression, the right of the zemindars to their lands was never denied, and sooner or later they were invariably restored to their estates.

In this position of affairs the East India Company succeeded to the Government of Bengal in 1765. At first little or no change was made in the administration of the finances. The collection of the land revenue was left entirely in native hands, subject to the control of the British

* Mr. Shore's minute of September 18th, 1789, para. 380.
† 2 Harrington Analysis, 352.
3 Id. 235.

resident at Murshedabad. But in 1772 a new system was inaugurated; and it fell to the lot of Warren Hastings, to carry it into effect. The control of the finances was removed from Murshedabad to Calcutta and placed under the immediate charge of the Governor General and his Council. The Company's finances at the time were in an alarming condition: the treasury was empty, and the country had just been desolated by a famine, which had carried off one-third of the population. It was the object of Hastings to realize as large a revenue as he could. His instructions were to govern justly, but to send more money. Unfortunately he had no data or reliable information upon which he could make a fair and equitable assessment. As he said himself. "The value of the land was known only to the zemindars, and it was not to be expected that they would part with their knowledge."* He in fact experienced the same difficulty that Lord Canning's Government afterwards experienced in assessing the Income-tax. But being a clever man he hit upon an original idea. To find out the real value of the zemindars' possessions, he determined to lease out, by public auction, for a term of five years, the whole of the landed property in Bengal. If the zemindar or owner of the estate was the highest bidder, he maintained his property; if he was not, he lost it. As an excuse for Warren Hastings, it must be remembered that he had in the exactions of Jaffir Khan and the other tyrants who disgraced the close of the Mogul dynasty, precedents to justify his conduct. Like them he did not deny the pro-

* Minute March 8, 1775, quoted in Francis' Revenues of Bengal, p. 132.

prietary right of the zemindars, but he apparently considered that a despotic Government could take just what it pleased from its subjects. As he afterwards said upon his impeachment: "He knew the constitution of Asia only from its practice."* There were precedents in abundance to justify every species of oppression. One of the last of the Muhammadan Viceroys had plundered every one, bankers and zemindars alike. But in Warren Hastings' measure there was at least some degree of regularity. He murdered no one, he imprisoned no one. He simply farmed out the land revenue of Bengal. If the proprietor was willing to pay as much as other people he kept his estate; if not, it was made over to the highest bidder, and the zemindar received a subsistence allowance for his support. But Warren Hastings never for a moment denied the proprietary rights of the zemindars. In a letter written in the same year (1772) to the Court of Directors, he had stated that the zemindars "were the *proprietors;* that the lands were *their* estates, and their inheritance; that from a long continuance of the lands in *their* families, it was to be concluded they had rivetted an authority in the district, acquired an ascendancy over the minds of the ryots, and ingratiated their affections."†

Warren Hastings's measure was simply a measure of expediency. He had no desire to dispossess the zemindars but he had a desire to secure as large a revenue as he could get. He had no means of assesing the revenue fairly, so he farmed it out to the highest bidders. In after years this

* Burke's Works, vol. 7, 357.
† General Letter No. 3, 1772.

measure formed one of the grounds of his impeachment. The charge was drawn up by Burke and adopted by the House of Commons in 1786, and it is interesting to see the view that was then entertained by the House of Commons of the position and rights of the zemindars.

The charge* sets out that "the property of the lands, "of Bengal was, according to the laws and customs of "that country, an inheritable property, and that it was "with few exceptions, vested in certain natives, called "zemindars or landholders, under whom other natives, called "talukdars and ryots, held certain subordinate rights of "property or occupancy in the said lands; that the said "natives were Hindus, and that their rights and privileges "were grounded upon the possession of regular grants, a "long series of family succession and fair purchase; that it "appeared that Bengal had been under the dominion of the "Mogul and subject to a Muhammadan Government, for "above two hundred years; that, while the Mogul Govern-"ment was in its vigour, the *property of zemindars was held* "*sacred*; and that either by voluntary grant from the said "Mogul or by composition with him, the native Hindus "were left in the free, quiet and undisturbed possession of "their lands, on the single condition of paying a fixed "certain and unalterable revenue or quit-rent, to the Mogul "Government; that this revenue or quit-rent was called the "*aussil jumma* or original ground-rent of the provinces, and "was not increased from the time it was first settled in 1573 "to 1740, when the regular and effective Mogul Government

* Burke's Works, Vol. 7, p. 109.

"ended. That notwithstanding that the right of property "and inheritance had been repeatedly acknowledged by the "said Warren Hastings to be in the zemindars and other "native landholders; and notwithstanding that he had "declared 'that the security of private property was the "greatest encouragement to industry, on which the wealth of "every State depended,' the said Warren Hastings, never- "theless, in direct violation of those acknowledged rights and "principles, did universally let the lands of Bengal in farm for "five, years; thereby destroying all the rights of private "property of the zemindars, thereby delivering the manage- "ment of their estates to farmers, and transferring by a most "arbitrary and unjust act of power the whole landed property "of Bengal from the owners to strangers."

As far as I am aware Warren Hastings never attempted to justify his conduct, on the ground that the zemindars had no right of property in their lands. Before he left India an Act of Parliament,"* had been passed directing the restoration of the zemindars to their estates; and in the review of his administration, which he wrote on his voyage home, he thus speaks of this Act of Parliament :—"I shall only further ob- "serve, on the proposed plan of restoring the zemindars to the "possession of their lands and the management of their "revenues, that unless care should be taken at the same time "to establish some mode of guardianship, with a view to "remedy the defects of minority, profusion and incapacity of "the zemindars, their restoration, which carries with it *the* "*appearance of justice,* will often terminate in acts of the

* 24 George IJ^, c 25, s. 39.

"greatest severity, in the total dispossession of the zemindars, "or in concessions on the part of Government to their "demands for the revenues."* The justice of the measure he admitted, but he apparently defended himself on the somewhat extraordinary plea that he was acting for the best interests of the zemindars themselves.

But the Act of 1784 not only did tardy justice to the zemindars for their past wrongs, but it was the immediate and proxminate cause of the Permanent Settlement. In forwarding the Act to their Government in Bengal the Court of Directors expressed their opinion "that the spirit of the Act would be best observed by fixing a permanent revenue on a review of the assessment and actual collections of former years; and by forming a settlement, in every practicable instance, with the landholders; establishing at the same time such rules as might be requisite for maintaining the *rights of all descriptions of persons under* the *established usages of the country.*" These orders of the Court of Directors were carried out with the most scrupulous care. Mr. Harrington, a contemporary of the events, of which he was speaking, in his Analysis of the Regulations, thus describes the enquiries which were instituted by Lord Cornwallis. "On the receipt of the instructions the most particular inquiries were set on foot, to obtain all possible information of the former and present state of the several districts: the condition of the landholders and *tenants of every description*; their rights under the Mogul Government before its decline; the *laws and usages which had since pre-*

* Warren Hastings's Memoirs, p. 121.

