ON THE

AGRICULTURAL COMMUNITY OF THE MIDDLE AGES,

AND

INCLOSURES OF THE SIXTEENTH CENTURY

IN

ENGLAND.

TRANSLATED FROM THE GERMAN OF

E. NASSE,

BY COLONEL H. A. OUVRY (LATE 9TH LANCERS).

"In der Beherrschung der Erde liegt die Kraft des Mannes und des Staates: die Grösse Roms ist gebaut auf die ausgedehnteste und unmittelbarste Herrschaft der Bürger über den Boden und auf die geschlossene Einheit dieser also festgegründeten Bauerschaft."—MOMMSEN.

LONDON:

MACMILLAN & CO., 16, BEDFORD STREET, COVENT GARDEN.

1871.

(Published under the sanction of the Cobden Club.)

THE RENT QUESTION:

A REPLY TO THE OBJECTIONS UPGED BY THE BRITISH INDIAN ASSOCIATION TO PROPOSED RENT BILL

AND

SOME FURTHER SUGGESTIONS FOR ATTAINING THE OBJECT DESIRED BY GOVERNMENT.

BY

PARBATI CHURN ROY.

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MARK LANE.

PREFACE.

"If I were five-and-twenty or thirty, instead of, unhappily, twice that number of years, I would take Adam Smith in hand, and I would have a League for free trade in Land, just as we have a League for free trade in Corn. You will find just the same authority in Adam Smith for the one as for the other; and if it were only taken up as it must be taken up to succeed, not as a political, revolutionary, Radical, Chartist notion, but taken up on politico-economic grounds, the agitation would be sure to succeed; and if you can apply free trade to land and labour too—that is, by getting rid of those abominable restrictions in your parish settlements, and the like—then I say the men who do that will have done for England probably more than we have been able to do by making free trade in Corn." . . . .

Speech of Richard Cobden.
November 23rd, 1864.

N.B.—This translation contains several additions to and alterations of the original, made by the Author, who has personally revised the manuscript.

All those notes which are not by the Author are marked with the initials of the Translator—H. A. O.

THE

BRITISH INDIAN ASSOCIATION

ON THE

RENT QUESTION.

If the endeavours of Government to give to Bengal a Rent Law that will prove satisfactory to all parties, should fail, it will not be for not having consulted the wishes of one of the parties, namely, the zemindars. Immediately the Rent Commission submitted their report accompanied by a draft Bill, that report and the Bill were forwarded to the British Indian Association for their opinion. On the Association offering a strong opposition to the draft Bill through their organ the *Hindu Patriot*, Government at once proceeded to revise the draft, and with that view commissioned the Hon'ble H. L. Reynolds to visit some of the principal districts of Bengal and Behar, with a view to consult the local officers and landholders on the subject of the Bill. Accordingly Mr. Reynolds held conferences at Bankipur, Dacca, Hooghly and one or two other places. It was given out at these conferences that the Lieutenant-Governor was not pledged to the Bill of the Rent commission, and that His Honor would be prepared to modify the provisions of the Bill in the light of the criticisms and suggestions that may be submitted to him. Thereupon the British Indian Association asked for an explanation "as to the points to which His Honor might wish to restrict the proposed legislation," and in reply "certain important

points were indicated, regarding which the views of the Lieutenant-Governor were generally stated and the opinion of the Association was also invited." The Association accordingly sat to deliberate upon the Bill. In the meantime Government forwarded to the Association another draft Bill prepared by Mr. Reynolds, in which most of the sections of the original Bill which were favorable to the ryots were omitted, and several things, such as the provisions regarding Distraint, were newly introduced for the benefit of the zemindars. But as we shall presently see with all these attempts at pleasing the zemindars, Government is still unsuccessful in satisfying them. We have never heard of an instance in which a landlord, whether an Englishman or a Native, ever made any concession in favor of the ryot, unless forced by Government. If, therefore, "Government desires to see the occupancy tenure made the rule and not the exception" and to allow "a moderate and fair enhancement" in rent to the landlord, as it professes to do, then let it adopt that law which it deems most conducive to the well-being of the ryot as well as the zemindar, without spending time in consulting people from whom it can never hope to have the best advice.

It appears from the letter addressed by the Secretary to the British Indian Association to Mr. Secretary Mackenzie that "the land-lords of Bengal simply asked for facilities in the recovery of rent" and that they would "rather forego that demand "than submit to the proposed Rent Bill "which" they say "would deliberately deprive them of just and acknowledged rights in not a few instances inherited from a time anterior to the establishment of British rule in this country, in many more instances paid for in hard cash under the solemn sanction of the legislature, long cherished and naturally

dearly prized." Now is it really that the zemindars simply want facilities in the realization of undisputed rent? Do they not in this very letter addressed to Government, in which they say they wanted a law simply for the easy realization of the rents, admit that the law regarding enhancement of rents, also requires amendment? Para 33 of this letter runs as follows:—"Moreover, while the conference are prepared to admit that the rule of proportion as laid down by the majority of the Judges of the High Court in the great Rent Case of 1864 is reasonable and equitable, they cannot shut their eyes to the circumstance that it is not workable as experience has shown. The data for determining the proportion being absent, the rule cannot be fairly applied."—If the rule of proportion laid down by the High Court is not of a workable nature, is it not an obstacle in the way of the zemindar to getting enhancement decrees? If it is an obstacle, is it not a grievance; and like all other persons suffering from a grievance, would he not like to have it removed? Surely he must be not a man of this earth who does not in these hard times whish to have his income increased and a zemindar cannot increase his income without increasing the rents of his ryots. Will the public, therefore, believe the zemindar when he says he wants a law simply for the more easy realization of rents, while he admits that the difficulties towards enhancement are such as prevent him from obtaining any enhancements at all? Will not the public on the contrary come to the conclusion that the zemindar's real object is to secure enhancement of rents by getting the ryot more within his grip by means of a summary process for the realization of rents than he can at present make use of? But Government has by means of inquiries, made in the course of the present deliberations, satisfied itself that what the

zemindar really wants is not so much a law for the speedy realization of undisputed rents as one for the enhancement thereof, and we believe that in the light of these inquiries Government will not allow itself to be misled by the skilful tactics of the zemindar.

We come next to the consideration of the second general objection raised by the zemindars to the proposed Bill, namely, that "it would deliberately deprive them of just and acknowledged rights in not a few instances inherited from a time anterior to the establishment of British rule in this country; in many more instances paid for in hard cash under the solemn sanction of the legislature long cherished and naturally dearly prized." This will lead us to a consideration of the old question as to what the rights of the zemindars were "anterior to the establishment of the British rule in this country" and what rights were conferred upon them under the sanction of the legislature.

We can not in the discussion of this question do better than make the following extracts from the judgment delivered by Mr. Justice Trevor in the well known Rent case of Thakooranee Dossee. It will be remembered that the majority of the Judges of the High Court entirely concurred in this judgment. The extracts are rather long, but they will amply repay perusal, as showing the conclusion arrived at by those learned Judges of the High Court to whose opinion the British Indian Association would seem, from their letter under reply, to attach great value:

"Coming to later times, (later than those described by Manu) we meet with the class of persons, the predecessors and ancestors of the zemindars of the Perpetual Settlement, who seem not to have had any existence before the time of the Mahomedan conquest."

"It will be sufficient to cite here, and to accept as sufficiently accurate for present purposes, the definition of a zemindar given by Mr. Harrington. 'A zemindar,' says that gentleman, 'appears to be, under the Mogul constitution and practice, a landholder of a peculiar description, not definable by any term in our language; a receiver of the territorial revenue of the State from the ryots and other under-tenants of the land, allowed to succeed to his zemindaree by inheritance, yet generally required to take out a renewal of his title from the Sovereign or his representative, on the payment of a fine of investiture to the Emperor, and a nuzarana or present to his provincial delegate, the Nazim; permitted to transfer his zemindary by sale or gift, yet commonly expected to obtain previous special permission; privileged to be generally the annual contractor for the public revenue received for his zemindaree, yet set aside with a limited provision in land or money when it was the pleasure of Government to collect the rents by separate agency, or to assign them temporarily or permanently by the grant of a Jagheer or Altumga, authorized in Bengal since the early part of the 18th century to apportion to the pergunnahs, villages and lesser divisions of land, within his zemindaree, the abwabs or cesses imposed by the Soobadar, usually in some proportion to the standard assessment of the zemindaree established by Todur Mull and others, yet subject to the discretionary interference of public authority either to equalize the amount assessed on particular divisions, or to abolish what appeared oppressive to the ryot; entitled to any contingent emoluments proceeding from his contract during the period of his agreement, yet bound by the terms of his tenure to deliver in a faithful

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account of his receipts."' It will appear from the above that under the Moguls, a zemindar was nothing more than a hereditary rent collector. But Mr. Trevor proceeds :

"These words (the words of the reservation in Reg. 1 of 1793) clearly show that though recognized as actual proprietors of the soil, that is, owners of their estates, still zemindars and others, entitled to a settlement, were not recognized as being possessed of an absolute estate in their several zemindarees ; that there are other parties below them with rights and interests in the land, requiring protection just in the same way as the Government above them was declared to have a right and interest in it which it took care to protect by law ; that the zemindar enjoys his estate subject to, and limited by, those rights and interests ; and that the notion of an absolute estate in land is as alien from the Regulation law as it is from the old Hindoo and Mahomedan law of the country."

"What then are those rights and interests recognized by law belonging to the ryots—for with them we are alone concerned—which limit and control the right of the zemindar in his own estate ? At the time of the Decennial Settlement, the ryots were, in Bengal as in other parts of India, divided into khood-kasht or resident and py-kasht or non resident. It has indeed been contended before us that time is of the essence of a khood-kasht tenure, that a ryot simply residing in a village in which his land is, is not a khood-kasht ryot ; and that in order to constitute a khood-kasht ryot under the Regulations, he must be a resident hereditary ryot ; and that if he has not succeeded by right of heirship, he does not fall within that class of tenants. But it appears to me that, whether we look to the etymology of the word

or to the thing itself, there is no reasonable ground for the question. Khood-kasht ryots are simply cultivators of the lands of their own village, who, after being once admitted into the village, have a right of occupancy so long as they pay the customary rents, and therefore with a tendency to become hereditary, and with an interest in the produce of the soil over and above the mere wages of labour and the profits of stock; in other words, above the cost of production.

"These tenants seem, at the settlement, practically and legally, though not by express statute, to have been divided into two classes, the khood-kasht kudeemee, and the simple khood-kasht, or those who had been in possession of the land for more than 12 years before the settlement, and those whose possession did not run back so long. Both by the Hindoo and Mahomedan law, as well as by the legal practice of the country, 12 years had been considered sufficient to establish a right by negative prescription, that is, by the absence of any claim on the part of other persons during that period, and hence the doctrine which has obtained, that khood-kasht ryots in possession 12 years before the settlement, were, under no circumstances, not even on a sale for arrears of revenue, liable either to enhancement of rent, or eviction from their holding, so long as they paid the rents which they had all along paid.—The existing leases of khood-kasht ryots at the time of the settlement, who had no prescriptive rights, were with certain exceptions specified in Sec. 60 of Regulation VIII of 1793, to remain in force until the period of their expiry; and those ryots were entitled to renewal of their leases at *Pergunnah rates*;

Sec. 7. Reg. IV of 1794.

and on a sale for arrears of revenue such ryots were entitled to a new settlement at the *Per-*

gunnah rates, and could be evicted only after declining to enter into engagement with the purchaser at the same rates.

Sec. 5. Reg. XLIV of 1793.
Cl. 5. Sec. 29. Reg. VII of 1799.