vailed in settling the rents payable by the ryots and other under-tenants to the zemindars and other superior landholders; what new impositions and exactions had been introduced under the Company's administration; what rules were required for securing the inferior occupants and immediate cultivators against oppression and extortion; and generally, what measures should be adopted to remedy existing defects and abuses in the adjustment and collection of the land rents."* The results of these enquiries were summarized and considered by Mr. Shore (afterwards Lord Teignmouth) in a series of most exhaustive minutes, in which the respective rights of the agricultural classes, from the zemindar to the ryot, were carefully set forth and recorded. Mr. Shore's conclusions were adopted by Lord Cornwallis, and were finally embodied in a series of legislative enactments which are generally known as the Permanent Settlement Regulations. If words have any meaning, those Regulations most distinctly recognized a property in land. They explicitly declared that the zemindars or landholders were the actual and hereditary proprietors of the soil. It should also be added that these regulations were passed with more than usual deliberation. They were the result of years of long and anxious enquiry in India, and before their final promulgation they were submitted for the sanction and approval of the Court of Directors and the Ministry in England. Mr. Dundas, the President of the Board of Control, writing to Lord Cornwallis on the 17th September, 1792, says:—"I thought it indispensably necessary tnat the measure should

* 2 Harrington Analysis, 174.

originate with the Board of Control, and likewise that I should induce Mr. Pitt to become my partner in the final consideration of so important and controverted a measure. He accordingly agreed to shut himself up with me for ten days at Wimbledon and attend to that business only. Charles Grant stayed with us a great part of the time. After a most minute and attentive consideration of the whole subject, I had the satisfaction to find Mr. Pitt entirely of the same opinion with us. We therefore settled a despatch upon the ideas we had formed, and sent it down to the Court of Directors."*

These Permanent Settlement Regulations of Lord Cornwallis are to India what Magna Charta is to England. It is to them that the zemindars and ryots alike look for the security of their liberties and rights. In the very first regulation the status of the zemindars is declared: and to an ordinary understanding there is not much ambiguity about the words:. "The Governor General is Council," so runs the Regulation, "declares to the zemindars, independent talukdars, and *other actual proprietors of land,* that no alteration will be made in the assessment which they have respectively engaged to pay, but that they and their heirs and lawful successors will be allowed to hold their estates at such assessment for ever. The Governor General trusts that the proprietors of land, sensible of the benefits conferred upon them by the public assessment being fixed for ever, will exert themselves *in the cultivation of*

* Ross' Cornwallis' Correspondence, Vol. 2-212.

their lands, under the certainty that they will enjoy exclusively the fruit of their own good management and industry. To discharge the revenues at the stipulated periods without delay or evasion, and to conduct themselves with good faith and moderation towards their dependent talukdars and ryots, are duties at all times indispensibly required from the proprietors of land, and a strict observance of these duties is more than ever incumbent upon them for the benefits which they will themselves derive from the orders now issued."*

To understand the force and effect of this public recognition of the zemindars as proprietors, it must be remembered that the question at issue, and which Lord Cornwallis' Government had to determine, was whether the zemindars were mere collectors of the revenue or the proprietors of the soil; whether, in fact, they had or had not a right of property in their land. Upon this point official opinion had hitherto been divided. Mr. Grant, the Sheristadar of the Board of Revenue, strongly maintained that they were mere collectors of revenue and that the Government had a perfect right to dispense with their services and appropriate their estates. The Government of Lord Cornwallis and the Court of Directors refused to entertain so monstrous a proposal. I will quote a short extract from the Court's despatch†:—"We have perused with attention Mr. Grant's discussion of the rights of zemindars: but we should have

* Reg. 1, 1793, s. 4-7.

† Letter of Court of Directors, August 21, 1788, quoted 3 Har. Analysis, 357 n.

thought our Supreme Government very blameworthy, if upon his suggestion, or upon being ever so much urged to adopt that line of conduct by the Committee of Revenue, they had ventured to issue any public declaration which would have abrogated the claims the zemindars have been supposed to enjoy to an hereditary possession: and thereby precipitately committed the national faith and honor upon a subject of so much magnitude. Neither can we observe without astonishment the levity with which this most important consideration has been treated by the Committee. We believe it is a fact that many of the present zemindars are the lineal descendants of those persons who possessed the lands before and under the conquest of Bengal by Akbar about two centuries ago. In like manner it is certain that the idea of an hereditary tenure has been sanctioned by repeated discussions in the British Parliament. It has been recognized also by the undeviating practice of our Governments in Bengal, and of all the Dewanny Courts since our possession of the country, and that not as mere acts of grace, but as the dues of justice. With all this evidence of fact before us, in favour of the zemindars, we should not hold ourselves warranted in so monstrous an exertion of the powers vested in us by the legislature, as that of nullifying upon a *mere theoretic opinion* all the supposed property of an extensive territory."

The declaration of Lord Cornwallis that the zemindars were proprietors was intended to set at rest the controversy for ever. It was a distinct acknowledgment and recognition of the status which the zemindars always had, but which

the British Government had never before formally declared. And to remove any ambiguity about the meaning of the word proprietor it was declared in the second Regulations that "the *property in the soil* was vested in the landholders."* After these solemn declarations of the Legislature, it is difficult to understand how it can be seriously contended that there is no such thing in India as a "right of property" in land: or how the so-called ancient land law of the country is to be restored without a direct infringement and violation of this right.

Now let us see how Mr. Ilbert, the legal member of Government, deals with these declarations of the legislature. The term proprietor is very summararily disposed of. "No serious argument," says Mr. Ilbert, "can be based upon it. The term as applied to land has no technical meaning in English Law." And he then goes on very gravely to inform the Council that the term proprietor as used by Lord Cornwallis in his Regulations meant nothing more than the word "owner"† as used in an English Rating Act. That as the only object of describing a man as owner in an English Rating Act was to fix upon some person to pay the rates and perform the duties prescribed by the Act, so the only object of the Regulations in declaring the zemindars to be proprietors was to fix upon some one to pay the Government Revenue. And so, says Mr. Ilbert, "the East India Company selected

*. Preamble of Reg. 11, 1793.

† Mr. Ilbert quotes the following definition of "owner" from the Public Health Act of 1875. "Owner means the person for the time being receiving the rack-rent of the lands or premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person."

the zemindars as the persons to deal with and *christened* them landholders or proprietors accordingly."

And these are the arguments gravely put forward for ignoring the rights of property. Surely Mr. Ilbert must know that the object of defining the word "owner" in an English Rating Act is to obviate the necessity of finding out who the real owner is. The object of Lord Cornwallis' enquiries on the contrary was to ascertain and determine who the real proprietor *was*, in order that he might be confirmed in his proprietary rights. Equally astounding is the assertion that Lord Cornwallis found the zemindars mere collectors of revenue, but was pleased to *christen* them proprietors. Lord Cornwallis however confirmed, he did not christen. The zemindars had been christened proprietors by Warren Hastings as long ago as 1772, they bore that name in Fox's India Bill of 1783 and in Pitt's Act of 1784, and all that Lord Cornwallis had to do, was to perform the ceremony of confirmation.