"It may here be observed that written enagements between the tenants and other parties were not the custom of the country. The entry of the tenants' names, and of the rents in the papers of the village accountants, was the only evidence of title which the great majority of the tenants in the country then held. The Regulations of 1793 attempted, but ineffectually, to introduce generally the system of the exchange of written engagements between the zemindars and their tenants.

'Khood-kasht ryots, whose tenancy *commenced subsequently* to the Decennial Settlement, are entitled to hold on at the rate which they have either expressly or impliedly contracted to pay during the incumbency of the zemindar who granted the pattah and his representatives, whatever that rate may be; and on a sale for arrears of revenue, they also are entitled to a renewal of their leases by a purchase at the *Pergunnah rate*. Should the rate in the engagement cancelled by the sale have been below that figure, they can only be levied on refusing to renew at the *Pergunnah rates*. Moreover it was enacted generally by Sec. 6 of Reg. IV of 1794, that if a dispute arises between the ryots and the persons from whom they may be entitled to demand pattahs regarding the rates of the pattahs, *it should be determined in the Dewanny Adawlut of the Zillah in which the lands were situated according to the rates established in the Pergunnah rates for lands of the same description and quality as those respecting which the dispute arose*."

Sec. 5. Reg. XLIV of 1793.
Sec. 7. Reg. IV of 1794.
Cl. 5. Sec. 29. Reg. VII of 1799.

By extracts from the judgement of Mr. Justice Trevor in Thacooranee Dassee's case, we have shewn the relative position of the zemindar and the ryot under the Permanent Settlement Regulations and the Regulations enacted immediately after the Settlement. We now propose to give other extracts from the same great authority, which contain the history of the legislation between the landlord and the tenant down to the passing of Act X in 1859. The extracts are as follow :—

"The Legislature, as just now observed, was in 1793 anxious to encourage the exchange of Pattahs and Kabulyats between the zemindars and their tenants; but so fearful was it, lest, from weakness or improvidence, the zemindars just recognized as actual proprietors should injure their own properties, and also endanger the stability of the Government revenue by granting long leases at *insufficient rents*, that it restricted the period for which leases could be granted to 10 years, renewable in the last year for another period of ten years. This law remained in force till 1812, when by Reg. V of that year, Sec. 2, the above restriction was taken off, and zemindars were declared competent to grant leases for *any period* which they might deem most convenient to themselves and tenants, and most convenient to the improvement of their estates. Moreover, by Regulation XVIII of the same year, it was explained, in consequence of certain doubts which had arisen on the construction of Sec. 2, of Reg. V of 1812, that the true intent of the said Section was to declare proprietors of land competent to grant leases for any period, even to perpetuity, and at any rent, which they might deem conducive to their interests."

Sec. 2, Reg. 44 of 1793.

"This law did not, however, expressly or by implication over-ride the rights of khoodkasht ryots to hold at Pergunnah rates. It simply declared that, having regard to the rights of others, the zemindar might grant leases for any period or any rent, be it high or be it low, provided the tenants were willing to pay it, and he to take it. Again, by Sec. 2 of Reg. VIII of 1819, it was declared that all leases and engagements for the fixing of the rent now in existence, that may have been granted or concluded for a term of years or in perpetuity, by a proprietor under engagement with Government, or other persons competent to grant the same, shall be deemed good and valid tenure, notwithstanding that the same may have been executed before the passing of Reg. V of 1812 and while the rule of Sec. 2 of Reg. 44 of 1793 above alluded to, was in full force and effect."

"Thus, then, the khood-kasht ryots, though they were entitled to pattahs at the Pergunnah rates by the laws of 1793 and following years, and though, under Sec. 6 of Reg. 4 of 1794, the Courts were in case of disputes, to determine the rate of the pattah according to those rates, still, under the operation of the laws above cited, ryots might, if they pleased, bind themselves by specific engagements irrespective of those rates; and, of course, having done so voluntarily, they would be held strictly to the terms of their engagement.

* * * * * * * * * *"

"The rates of rent, then, which khood-kasht ryots *under the old Regulations*, were liable to pay, independent of contract, remained in all cases, whether under a purchase at a sale for arrears of revenue, or otherwise, fixed either at the Pergunnah rate, the rate payable by land of a similar description in the places adjacent, or at rates fixed according to the law and usage of the

country; and they were entitled to hold their lands so long as they paid those rates. But when Reg. XI of 1822 was passed, the use in Sec. 32 of that law of the terms khood-kasht kudeemee ryot, or resident and hereditary ryot with a prescriptive right of occupancy, to designate the cultivator who would not be liable to eviction on a sale for arrears of revenue, gave rise to the doctrine, that khood-kasht ryots who had their origin subequent to Settlement were liable to eviction, though, if not evicted, they under Sec. 33, could only be called upon to pay rents determined according to the law and usage of the country, and also that the possession of all ryots whose title commenced subsequent to the settlement was simply a permissive one, that is, one retained with the consent of the landlord. Again, by Act XII of 1841 and Act I of 1845 (which repealed the former) a purchaser acquired his estate free of all encumbrances which had been imposed on it after the time of the Settlement; and he is entitled, after notice given under Sec. 10 of Reg. V. of 1812, to enhance *at discretion*, any thing in the Regulations to the contrary notwithstanding, the rents of all under-tenures in the said estate, and to eject all under tenants with certain exceptions, amongst which are khood-kasht kudeemee ryots, but not simple khood-kasht ryots. It follows that these laws distinctly gave the purchaser the power to eject a khood-kacht ryot whose tenure was created after the Permanent Settlement, and, if not ejected, they are liable to be assessed *at the discretion of the landlord. This word* "*discretion*," entirely annihilated the rights of the khood-kasht tenants, created subsequent to the Settlement *in estates sold under these laws*. It reduced them from tenants with rights of occupancy, as long as they paid the established rate of the Pergunnah, or the rate which

similar lands paid in the places adjacent, into mere tenants at the will of the zemindar, who might in any year eject them, and place in their stead any tenant competing for their land. It is in short, introducing into this country competition in the place of customary rents."