But another explanation of the word proprietor is given by Mr. Ilbert. He says that the zemindars were proprietors in this sense that the Government "transferred to them those *indefinite proprietary rights in the soil* which had formerly been claimed by the State." Now this is exactly what the State did not do. The State never had, and as far as I am aware, never claimed a proprietary right in the soil. Warren Hastings' Government never claimed it. Lord Cornwallis' Government never claimed it. The Muhammadan Government certainly never claimed it. "It was an established principle we are told, of Mogul finance as practised in Hindoos-

tan that the rents belong to the Sovereign and the land to the zemindar."* The Emperors of Delhi would certainly not have purchased land from the zemindars, as we know they did,† if they possessed or claimed a proprietary right in the soil. I must leave it, therefore, to Mr. Ilbert to explain what authority he has for stating that the Government either claimed a proprietary right in the soil, or transferred such right to the zemindars. Whatever rights the zemindars possessed as proprietors they owed to themselves and not to the State.

But, says Mr. Ilbert, admitting that the Legislature recognized the zemiudars as proprietors, " they did not settle or define, they did not even ascertain the rights of the ryots or occupying cultivators. The legislation of 1793 left those rights outstanding and undefined, and by so leaving them it tended to obscure them, to efface them, and in too many cases ultimately to destroy them." Now it is seldom one meets with a more original or startling proposition than this; certain persons had or were supposed to have certain rights just 100 years ago: the legislature of the time ignored those rights, effaced them, obliterated them, destroyed them; and after property has been bought and sold for 100 years, free from all incumbrances, these outstanding rights are to be suddenly revived at the expense of the present holders of the property, and restored not even to the persons who are supposed to have originally possessed them, but to

* 3 Har: Analysis 245, 300.
† Id. 348.

persons who never have possessed them and who have never even asked to possess them !

But apart from his principles, is Mr. Ilbert correct in his facts? Is it true that the Legislature in 1793 did not ascertain and determine the rights and privileges of the ryots at the time of the permanent settlement? Such a supposition is *primâ facie* incredible. The Act of Parliament of 1784, and the orders of the Court of Directors, expressly required Lord Cornwallis and his advisers, not only to settle the land with the zemindârs, but "to establish at the same time such rules as might be requisite for maintaining the *rights of all descriptions of persons under the established usages of the country.*"* It was their express duty to ascertain and record the customary land law of the country. And if Mr. Ilbert had had leisure, which he tells us he had not, to consider attentively the documents which he contemptuously describes as making up the permanent settlement, he would have found that the commands of Parliament and the instructions of the Court of Directors had been fully carried out, and that the right of the under-tenants and cultivators were ascertained and determined with as much care as the rights of the zemindars themselves. The question is one which is not open to dispute. The records of the Permanent Settlement are still extant, and any one who pleases can refer to them. I do not wish to be tedious, but when so astounding an assertion is made that Lord Cornwallis and his advisers left the ryots without

* Ante page 10.

protection and deliberately overlooked their rights, or, as Mr. Ilbert says, left them outstanding, it is only fair that I should let the authors of the Permanent Settlement speak in their own defence.

In his Minute of the 18th June 1789, which forms the basis of the Permanent Settlement Regulations, Mr. Shore thus writes :—*

"I now advert to the third subject of enquiry, the rules for preventing oppressions upon the ryots by the zemindars and farmers. In determining this question the *rights* of the zemindars, talukdars and *ryots ought to be first ascertained,* and I shall here insert a summary of what I deem myself authorized to maintain upon these points, premising that I pretend only to state facts and draw such conclusions from them as they fairly admit, without reconciling any apparent inconsistency either in fact or form.†

"I consider the zemindars as the proprietors of the soil, to the property of which they succeed by right of inheritance, according to the laws of their own religion, and that the sovereign authority cannot justly exercise the power of depriving them of the succession, nor of altering it, when there are any legal heirs. The privilege of disposing of the land by sale or mortgage is derived from this fundamental right, and was exercised by the zemindars before we acquired the Dewanny.‡

* Para. 368.
† Para. 369.
‡ Para. 370.

"The revenues of the land belong to the ruling power, which being *absolute*, claimed and exercised the right of determining the proportion to be taken by the State.*

"With respect to the ryots their rights appear very uncertain and indefinite. While the demands of Government upon the zemindars were regulated by some standard as I conclude it was from the time of Akbar to that of Jaffer Khan,† they had little temptation or necessity to oppress their ryots, but the same variable discretion, which has affected the payments required from them, has extended in the same manner to the ryots. The rates of the land were, probably, fixed formerly according to the nature of the soil and its produce; the cesses imposed by the zemindars were an enhancement of those rates, and arbitrary at first without being oppressive.‡ It is, however, generally understood that the ryots by long occupancy acquire a right of possession to the soil, and are not subject to be removed; but this right does not *authorize them to sell or mortgage it, and it is so far distinct from a right of property.* This, like all other rights under a despotic Government, is precarious. The zemindars, when an increase has been forced upon them, have exercised the right of demanding it from the ryots. If we admit the property of the soil to be solely vested in the zemindars, we must exclude any acknowledgment of such rights in favour of the ryots, except where they may acquire it from the proprietor.§

* Para. 372.
† Ante page. 4.
‡ Para. 383.
§ Para. 389.

"In every district throughout Bengal, where the license of exaction has not exceeded all rule, the rents of the land are regulated by known rates, and in some districts each village has its own. These rates are formed with respect to the produce of the land at so much per bigha; * some lands produce two crops a year, some three; the more profitable articles, such as the mulberry plant, betel leaf, tobacco and sugarcane, render the value of the land proportionably great.† These rates must have been fixed upon a measurement of the land, and the settlement of Turymul ‡ may have furnished the basis of them. In the course of time cesses were superadded to that standard and became included on a subsequent valuation, *the rates varying with each succeeding measurement.*§

"When the rents by successive impositions become too heavy, the *ryots either abscond* or the zemindar allows them a compensation by giving them other lands at a favourable rate.‖ When a measurement of the land takes place, the existing rates are confirmed, and generally, with some additions. When none can be found, a reference is made to the rates of other lands of the same quality in the vicinity of the spot measured, but the adjustment of them in that case is a business of considerable difficulty. Every part of the transaction is a subject of contention, the demands on both

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* About one-third of an acre.
† Para. 391.
‡ The Finance Minister of Akbar.
§ Para. 392.
‖ Para. ~~398~~ 397.

sides are unreasonabl,e and are finally terminated by a compromise.*

"There are two other distinctions of importance † with respect to the right of the ryots. Those who cultivate the lands of the village to which they belong, either from length of occupancy or other cause, have a stronger right than others, and may *in some measure* be considered as hereditary tenants, and they generally pay *the highest rents.* The other class cultivate lands belonging to a village, where they do not reside ; they are considered as tenants-at-will ; and having only a temporary accidental interest in the soil, which they cultivate, will not submit to the payment of so large a rent as the preceding class, and when oppressed easily abandon the land, to which they have no attachment.‡

"A ryot pays his rent either by a formal or implied agreement. The first is a deed called a pottah,§ which ought to express the nature and terms of his tenure and the amount of his rent ; it often, however, refers some of the conditions tc indefinite rules, such as the custom of the village or the pergunnah, the rates of an elapsed year, or the rent of his predecessor. The terms of an implied agreement are sometimes specific as in Chittagong, where the rents are paid from year to year, according to rates established upon a measurement of the lands in the year 1767, or indefinite, as having a reference to the rates of the last and preceding