"As to py-kasht ryots they are nowhere expressly mentioned in the laws referring to Bengal.* * * * * * In Bengal, the rates of py-kasht ryots at the present date, though it seems to have been different formerly, are generally above the Pergunnah rates. * * * * *"

"Such was the state of the Law when Act X of 1859 was passed, under the power, it may be presumed, which the Governor-General in Council had reserved to himself in the 7th Article of the Proclamation inserted in Reg. 1 of 1793, of enacting, whenever he might deem it proper, such Regulations as he might think necessary for the protection and welfare of the ryots and cultivators of the soil."

It will be seen from the above that the changes made in the Legislature by the sale-laws of 1841 and 1845 affected only the ryots of such estates *as were sold for arrears of revenue.* As regards the ryots of all other estates, the old Regulations which gave to all resident ryots whatever the right to hold at the *Pergunnah rates*, remained quite unchanged. It is important to bear this fact in mind, as great stress has been laid by the zemindars in their petition under review, on the changes effected by the above mentioned sale-laws.

Our readers are aware that the majority of the Judges expressed their entire concurrence in the views held by Mr. Justice Trevor. Mr. Justice Campbell and Mr. Justice Norman, besides expressing their general concurrence with Mr. Justice Trevor, also expressed their views on the subject at some length, and it is our intention

to make our readers acquainted with the views of these two Judges.

Mr. Justice Campbell: "It being then clearly established that, by the terms of the Permanent Settlement the zemindars were not made absolute and sole owners of the soil, but that there were only transferred to them all the rights of government, *viz*, the right to a certain proportion of the produce of every bigah held by the ryots, together with the right to profit by future increase of cultivation, and the cultivation of more valuable articles of produce; it being further established that the Khood-Kasht or resident ryots retained a right of occupancy in the soil, subject only to the right of the zemindars to a certain proportion of the produce represented by the Pergunnah or District rates, we have next to consider the changes which occurred between the Permanent Settlement and the passing of Act X of 1859. Little material change was made by the Legislature. The declaration of Reg. V of 1812, that, where Pergunnah rates were no longer clear, the term "rates payable for the land of a similar description in the places adjacent," should be substituted, is a mere accommodation of the existing Law to the march of society. The *only* material change affecting certain estates is to be found in the gradually increasing *stringency of the Sale-Law. During the first generation subsequent to the Permanent Settlement, all new khood-kasht ryots settled by proprietors on waste or other lands were, in case of sale, absolutely protected.* The purchaser could neither evict them nor enhance their rents beyond the customary rates; he could but take rent "according to the established usages and rates of the Pergunnahs or District."

Reg. XLIV of 1793, Sec. 5; IV of 1794, Sec. 7; VII of 1799, Sec. 29, cl. 5; Privy Council decision in case of Ranee Shurnomoyee vs. Moharajah Suttish Chunder Roy, 23rd July 1864, Reg. XI of 1822, Sec. 32.

But by Regulation XI of 1822, this protection is narrowed to the case of any Khood-kasht Kudeemee (old Khood-kashrt) ryots or resident and hereditary cultivator having a prescriptive right of occupancy. Perhaps we may infer that the purchaser acquired the right to terminate all other tenures created since the settlement, and to evict the holders. Still, as in truth this right of eviction was scarcely ever exercised, and it appears that, if not exercised, the purchaser was still limited to the Pergunnah rates "according to the law and usage of the country," the practical effect of this Regulation does not seem to have been great as respects the question before us, and it is therefore hardly necessary to inquire what was the exact term of preseription which then made a man an old Khood-kasht ryot."

Reg. XI of 1822, Sec. 33.

" By the later Sale Laws, Acts XII of 1841 and I of 1845, stringent provisions were introduced. Protection was given to Khood-kasht Kudeemee" ryots, but the purchaser had power not only to evict, but also to enhance at discretion the rents of all other ryots. The sales-under this act were, however, comparatively few."

* * * * * *

" Such being the Laws, it may be conceded that, from the time of the Permanent Settlement, the zemindars have been free to make such arrangements and contracts as pleased them regarding all land in which no rights were held by ryots or others at the time of the Settlement, or which at any time might lapse by the failure or abandonment of the ryots, subjects only to this *that a man once admitted on an ordinary Khood-kasht tenure without limitation of time, could not be ejected or enhanced beyond the customary rates, except in certain cases by*

Mr. Justice Norman: "The Regulations of 1793, which have been already referred to at great length, while formally declaring the property in the soil to be in the zemindars, make provision for the protection of the ryots in their holdings, and for regulating the amount of rent to which they were to be subject.

According to the old Regulations, if disputes arose between the zemindar and the tenant, the dispute was to be adjusted according to the Pergunnah rate, and not according to the rate which a zemindar might obtain if he could let his land to the best bidder; and this continued to be the law down to the passing Act X of 1859."

Reg. VIII of 1793, Sec. 60; IV of 1794, Secs. 6 & 7; XLIV of 1793, Sec. 5; VII of 1799, Sec. 29, cl. 5; LI of 1793, Sec. 10.

. . . . . .

"Regulation XI of 1822 would seem materially to abridge the rights which under the former Regulations khood-kasht ryots in Bengal had previously possessed. But it probably did not affect any but the ryots of land sold under that Regulation for arrears of Revenue. There is nothing in that Regulation to affect the right of those who continued in occupation to hold at the Pergunnah rates."

. . . . . .