* Para. 398.
† Para. 225, 230.
‡ Para. 225.
§ A lease.

year as in Nuddea. In some places as in the northern parts of the Dacca districts the collections are made by a measurement of the land held by each renter, immediately previous to the harvest, agreeable to which the lands are valued and the rents received.*

"Leases to the khudkast ryots, or those who cultivate the land of the village where they reside, are generally given without any limitation of period, and express that they are to hold the lands paying the rents from year to year. Hence the right of occupancy originates: and it is equally understood as a prescriptive law, that the ryots who hold by this tenure, *cannot relinquish* any part of *the lands in their possession*, or change the species of cultivation without a forfeiture of the right of occupancy.† Pykast ryots, or those who cultivate the land of villages, where they do not reside, hold their lands upon a more indefinite tenure. The leases to them are generally granted with a limitation in point of time, and when they deem the terms unfavourable they repair to some other spot."‡

Mr. Shore's conclusions may be summed up as follows:—

1. That the zemindars were the proprietors of the soil.

2. That the Government being an arbitrary Government could fix the land tax or revenue at whatever rate it pleased.

3. That the cultivators were of two descriptions—Resident ryots and non-resident.

4. That non-resident ryots were mere tenants-at-will.

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* Para. 227-230.
† Para. 406.
‡ Para. 407.

5. That resident ryots from long residence acquired a right of occupancy, but this right of occupancy was distinct from a right of property, as they could neither sell nor mortgage the land.

6. That a resident ryot who relinquished any portion of his land, or who changed the species of cultivation, forfeited his right of occupancy.

7. That all ryots whether resident or non-resident held their lands under an express or implied agreement, as to the rent that was to be paid, but that the zemindars imposed at their pleasure cesses upon their ryots over and above the amount stipulated for in the agreement.

8. That when these impositions became excessive the only remedy left to the ryot was to abscond.

9. That the rates of rent depended upon the nature of the produce grown, and varied with each succeeding measurement, and in some places with each succeeding harvest.

It should further be added that the rents paid by the ryots were reckoned at a half to three-fifths of the gross produce,* and the zemindar had the power of imprisoning and subjecting to corporal punishment any ryot who made default in the payment of his rent. If this is a correct account of the customary land law of the country before 1793, Bengal was certainly not the Utopia which the ardent reformers of the present day represent it to have been.

And now let us see how the much-abused Cornwallis dealt with the evils which these enquiries had laid bare.

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* Shore's Minute, ~~Dec. 8~~, 1789, Para. 5.

Let us see what truth there is in the charge, which his detractors bring against him, that he left the rights of the ryots "outstanding, and undefined, and so obscured them, effaced them, and in too many cases ultimately destroyed them." Mr. Ilbert does not condescend to inform us what these rights were which Lord Cornwallis so recklessly destroyed. If we are to accept the result of Mr. Shore's enquiries, the rights of the ryots were of a somewhat shadowy description. The non-resident ryots were tenants-at-will: while the resident ryots appear to have been in a worse position, for they were subjected to heavier exactions and had to pay a higher rent.*

Some of them, however, had a recognized right of occupancy—a right which Mr. Shore tells us was distinct from a right of property as they could neither sell nor mortgage the land, but which nevertheless gave them the right of holding the land so long as they paid the rent.† It is clear that they had no right to hold at privileged rates, for their rent was higher than that of the non-resident ryots, and was always subject to re-adjustment either by measurement of the land in cultivation‡ or with reference to the value of the crops grown upon it.§ What rendered this right of occupancy practically valueless, was the system of arbitrary impositions to which the ryots were subjected over and above the stipulated amount of their rents.‖ Lord Cornwallis took a very practical view of the situation. He

* Idem, Para. 225.
† Idem, 389.
‡ Idem, 398, 418.
§ Idem, 391.
‖ Idem, 233.

virtually said to the zemindars: I shall confirm you in your proprietary rights; with those I will in no way interfere. But I will not allow you to violate your agreements with your ryots by imposing upon them at your pleasure arbitrary exactions in excess of their rent. I will interpose the law between you and your tenants.

He accordingly deprived them, of what may be called their seignorial privileges. They were no longer to exercise civil and criminal jurisdiction within their estates; * the charge of the police was taken out of their hands; † and, they were prohibited ‡ under the severest penalties from confining or inflicting corporal punishment upon their ryots to enforce payment of their rents. As a further security to the ryots he established Courts of Civil Judicature throughout the country, and to these Courts all disputed claims between the zemindars and their ryots were to be referred instead to being left to the arbitrary determination of the zemindar himself. By these provisions the reign of law was introduced, and personal freedom secured to the ryots of Bengal.

Having emancipated the ryots from their thraldom as men, he next proceeded to deal with their rights as tenants. There were certain under-tenants § who had obtained either by grant or purchase from the zemindars a proprietary right

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* Reg. VIII, 1793, s. 66.
† Reg. XXII. 1793, s. 2.
‡ Reg. XVIII, 1793, s. 28.
§ Mokurirdars and Istemrardars, Reg. VIII, 1793, s. 49.

in the soil, * and the rents of this favoured class were declared to be fixed for ever and the zemindar was prohibited from enhancing them. With regard to those resident-ryots who had acquired a right of occupancy, provisions were made for their protection, † and the zemindars were prohibited under the most stringent penalties from exacting from their ryots, under the name of cesses or other imposition anything beyond the rent stipulated in the agreement. ‡ Leases were to be granted to all ryots, and a specific sum fixed for the rent, § and all disputes between landlord and tenant were to be decided by the Civil Court according to the rules prescribed by the Regulations. ‖

Such was the permanent settlement for which Lord Cornwallis has been so much abused. His object was not to create rights which did not exist, but to ascertain and protect rights which did exist. He had no preconceived theories. His published Minutes show that he had no particular love for the zemindars, his whole sympathies were with the ryots. But he desired to act justly; and while protecting the ryots in their weakness, he had no wish to deprive the zemindars of their legitimate rights. If a work is to be judged by its results, we have only to point to the present prosperity of Bengal, prosperous beyond any other province in India, as an enduring proof of his sagacity and judgment.

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* Shore's Minute, Sept. 18, 1789, para. 389.
† Reg. VIII, 1793, s. 60.
‡ Id. s. 55.
§ Id. 57.
‖ Reg. III, 1793.

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† Reg. VIII, 1793, s. 60.
‡ Id. s. 55.
§ Id. 57.
‖ Reg. III, 1793.

Having seen what was the ancient law of the country as existing in the time of Lord Cornwallis, I will now consider how far the proposals of the present Bill are in accordance with that law which Lord Ripon's advisers profess themselves anxious to restore.