"Therefore, *down to the passing of Act X of* 1859, *no zemindar except the very small class of purchasers under Acts XII of* 1841 *and* 1 *of* 1845, *suing to enhance the rent of a ryot would be entitled to a decree except according to the Pergunnah rate or if the Pergunnah rate could not be ascertained the rate payable for land of a similar description in places adjacent.*"

We believe, we have now succeeded in convincing our readers that, as Mr. Justice Norman says in the con-

cluding portion of the above extract from his judgement, "down to the passing of Act X of 1859 *no zemindar except the very small class of purcharers under Acts XII of 1841 and 1 of 1845, suing to enhance the rent of a ryot would be entitled to a decree except according to the Pergunnah rate, or if the Pergunnah rate could not be ascertained the rate payable for land of similar description in places adjacent.*" Let us now examine, how far the rights vested in the zemindars by the Permanent Settlement of 1793, were interfered with by Act X of 1859.

We have seen that "by the terms of the Permanent Settlement, the zemindars were not made absolute and sole owners of the soil" but that all *khood-kasht* or resident ryots retained a right of occupancy in the soil, from which the zemindars could not oust them; that these khood-kasht ryots were entitled to hold lands at the customary rents and that the zemindars could never enhance their rents, beyond the rates prevalent in the Perguunah for similar descriptions of land. It is true that by subsequent Sale Laws, changes were introduced which were somewhat prejudicial to the interests of the ryots. But as these changes affected only the ryots of those estates that were sold for arrears of revenue, and as the number of such estates was very small, only a very small proportion of the ryots became losers by the operations of these Sale Laws, which confined only to the khood-kasht kadeemee or *resident and heridítary* ryots the privileges which were formerly enjoyed by all khood-kasht or *resident ryots.*

At the time that Act X of 1859 was passed the state of things was as follows :—

1. In estates which had not been sold for arrears of revenue, under Act XII of 1841 or Act I of 1845, all

khood-kasht ryots enjoyed the right of occupancy, and their rents could never be enhanced beyond the Pergunnah rates. The pye-kasht ryots had no right of occupancy, and their rents could be enhanced at the pleasure of the landlord.

2. In estates which were sold for arrears of revenue under Act XII of 1841 or Act I of 1845, only the khood-kasht kadeemee ryots enjoyed the right of occupancy, the others had no rights whatever. The number of estates which were sold under the above mentioned Laws was, however, very small.

Act X of 1859 has, as we are aware, done away with the above distinctions, and introduced in their stead the 12 years' rule regarding occupancy rights. It has thus taken away from the zemindars the rights which they enjoyed before, with reference to lands held by pye-kasht ryots in all estates generally, and with reference to lands held by all ryots other than khood-kasht kadeemee ryots in estates sold under the Sale Laws of 1841 and 1845. So that while the zemindars were gainers as regards khood-kasht ryots of less than 12 years' standing, the ryots were gainers in all cases where being mere pye-kasht ryots they held for more than 12 years, or where in estates sold under Act XII of 1841 or Act I of 1845, they were not khood-kasht kadeemee ryots. It would look, at first sight, as if the advantages on the side of the ryots under Act X of 1859 were greater than those on the side of the zemindars; but as we shall presently see, this is a mere delusion. "We have seen that, down to the passing of Act X of 1859, "no zemindar, except the very small class of purchasers under Act XII of 1841 and Act I of 1845, seeking to enhance the rent of a ryot would be entitled to a decree except according to the Pergunnah rate, or, if the

Pergunnah rate could not be ascertained, the rate payable for land of similar description in places adjacent." This limited the zemindar's power of enhancement to only the Pergunnah rate or the rate current in the neighbourhood. But these powers were largely increased under Act X of 1859. Under this Act not only the rent of a ryot could be enhanced so as to make it equal to the rate prevailing in places adjacent, but it could also be enhanced beyond the prevailing rate, if the value of the produce or the productive powers of the land were found to have increased, since the time the rent, sought to be enhanced, was fixed.

The law regarding enhancement under Act X of 1859 will be found below.

"Sec. 17. No ryot having a right of occupancy shall be liable to an enhancement of the rent previously paid by him, except on some one of the following grounds, namely;—that the rate of rent paid by such ryot is below the prevailing rate, payable by the same class of ryots for land of a similar description and with similar advantages in the places adjacent; that the value of the produce or the productive powers of the land have been increased, otherwise than by the agency or at the expense of the ryot; that the quantity of land held by the ryot has been proved by measurement to be greater than the quantity for which rent has been previously paid by him."

Now it will be seen that the above quoted second ground of enhancement (increase in the value of the produce or the productive powers of the land), which was not to be found in any of the previous laws from the Permanent Settlement downwards, was intended to largely benefit the zemin lar. The High Court has ruled that when an enhancement is granted under this ground, "the old rent must bear to the

the former value of the produce of the soil bears to its present value." We all know that if the productive powers of the land have not generally increased, of the produce has as a rule considerably increased since the Permanent Settlement, and the effect of this new provision would have been very disastrous to the ryot, had it not been for the fact that for want of satisfactory data regarding the previous state of things, the zemindars were not able to realize to the fullest extent the benefits intended to be conferred on them by the signature. But the zemindars have to thank themselves if they cannot produce satisfactory evidence regarding the former value of produce necessary to obtain an enhancement decree. The Legislature had done all it could to help them. It had passed a new law regarding enhancement which was highly favorable to them, while it was highly unfavorable to the ryots. *The extention of the occupancy rights to certain ryots who did not enjoy them under the old law, was not so great an encroachment on the rights of the zemindars as the new provision regarding enhancement was on those of the ryots.*