The great principle of the Bill is to convert all the ryots of Bengal into occupancy ryots, or as they are called in the Bill, "settled ryots." At the time of the Permenent Settlement, the only occupancy ryots were the hereditary resident or khudkast ryots of the village. The non-resident ryot was a mere tenant-at-will. The Bill proposes to confer this occupancy right on resident and non-resident ryots alike. Under the present law * a ryot who has held and paid rent for a piece of land for 12 years acquires a right of occupancy in it, provided the lease under which he holds does not contain a stipulation inconsistent with the accrual of such right. When this right was conferred in 1859 it was thought but reasonable and fair that the landlord should, if he wished, make it a condition of the lease that the right of occupancy should not accrue. The landlord might have particular reasons for wishing to get the land again into his possession at some future date. It was accordingly provided in 1859, that the accrual or non-accrual of the right of occupancy would depend upon the contract entered into between the landlord and the tenant. By a stroke of the pen, and without any compensation to the landlord, all these contracts are now to be swept away. The

* Act X, 1859.

Bill declares that " Every person who for a period of 12 years whether before or after the commencement of the Act, has continuously held as a ryot ryoti land in any village or estate, shall, *notwithstanding any contract to the contrary*, and though the land held by him at different times may be different, be deemed to have become on the expiration of that period a settled ryot in that village or estate."* It is further declared that a settled ryot shall have a permanent right of occupancy in the land at a fair and equitable rent, the existing rent to be deemed to be fair and equitable unless the landlord can prove the contrary. The right of occupancy further carries with it a right to sell or sublet the land without the permission of the landlord. The effect of the proposed change in the law will be to defeat all existing contracts, and to give to every ryot a right of occupancy at the rent which he is paying at the present time, and which the law is to presume to be a fair and equitable rent. But this is not all. Though the rent may for various reasons be an inadequate rent, the landlord is prohibited from raising it. Even if the tenant is willing to pay a higher rent, the landlord cannot accept it. All contracts between a landlord and a settled tenant for the payment of an increased rent are declared void! Under no circumstances can a landlord and tenant enter into an agreement by which the rent of the land is raised. If a landlord wishes to enhance his rent, he must either bring a suit against his tenant in

* Thus if a ryot has held an acre of land in any part of an estate for 12 years, and then obtains a lease for 10 acres, he at once gets a right of occupancy in the whole.

the Civil Court—a most ruinous proceeding to both parties—or he must go before a Revenue Officer of Government and obtain his approval of the agreement. The most ordinary dealings between man and man are absolutely prohibited, and the Civil Court or the Revenue Officers of Government are to be appealed to in all the daily transactions of agricultural life.

Can it be pretended that these provisions are in accordance with the ancient land law of the country. What does Mr. Shore say? "The regulation of the rents of the ryots is properly a transaction *between the zemindar and his tenant and not of the Government.*"* The great object of the Permanent Settlement was to encourage landlords and tenants to enter into written contracts with each other. The landlord was required to give leases to all his tenants,† and there is not a Regulation or Act in the Statute Book, in which the Government has ever claimed the right of interfering between a landlord and his tenant; on the contrary it has always disavowed such right.‡ To what cause, then, are we to attribute this total change in the policy of Government? Has the condition of the ryots of Bengal become so deplorable, after more than a century of British rule, that the landlords and tenants can no longer be trusted to manage their own concerns, but must be placed under the tutelage of a Revenue Officer of Government? If, however, we are to accept the

* Minute of September 18, 1789, para. 433.
† Reg. 8. VIII, 1793, s. 58, 59.
‡ The Preamble of Reg. 11, 1793.

testimony of the late Lieutenant-Governor of Bengal, the condition of the peasantry is exceptionally prosperous. "I have just" said Sir Ashley Eden in 1877, "returned from visiting the Eastern districts, and I may say on this occasion, when my administration is only at the commencement, what I could not well say at a later period, without seeming to take credit for the government of which I am the head. Great as was the progress which I knew had been in the position of the cultivating classes, I was quite unprepared to find them occupying a position so different from that which I remembered them to occupy when I first came to the country. They were then poor and oppressed, with little incentive to increase the productive powers of the soil. I find them now as prosperous, as independent, and as comfortable as the peasantry I believe, if any country in the world, well fed, well clothed, free to enjoy the full benefit of their own labours and to hold their own and obtain prompt redress for any wrong."

All this prosperity has been obtained under a Government which had the good sense to mind its own business and leave the people alone. For what conceivable reason, then, are the whole of the agricultual community to be placed under a legislative ban? Why is this new system of tutilage to be introduced? If such remarkable prosperity has been attained while landlords and tenants have been peacefully left to arrange their rents between themselves, what justification can there be in 1883 for taking the management of their estates out of the hands of the land-

lords and placing them in the hands of a Revenue Officer of Government? So far as Bengal is concerned it is admitted that the ryots are prosperous and "can obtain prompt redress for any wrong." One would have thought, under these circumstances, that it would have been prudent to have let well alone.

But it is said that in prohibiting the freedom of contract between the landlords and the tenants the Government are merely reviving and restoring the ancient land law of the country. In this ancient land law two principles, it is asserted, are found to be embedded. First, that the resident ryot cannot be ejected from his holding in the village lands so long as he pays the established rent: and second, that it is the right and duty of the ruling power to determine the rent payable by the ryot to the zemindar. No one, as far I am aware, has ever denied that a ryot with a right of occupancy is entitled to hold the land so long as he pays the rent: but the question is who fixes the rent, the zemindar or the State? I emphatically deny that the ruling power have ever interfered in Bengal to determine the rents which the ryots were to pay to the zemindars. In other provinces of the Mogul empire, where, as in Madras, there were no zemindars, the State professedly settled the proportion of the produce which the cultivators had to pay. "The Institutes of Akbar," says Mr. Shore,* "show that the relative proportions of the produce were settled between the cultivator and the Government, yet *in*

* Minute of September 18, 1789, para. 378.

Bengal I can find no instance of Government regulating these proportions."

The reason is obvious. In Bengal the Muhammadan Government assessed the zemindars, in the other provinces of the empire, where there were no zemindars, the Government professedly dealt with the cultivators. But even where the Government professedly dealt with the ryots, it was found impossible in practice to assess each individual cultivator. It was one of the schemes of Akbar to have a general survey made of his empire, but we are told that "at a very early period the scheme of Akbar to assess fields was discovered in practice to be full of embarrassment; and before his measurements even were completed, he was reduced to the necessity of assessing whole villages, and leaving it to the people themselves to distribute the portion payable by individuals."*

Mr. Shore, after stating that he could find no instance in Bengal of Government fixing the rent of the ryots, observes in a subsequent part of the same Minute that, "the regulation of the rents of the ryots, is properly a transaction between the zemindar or landlord and his tenants, and not of the Government; and the detail attending it is so minute as to baffle the skill of any man not well versed in it."† I unhesitatingly assert that there never was a time when the zemindar could not make what terms he pleased with his ryots, and that the pergunnah rates, or the established rates of which we hear so much, were the rates which the zemin-

* Brigg's Land Tax., p. 126.
† Para. 433.