We have seen how the Permanent Settlement Regulations of 1793 and the Regulations of the succeeding few years were very much in favor of the ryots; how a change has since gradually come over in favor of the zemindars; how while Act X of 1859 extended the right of occupancy to certain long standing Pye-kasht ryots who did not enjoy it before, it deprived short-standing khood-kasht ryots of theirs, and further increased the zemindar's powers of enhancement. Had it not been for the circumstance, that the zemindar owing to his own fault cannot produce satisfactory evidence regarding the former productive powers of land or the value of produce,

the consequence of the new law of enhancement would have been simply ruinous to the ryot. But fortunately for him, through the ignorance or negligence of the zemindar, the worst effects of the new law of enhancement have been averted, and though the ryot still labours under a great many disadvantages, he would fain continue as he is. But the zemindar will not let him alone. Failing to enhance rents to the desired extent by fair means, the zemindar has recourse to unfair ones. He institutes false cases in the civil and criminal courts, uses force, and does every other thing that wealth and power could place within his reach, to harass and injure the ryot, and exact from him enhanced rents. But as under the present improved systems of civil and criminal administration, he cannot always resort to illegal means with impunity, the consequence is that he is not satisfied with the present law of enhancement. While, therefore, referring to portions of the Draft Rent Bill, tending to benefit the ryot, he sees no necessity for an alteration in the present substantive law ; he warmly advocates a change in that law, as regards the enhancement of rents. In para 9 of their letter to Government the British Indian Association state :—

"The first question discussed by the conference (of landholders) was the necessity of the Bill. They are unanimously of opinion that no occasion whatever has arisen for a radical alteration of the substantive law."

But the Association contradict themselves when in para 20 of the same letter they say :—

"It will be seen from the above that the grounds (of enhancement) enjoined in the existing Rent-law and in the Draft Bill No. 2, do not substantially differ, but it is notorious that the present rules of enhancement are simply unworkable. The mis-understanding, dispute and

litigation, to which they have given rise, have indeed become a public scandal, and to re-enact those provisions would be simply to perpetuate the present state of things."

We fail to understand how, if the working of a portion of the present law is "a public scandal," there should not exist "*any occasion whatever*" *for at least a partial alteration of it.*

In their anxiety to secure for themselves a more favourable law regarding enhancement, than at present exists, the Association have been guilty of mis-representation. "The settlement of rent in Bengal has *always*," they say, "been a matter of mutual arrangement, regulated by the laws of demand and supply. Hence it is that rents at different rates are paid for the same class of land in parts of the same Mouzah. The Pergunnah rate is notoriously a myth, and never was a reality." It is for the first time that we hear that "the settlement of rent in Bengal has always been a matter of mutual arrangement, regulated by the laws of demand and supply," or, in other words, is ruled by competition. This statement is self-contradictory. If the settlement of rent is *always* regulated by the laws of demand and supply, in spite of any Acts and Regulations to the contrary, there can be no necessity for altering those Acts and Regulations. We say Acts and Regulations to the contrary, for, from the time of the Permanent Settlement downwards, there is nothing in them (except the Sale Laws which need not be referred to here) that would go to support the above statement of the Association. The settlement of Rajah Todar Mull of which history supplies such detailed informations, and which is regarded, even at this lapse of time, with deserved admiration, becomes a myth, if, as the Association assert, "the pergunnah rate is notoriously a myth,

and never was a reality." The Association should have pointed out instances in which "rents at different rates are paid for the same class of land in parts of the same Mouzah," *by the same class of ryots.* We have added in the above quotation the words "*the same class of ryots*" as the force of the Association's assertion is entirely lost if those words are not introduced. We should like to hear from the Association in how many instances "whilst the landlord cites the highest rent paid, the ryot seeks to rebut it by citing the lowest rent paid," unless it be that the landlord, as it usually happens in such cases, has gained over some ryots, and with their aid tries to enhance the rents of others. The Association further state, "the rice-growing lands constitute the bulk of the cultivated area of Bengal, and yield the crop by the mere scratching of the ground as it were, or, as the Rent Commission remark with reference to alluvial lands, 'yields a bumper crop in return for the mere exertion of sprinkling the seed on its surface,' and as regards these lands the dictum, that the value of the produce or the productive power of the land has been increased by the agency or at the expense of the ryot, does not as a rule hold good in as much as the sun and periodical rains renovate the soil annually without any artificial aid, except in rare instances, and the value of the produce is regulated by causes independent of the exertions of the ryot."

. . . . . .

"The second (according to the Association's classification) ground of enhancement (namely that the value of the produce or the productive power of the land has increased) is thus inapplicable to rice-lands, which as observed constitute the bulk of the cultivated area of Bengal, and simply opens a wide door to litigation in consequence of the practical difficulty of ascertaining the rise

in the value of produce, and the decisions of the High Court have greatly complicated matters in this direction."

Our readers will observe that in the above extract, the Association first speaks of the dictum "that the value of the produce or the productive power of the land has been increased by the agency or at the expense of the ryot," and then goes on to say that a wide door to litigation is opened "in consequence of the practical difficulty of ascertaining the rise in the value of produce." We do not see how the one can be connected with the other. If the ryot has no hand in the increase in the productive power of the land or the value of the produce, there can be no difficulty in proving it, and this can have nothing to do with the practical difficulty of ascertaining the rise in the value of produce, and the door to litigation need not be opened wide on that account. The "practical difficulty" does not, as the zemindars are very well aware, lie in proving that the increase has been "otherwise than by the agency or at the expense of the ryot;" but the fact is that the zemindars find it practically difficult in the first place, to prove when the rents were last adjusted, and secondly, what has been the increase in the price of produce since that last adjustment. The zemindars' Association have accordingly recommended that "the gross produce of land be divided into sixteen annas, and that 6 annas out of it be apportioned as the share of the landlord, and 10 annas as that of the tenant, and that the same be converted into money value." This may be a very simple way of enhancing rents, but is not, as we shall see hereafter, at all fair to the ryot.

We closed our last article on this subject with the statement that in the opinion of the Association the gross produce of the land should be divided into sixteen annas,

and that six annas out of it should be apportioned as the share of the landlord and ten annas as that of the tenant. To quote the Association at length : "As for the second point (namely, what should be the proportions in which the produce of the land should be divided between the landlord and the tenant) the committee have already pointed out that originally the proportion varied from three-fourths to one half. In the case of payment in kind Mr. Reynolds recognizes the principle of one-half. As regards staple crops, the conference would, however, divide the gross produce of land into sixteen annas, and apportion 6 annas as the share of the landlord and ten annas as that of the tenant, converting the same into money value. Where the maximum of 6 annas has been reached, there should be no further increase. Where, however, the enhancement of rent up to the maximum standard of 6 annas would exceed double the present rent, the enhancement should not be more than double, for in that case a further addition would be oppressive. The conference believe that if the proportions be laid down as proposed above, they would be fair to both landlord and tenant ; the former would receive a fair and equitable rent, and the latter would have enough to cover the costs of cultivation, maintenance and profit."

The zemindars think that by appropriating six annas of the produce to themselves and leaving ten annas to their ryots, they would be acting in a fair and equitable manner to the latter. But, we believe, no disinterested and right-thinking man will agree with them in this. In the first place, it is now quite impossible to determine in a satisfactory manner, what the ratio of rent to produce originally was. Secondly, even admitting for argument's sake that it varied, in former times, from $\frac{1}{2}$ to $\frac{3}{4}$, there is no

a ryot, who now pays an annual Jumma of Rs. 10, should be called upon to pay one of Rs. 20. Surely the circumstances of the ryots must be exceptionally good, if, after paying double the rent they now pay, they should still have, as the Association state, "enough to cover the costs of cultivation, maintenance and profit." But who does not know that this is far from being the tenth? The proposal of the Association to have a uniform standard of rent throughout Bengal displays a lamentable ignorance of the state of the country. "The progress of nearly a century has" as the Rent Commission state "created relations of persons and conditions of things, to sweep away which for the purpose of establishing an ideal normal standard would involve an interference with vested rights and a disturbance of existing associations, which would irritate the feelings of those concerned, and render the remedy worse than the disease. Were we to set up any single average standard of comfort for the whole agricultural population of these provinces, we might find that, while it placed the Behar ryot in a position of ease, calculated by the sudden change to engender sloth rather than energy, it fell short of the existing requirements of members of the agricultural community in some other parts of the country. The inequalities in existing rents are due to causes which have their roots in the past history of the best part of a century. The density or sparseness of population in different districts; the quantity of unreclaimed land available to meet the requirements of a growing community; the energy of particular landlords; the proximity or distance of courts or Magistrates able to repress this energy, when it exceeded the bounds of law; the force of resistance offered by the ryots, varying widely in different parts of the country; the indolence of other landlords; the frequency

of Government management; the irregular incidence of famine; the unequal opening up of the country by railways and roads, in respect of which all districts do not yet enjoy equal facilities; the action of the great rivers —these and other causes have produced imparities, of which we think that account must be taken in any endeavour to settle rents or the enhancement of rents by legislation."

In answer to the question—can a simple uniform rule be laid down for enhancement? the Commission remark: "We think this question must be answered in the negative. The subject has been fully considered by able and practical minds upon more than a single occasion; and none of these deliberations has produced any simple practicable rule, which, applied to all conditions, and under all circumstances, will afford satisfactory results. In taking up the question anew, and seeking for such a rule, we have examined all that has been done by those who have preceded us in the quest, and we have made what further search we could in the light of their knowledge and experience; and the ultimate conclusion at which we have arrived is that no such rule can be devised or formulated. It would, of course, be possible to lay down some rule, which, like Draco's Penal Code, might be embodied in a single section and apply to all cases; but, when it came to be put into operation, it would work so much injustice to both parties that each would be equally eager for its repeal."

After having enumerated the different causes which produce a difference of rates proceeding from the situation and quality of the soil, the means of communication &c., the Commission proceed as follows:—

"These are some of the many causes upon which de-

subject-matter with which rent is concerned in these provinces. No simple rule of uniform application can allow for all these: and, unless they are allowed for and taken into account in individual cases, there cannot be fair and equitable rates of rent, for, in order to be really so, they must be fair and equitable in the concrete as well as in the abstract. The conclusion then to which we feel guided upon the whole subject of settlement of rents and enhancement is, that the safest course for the Legislature is to lay down certain broad lines upon which the officers of Government (whether in the Judicial or Executive Department) shall proceed in this matter—at the same time providing certain positive checks, which experience has shown to be necessary in order to prevent sudden and great changes in the respective conditions of landlords and tenants in Bengal."

It is for the above reasons that Government proposes "to draw up a Table of Rates for each district by a District Commission, which should lay down the equitable rates payable for each class of land in the district or in each segment of the district subject to similar conditions." We think that under the circumstances this would be the best method of meeting the difficulty.

We have approved of the proposal of Government to prepare a Table of Rates for each district or each segment of a district similarly circumstanced, as that seemed to us to be the only practicable way of solving the Rent difficulty. We have stated the reasons, why no such simple uniform rule, as is recommended by the British Indian Association, could be laid down regarding enhancement. "But," say the Association, "no rule can be devised by human ingenuity, which would work with an invariable equality. There must be extreme cases, which cannot be met by any rule, however well

considered and unexceptionable in theory. But the question is whether the proposed rule would not meet the ends of justice in the great majority of cases. This rule is based on substantial justice, for the quality of soil is measured by the quantity of its produce and whatever the proportion fixed for division between the landlord and tenant, it will be self-adjusting, for the ryot who cultivates inferior land will give less as the landlord's share of the produce of such land than the holder of superior land. Then, again, once the proportion is fixed, the rule will be self-acting. The landlord will know his exact share, and the ryot his, and it will be the interest of both to settle disputes between them by mutual agreement according to the general standard." Now the British Indian Association think, that their proposal to give to the zemindar " six annas of the produce unless the rent thus enhanced exceeded double the previous rent in which case the increase should be double the existing rent," would " meet the ends of justice in the great majority of cases." The best way to meet the above general assertion of the Association would be by applying their rule to each district, and examining how it would work in that district. Take for instance the district of Dacca. In this district the ratio of rent to gross produce is generally represented by the fraction 1/20. In some cases it may be a little higher, but in no case it is higher than 1/10. The cases of the adjoining districts of Mymensing, Furreedpore and Tipperah are similar to the case of Dacca. Now, the introduction of the Association's rule to these districts would mean the raising of the rents all round to double of what they are at present. In fact, the same thing would happen in all the districts of Eastern, Southern and Northern Bengal. It is needless to state that the consequences of such a wholesale and enormous increase, would prove most di-