dar himself established. How could it be otherwise ? If he did not establish them, who did ? The Government did not, for Mr. Shore tells us that there is no instance* of Government interfering to regulate these rates in Bengal. What were the cesses which the zemindars before the Permanent Settlement were accustomed to levy, but an increase of the rates ? "The cesses" says Mr. Shore, "imposed by the zemindar were an enhancement of these rates and arbitrary at first without being oppressive."† For what object were the lands of the ryots periodically‡ measured, for what object were enquiries made as to the quality of the land and the articles it produced, except to obtain an increase of rent ? "The rates," said Mr. Shore, "varied with each succeeding measurement ; and when they become too heavy the ryots abscond, or the zemindar allows them a compensation by giving them other lands at a favourable rate."§ In the face of these facts how can it be contended that the zemindar did not fix the rates ? The lands were not measured by a Government officer, but by the zemindar's own servants. There was no one but the zemindar who could have fixed the rates. A special officer called the "halshanah," whose special duty it was to measure was attached to every zemindar's establishment.‖ General measurements, we are told, were made every ten or fifteen years,¶ and the general rates as determined by the measurement would remain in force

* Shore's Minute, Para. 378.
† Para. 388.
‡ 2 Har. Analysis, 70.
§ Minute of September 18, 1789, paras. 392, 397,
‖ 2 Har. Analysis, 67.
¶ Id. 70.

till the next measurement. These rates would then be the established rates of the village, pergunnah, or other division until revised by a subsequent settlement. But as the rent was fixed, with reference to the quality of the land and the nature of the crops grown upon it,* there was a great diversity of rates even in a single village.† This, again, shows that the rates could not have been fixed by the ruling power, but must have been a matter of adjustment between the zemindars and ryots.‡ Mr. Francis, writing as a member of Warren Hastings' Government in 1776, says: "The amount of rent must be settled between the zemindar and his tenant. *Government can never descend to the ryots, so as to fix any general assessment upon them,* because the rates of land depend on a number of circumstances; such as the quality of the soil, the articles it produces, of which there may be a variety in one village, besides, vicinity to markets or water carriage makes land of more or less value to the cultivator."§ I do not know how it is possible more conclusively to show that the ruling power neither fixed nor attempted to fix in Bengal the rates of rent which the ryots were to pay.‖

The great reform in the ancient land law of the country introduced by Lord Cornwallis, was the prohibition of cesses. The zemindars as we have seen, not only enhanced their rents by regular measurements, but by imposing arbitrary cesses

* Shore's Minute, Para. 502
† Idem, 219.
‡ Idem, 398.
§ Francis's Revenues of Bengal, p. 62.
‖ Minute of February 3, 1790.

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upon the ryots in addition to the stipulated rent. This Lord Cornwallis very naturally considered to be an act of oppression. "Every bigha of land," writes Lord Cornwallis in the Minute so often referred to, "possessed by the ryots must have been cultivated *under an express or implied agreement that a certain sum should be paid for each bigha of produce and no more.* Any cess or tax imposed by the zemindar over and above that sum, is not only a breach of that *agreement*, but a direct violation of the established laws of the land. Neither is the privilege, which the ryots in many parts of Bengal enjoy, of holding possession of the spots of land which they cultivate so long as they pay the revenue assessed upon them, by any means incompatible with the proprietary rights of the zemindars. Whoever cultivates the land, the zemindars can receive no more than the *established* rent, which in most places is *fully equal to what the cultivator can afford to pay.*" The established rent being as he had before stated, "the sum certain and no more," which the ryot, whether resident or non-resident, had agreed to pay. He then proceeds. "Neither is prohibiting the landholder to impose new cesses or taxes on the land in cultivation, tantamount to saying to him, that he shall not raise the rents of his estates. The rents of an estate are not to be raised by the imposition of new cesses or taxes on every bigha of land in cultivation; on the contrary they will be lowered by such impositions, for when the rate of assessment becomes so oppressive as not to leave the ryot a sufficient share of the produce for the maintenance of his family, he must at length *desert the land.* The rents of an estate can

only be raised by inducing the ryots to cultivate the more valuable articles of produce, and to clear the extensive tracts of waste land. "The basis and scope of this opinion," as Mr. Justice Field points out, "becomes clear when we find Lord Cornwallis saying in the same context, that the rent then established was in most places fully equal to what the cultivator could afford to pay."* And if we turn to the Regulations which Lord Cornwallis afterwards enacted, we shall find that so far from desiring to establish a rate of rent, irrespective of the agreements which the zemindar and ryots might make, his great object was to encourage the parties to come to an adjustment between themselves. All that he insisted upon was that the zemindars should consolidate the cesses with the rent and that the leases should be in a proper form, and should specify the exact sum to be paid as rent;† but subject to these restrictions the right of the zemindars to enhance the rents of the ryots, by measuring and assessing the lands, according to the nature of the crops grown upon them was left unfettered.‡ The new rent after enhancement was as certain and specific as the old rent before enhancement: and it continued to be the "established" rent of the village, until it was in its turn superseded by a fresh agreement. There is not the slightest indication in any of the Regulations, that the Government ever dreamt of establishing rates of rents which the zemindar was not to be at liberty to enhance. We know

* Mr. Justice Field on Landholding, Para. 540.
† Reg. VIII, 1793, s. 54-57.
‡ Reg. VIII, 1793, s. 56-57-60.

as a matter of fact that, immediately after the Permanent Settlement rents were constantly raised and adjusted, both by the Government in their private estates, and by the zemindars in their estates; and in 1812 a Regulation* was passed, not to prohibit enhancements, which the Legislature would have done, if enhancements had been illegal, but to provide a procedure which was to be followed for enforcing them. So far, indeed, from the zemindars not being able to enhance their rents under the Permanent Settlement Regulations, the charge brought against Lord Cornwallis by the advocates of tenant-right has always been that he did not deprive the zemindars of this power, but "left them to make their own settlement with the ryots on such terms as they might choose to require."†

To prevent, therefore, a zemindar from making an agreement with his ryot for an increase of rent, is not only an infringement of the personal right of contract, which we all enjoy, but is opposed to both the Regulation, and ancient law, which it is Lord Ripon's desire to restore.

It has been already pointed out that the occupancy ryot at the time of the Permanent Settlement forfeited his right of occupancy if he mortgaged or sold the land.‡ It was also expressly declared by the Regulations that he had *no right of property or transferable possession* in the soil.§ But Mr. Ilbert's Bill gives the ryot the power of selling or transferring the land without the landlord's consent. No restric-

* Reg. V. 1812.
† Mr. Justice Field on Landholding, p. 525.
‡ Anti page.
§ Reg. VII, 1799, s. 15, c. 17.

tion whatever is imposed. The purchaser need not even be a cultivator. He may be a land speculator, a money lender, or an insolvent. But whoever he is, the zemindar is bound to accept him as his tenant. And yet Lord Ripon says he is only restoring the ancient land law of the country. A transfer under that ancient law involved a forfeiture. If the right is now given to the ryot, it can only be given at the expense of the zemindars. The zemindars altogether object to the concession of such a right. They say and not unreasonably, that it will seriously depreciate the value of their property. The class of people who will purchase these occupancy rights in Bengal are the mahajans or money-lenders. These people will not cultivate themselves, but will sublet to an inferior class of tenants. There will thus be introduced a middle-man between the landlord and the actual cultivator. The landlord ought surely to have some voice in the selection of his tenants. A notorious robber or dacoit may buy up these occupancy rights and locate himself in the heart of the estate to the consternation of the landlord and tenants alike. The owner may see his property ruined by bad cultivation, or his peace and quietness may be destroyed by his bitterest enemy settling in his midst, and yet he will be powerless to interfere.

To the occupancy ryots themselves the concession of free sale will be a most dubious advantage. Indebted as most of them are to the money-lender, in a few years they will be sold out of house and home. At present their land is safe from the money-lender's grasp. That he cannot seize, and their moveable property is

not worth seizing. He is, therefore, obliged to assist them in times of difficulty, for his only hope of recovering his money is the prospect of a good harvest. He is therefore as much interested in their prosperity as they are themselves. But make their land saleable, and he will have no need to wait for a future harvest ; the land will satisfy his demand, and what matters it to him if the ryot is reduced to beggary. We shall have in Bengal, what we had in the Deccan from a similar cause, a peasantry reduced to a hopeless state of poverty and destitution.

It is idle to expect that these occupancy rights when sold will be purchased by cultivators. They have not as a body the capital to purchase such rights. One result must inevitably follow. In a few years the cultivating occupancy ryot will have disappeared; and in his place will be a ryot absolutely without rights, holding as a tenant-at-will under a capatalist who has bought up the land as a mere speculation,

It is a remarkable feature in the Bill that, while a zemindar and an occupancy ryot can enter into no contract the capitalist who buys up the occupancy rights, can sublet the land on any terms he pleases. *His* tenant has no rights whatever against him. No prohibition is placed upon his freedom of contract, it is the zemindar alone who cannot deal as he pleases with his own.

It is true that the Bill secures to the zemindar a right of pre-emption in case the ryot wishes to sell his land. But this right is simply delusory. The Bill which places the zemindar under a disability to contract is equally careful to render his right of pre-emption absolutely valueless.

He may buy out the ryot, but he cannot buy up the occupancy rights. If he relets the land, he is compelled to let it to the new tenant on exactly the same terms and at the same rent as those on which the old tenant held. Moreover, he must either give the price asked by the tenant, or bring a suit in the Civil Court to have the proper value ascertained. And after all this, he literally buys nothing. The money-lender who purchases can sublet the land and dictate his own terms; but the zemindar can enter into no agreement; the law relets the land for him, and at the old rent. It is difficult to say from what fountain of jurisprudence legislation of this sort is derived.

There is another provision of the Bill upon which I must say a few words. It is striking illustration of the way in which the Bill restores the ancient land law of the country. Before the Permanent Settlement, Mr. Shore tells us that the ryot's rent varied from half to two-thirds of the gross produce. The usual rate—and the present rate, where rents are paid in kind as in Behar was half or nine-sixteenths. Mr. Ilbert's Bill fixes a maximum rate of one-fifth. In other words, the common rate at the time of the Permanent Settlement was five-tenths; the Bill reduces it to two-tenths. This reduction has been made without the slightest inquiry. It was originally, Mr. Ilbert said, intended to fix the maximum rate at one-fourth, but at the last moment the Lieutenant-Governor suggested it should be one-fifth, and so one-fifth it is. This is certainly restoring the ancient land law with a vengeance. It is proposed to do what Mr. Shore said could not possibly be done—fix a

general rate for the whole of Bengal and Behar. The proposal is worthy of a madman. It is impossible to conceive that it could have emanated from any other brain. To the ryots of Eastern Bengal the proposed rate will be most disastrous. Rents in those districts are unusually low, presumably because the ryots or their ancestors originally reclaimed the land; but let a maximum rate be once established, and no zemindar will rest until he has run up his rent to the prescribed limit. He will naturally consider that he has a right to get what Government says he is entitled to receive. In those districts, therefore, there will be a general rush to the Courts for enhancement. In other parts of Bengal and Behar, where the rates are above the maximum, there will be an enormous depreciation of property. In many cases the proposed maximum rate will be absolutely less than the Government assessment. Have the remindars, then, no reason to complain of blind and criminal legislation like this? No enquiry is made, but suddenly and without warning the zemindars find that a maximum rate of rent is fixed by Government for the whole country, without any reference to local circumstances or the condition of particular estates.

I am afraid I have already exhausted the patience of my readers, but I must ask their indulgence to permit me to notice one further provision in the Bill. It deserves attention from its wonderful originality. Not satisfied with giving rights to the ryots, which they have never asked for and never possessed, the Bill actually proposes to give rights to the land itself. Throughout Bengal there

is at the present moment a vast extent of waste or uncultivated land. In this land no one has any interest, or claims any interest, except the zemindar. It is absolutely valueless until brought into cultivation, and it is the interest of the zemindar to bring it into cultivation. But he is no more free to deal with this land, in which no one can possibly have any right, than he has with land which has been held by ryots for a century. All land which is not at the present moment actually cultivated by the zemindar himself is declared to be ryoti land, and in this category will fall all the waste and uncultivated land in Bengal. Such a provision would be intelligible in a country where the land belonged to village communities. But there are no village communities in Bengal. The land is admittedly the zemindars, and yet it is to be impressed with dormant rights and privileges, for the benefit of prospective tenants.

Neither time nor space permits me to notice many other provisions of the Bill, which are quite as startling and novel as those to which I have particularly adverted. I must content myself in conclusion with saying one or two words upon the last argument of Mr. Ilbert, upon which he apparently places considerable reliance. It is said that the Permanent Settlement was a contract between the Government and the zemindars and was therefore not binding upon the ryots, and that the Government expressly reserved to themselves the power of legislating at some future time in the interests of the ryots.

Now, it is perfectly true that at the time of the Permanent Settlement each zemindar entered into a special agree-

is at the present moment a vast extent of waste or uncultivated land. In this land no one has any interest, or claims any interest, except the zemindar. It is absolutely valueless until brought into cultivation, and it is the interest of the zemindar to bring it into cultivation. But he is no more free to deal with this land, in which no one can possibly have any right, than he has with land which has been held by ryots for a century. All land which is not at the present moment actually cultivated by the zemindar himself is declared to be ryoti land, and in this category will fall all the waste and uncultivated land in Bengal. Such a provision would be intelligible in a country where the land belonged to village communities. But there are no village communities in Bengal. The land is admittedly the zemindars, and yet it is to be impressed with dormant rights and privileges, for the benefit of prospective tenants.

Neither time nor space permits me to notice many other provisions of the Bill, which are quite as startling and novel as those to which I have particularly adverted. I must content myself in conclusion with saying one or two words upon the last argument of Mr. Ilbert, upon which he apparently places considerable reliance. It is said that the Permanent Settlement was a contract between the Government and the zemindars and was therefore not binding upon the ryots, and that the Government expressly reserved to themselves the power of legislating at some future time in the interests of the ryots.

Now, it is perfectly true that at the time of the Permanent Settlement each zemindar entered into a special agree-

ment with the Government to pay a certain revenue and to observe certain conditions. With that special agreement the ryots had no concern. It in no way affected their rights or interests. But the ryots were as much subject to the law as laid down in the Regulations as the zemindars themselves. The Regulations dealt with the rights of all parties, whether zemindars, under-tenants, or ryots, and declared that the property in the soil was vested in the zemindars, subject to certain exceptions, which were particularly set forth.

Certain subordinate landholders, who were called talukdars, and who had acquired a proprietary interest in the soil, were declared entitled to hold their land at a fixed rent for ever. Certain under-tenants, called mokururidars, were also found entitled to similar privileges, and their rights were in the same way secured and protected. But with the exception of the land held by these two favoured classes, it was declared that the zemindars could let the remaining lands of their estates in "whatever manner they thought proper," subject to certain specified restrictions.* This is part of the law of the land, and is as binding upon the ryots as the restrictions are upon the zemindars. A ryot who contended that the zemindar could not let his lands on such terms as he pleased,

* Reg. VIII, 1793, s. 52. Mr. O'Kenealy in his Minute, printed at page 423 of the Rent Commissioners' report, attempts an ingenious explanation of this passage. But his explanation, as pointed out by Mr. Justice Field in his work on Landholding, p. 523 note, would compel us to substitute restriction for restrictions. It is an invariable rule in interpreting a Statute to read the words in their plain and natural sense, and these words have never, as far as I am aware, been interpreted otherwise. This was the sense in which Harrington understood them. 3 Har. Analysis, p. 467, and in which every one has understood them for upwards of 100 years. And if there could be any doubt upon so plain a subject, it would be removed by a reference to the Regulation of November 23, 1791, s. 55-74, which is re-enacted by Reg. VIII, 1793.

would have to bring himself within the exceptions admitted by the Regulations. If he could not do so, he would be liable to ejectment if he refused to accept the zemindar's terms. He would not be ejected by virtue of any agreement which the zemindar had entered into with Government, but under the genenal law of the land as declared in the Regulations. To deprive a zemindar, as the present Bill does, of his power of letting the lands on such terms as he pleases, is as plain a violation of the rights he enjoyed at the time of the Permanent Settlement as it is possible to conceive. It is, moreover, a distinct violation of the agreement he entered into with Government. When he stipulated to pay a certain sum as land revenue, and to perform the other obligations of the agreement, he did so on the distinct understanding that he had power to let "the remaining lands on such terms as he pleased." The Government having made this agreement in their executive capacity, now proceed to infringe it in their legislative capacity.

But it said that the very Regulation, that declared and confirmed the proprietary rights of the zemindars, expressly reserved to the Government the power of future legislative interference. The words are these:—

"To prevent any misconstruction of the foregoing articles, the Governor-General in Council thinks it necessary to make the following declarations to the zemindars and other actual proprietors of land.

"It being the duty of the ruling power to protect all classes of people, and more particulary those who from their situation are most helpless, the Governor-General will,

whenever he may deem proper, enact such Regulations as he may think necessary *for the protection and welfare of* the dependent talukdars, ryots, and other cultivators of the soil, and no zemindar, independent talukdar, or other actual proprietor of land shall be entitled on this account to make any objection to the discharge of the fixed assessment which they have respectively agreed to pay."

Now quite apart from this declaration no one as far as I am aware, has ever denied that the Government has full power to legislate for the protection and welfare of the ryots or of any other class of the community. Such power is necessarily inherent in all Governments. But legislation for the protection of one class does not mean that you are to confiscate the rights of property of another class. If it is necessary for the good of the community that you should take away a man's land, you compensate him at the expense of the community. To take away a man's property without compensation is robbery, whether the act is perpetrated by the legislature or a highwayman on the road. In the present case, it is admitted that the zemindars have enjoyed the rights and privileges, of which they are now to be deprived, since the Permanent Settlement in 1793; and I have also, I think, shown that the Permanent Settlement did not create, but simply affirmed those rights—and are they to be deprived of them now, on the specious ground that the Government is entitled to legislate for the protection and welfare of the ryots? Surely such legislation must follow and not depart from the lines of the Permanent Settlement. The new ordinances to be framed

for the protection of the ryots must be of the same kind as the rules which the authors of the Permanent Settlement enacted for the same purpose. The object of those rules was to secure and protect the ryot from oppression. If those rules have not effected their purpose, by all means let them be supplemented by others, of the same scope and with the same object in view. Legislative protection necessarily implies the existence of rights to be protected; you cannot protect rights which have no existence. No one can object to the legislature securing and protecting the rights which the ryots already possess. The objection to the present Bill is that, under the plea of remedial legislation, new rights are created in favour of one class of the community, at the expense of the acknowledged rights of another class of the community. There has been much legislation in England for the protection and welfare of children and others employed in mines and manufactories; but whoever heard of an Act which under the plea of legislating for the protection and welfare of the employees, gave the employees a share in the mine or the manufactory itself. And yet this is precisely what the present Bill does. To protect the ryot you need not rob the zemindar. There is room in the land for both. As the ryot is entitled to protection, so the landlord can equally claim to be maintained in his rights. The two objects are not incompatible. Their interests may, to a certain extent, be conflicting but they are not irreconcileable. Let us take care that we do not make them so. It cannot be expected that the zemindars will give up their rights without a struggle,

and who can tell what animosities that struggle will arouse. At present peace, quietness, and prosperity reign throughout the land; but does any sane man think that a measure which upsets all the existing relations between landlords and tenants—a measure which will affect some fifty millions of people can be introduced without the most disastrous commotions?

Political necessity may justify many things, but so far as Bengal is concerned, * political necessity is not even alleged. It is admitted that the ryots are prosperous, and that as a rule it is the zemindars and not the ryots that need the assistance of the Legislature. If this is the case, and it is admitted to be so, what conceivable excuse can there be for the proposed legislation? It is not pretended that the ryots have asked for it. No one has asked for it: it is the spontaneous production, I will not say of Government, but of a few officials, the lineal decendants of Mr. Sheristadar Grant, and that Revenue Committee† whose peculiar theories on the rights of property so shocked and horrified the old Court of Directors. It is to be regretted that Lord Ripon has fallen into their hands. I am willing to believe that *he* has no desire to pass a revolutionary measure, and that he honestly thinks that he is restoring the ancient land law of the country.

I have attempted in these pages to ascertain what this ancient land law was, and my labour has, indeed, been in

* My remarks are confined to Bengal. I am not speaking of Behar. There seems to be a consensus of opinion that the Bill is utterly unadapted to Behar. Nearly all its provisions are diametrically opposed to the recommendations of the Behar Rent Commission.

† Ante page. 13.

vain if I have not shown that every provision of Mr. Ilbert's Bill is opposed to that ancient land law, and the express enactments of the Permanent Settlement Regulations; and I would commend to His Excellency's attention the following very pregnant remarks of Mr. Justice Field: "When modern reformers talk with complacent benevolence on paper about restoring the ryots of the present day to their ancient customary rights and the ancient land law of their country, it is very desirable we should understand by the light of facts, the condition to which this plausible proposition would re deliver them if it were literally carried into effect."*

* Mr. Justice Field on Landholding, p. 450.