sastrous to the country. But, it will be said, if the proposed ratio (6/16) be too high, make it somewhat less, but still make it a "simple, intelligible and easily workable" rule that would apply to all cases. But unless the Association would be satisfied with 1/12 or 1/10 of the gross produce, which they are not likely to be, there could not be introduced a rule which would apply to all the districts of Bengal, and not only not press heavily on the ryots generally, but leave them, as the Association would seem to desire, "enough to cover the cost of cultivation, maintenance and profit." Even 1/10 of the gross produce would be rather too high a proportion for some of the Eastern districts.

The Association would seem to think that the ryots of Eastern Bengal are in a very prosperous condition. It is difficult for outsiders, and especially for Europeans, occupying high positions, to be acquainted with the real condition of the ryots. To know them as they are, one must as it were live amongst them, see them, not in their holiday dress, as Europeans generally see, but in their every day dress, especially in winter, and see also what they eat. Instead of meeting the above general assertion of the British Indian Association by one of our own, we shall try to place before our readers the results of certain facts we have collected regarding ryotee holdings. We shall for the present confine ourselves to the district of Dacca. It appears from the Road-Cess Returns of this district that the papers filed by the zemindars showed that there were :—(I) 155 holdings paying annual rents above Rs. 100; (II) 339 holdings paying annual rents above Rs. 50, but not exceeding Rs. 100; (III) 7,596 holdings paying annual rents obove Rs. 20, but not exceeding Rs. 50, (IV) 75,187 holdings paying annual rents above Rs. 5, but not exceeding Rs. 20; and (V) 2,45,853 hold-

We find from the above that in every 1000 holdings, there are none of the 1st class, one only of the 2nd class, 23 of the 3rd class, 228 of the 4th class and 748 of the 5th class. As the 5th class holdings form ¾ths of the entire number of holdings in Dacca, we shall confine our examination to this class for the present. The total annual rental paid by the 2,45,853 holdings of this class is Rs. 4,33,853 (Vide Dacca Road Cess Returns). The average rental paid by a holding of this class is therefore Rs. 1-12 annas. As the average rate of rent per *biggah* in the Dacca district is 12 annas, the average extent of a holding of this class will therefore be about 2½ *biggahs*. As some of the holdings of this class are non-agricultural, we shall take the average extent of an agricultural holding to be about 5 *biggahs*. Generally speaking, a ryot in the Dacca district holds about 5 *biggahs* of land. This, as we shall presently see, cannot yield him such produce as would enable him to pay double his present rent, and still have "enough to cover the costs of cultivation, maintenance and profit." The yield per acre appears from the Collector's Return XLI B. for 1873-74 to be as follows:—

Rice	...	...	... 480 to 1,440lbs.
Wheat	...	...	... 480 to 880lbs.
Oil-seeds	..	..	. 120 to 240lbs.
Fibres	...	...	. 240 to 480lbs.

The average yield per *biggah* may be safely taken to be as follows. Rice 6 mds.; Oil seeds 2 mds.; Fibres 5 mds.; and Pulses 3 mds. We have taken Pulses, instead of Wheat, as the latter is not a staple crop in Dacca. The money value of the above would be represented by about Rs. 32. But as the same land does not produce in the same season both rice and fibres, or both oil seed and pulses, the value of the annual yield per *biggah* would be only Rs. 16.

The entire value of the yield of an average ryot's holding in the Dacca district would therefore be Rs. 16 × 580, supposing that he cultivates all the lands of his holding, which he does not do, as a part of the holding is occupied by his huts. But even taking the average yield of a ryot's holding in the Dacca district to be Rs. 80 a year or Rs. 6-10 annas a month, it would not we hope be considered so large as to entitle him to be called prosperous. The first census showed that the average number of persons per house in the Dacca district was 6·4. Now a ryot who has to feed, clothe and house 6 persons out of his monthly earnings of say Rs. 7, and pay rents, and bear costs of cultivation, is far from being prosperous, and this is the general condition of the ryots of Dacca.

We have shown that the majority of the ryots of the Dacca district do not hold more than 5 Biggahs of land each. By following the same process of reasoning, we find that as in the district of Dacca, ¾ths of the ryots of the adjoining districts of Tipperah and Furreedpore do not each hold more than 5 Biggahs; that the average extent of the few large sized holdings, which hardly form 3 per cent. of the entire number of holdings in these districts, does not exceed 35 Biggahs; and that the area of an average middle sized holding is about 12 Biggahs. We have already said, that a ryot holding and cultivating 5 Biggahs of land, in whose house there were 6 persons, could not be said to be in a prosperous condition. But we ought to have said that even a holding of 12 Biggahs (the average area of a middle sized holding) is not large enough to keep a ryot and his family in comfort. In proof of this, we shall make certain extracts from the *Statistical Reporter*, a paper that was once published by Government, and which contained informations gathered after careful local inquiry.

"In the 24-Pergunnahs Sunderbunds, west of the Jabuna and Khalindee, a holding of anything *above* 150 Biggahs would be considered very large, and *below* 15 Biggahs, very small. In the same district, east of the above named rivers, and in Jessore Sunderbunds, with which the lands East of the Jabuna and Khalindee assimilate, 200 Biggahs and upwards would be considered a very large holding, *below* 20 Biggahs a very small one. In the 24-Pergunnahs on the west of the Jabuna and Khalindee, and in Backergunge 25 Biggahs of land would be considered a fair sized comfortable holding for a ryot with a family; but in Jessore, and the eastern part of the 24-Pergunnahs Sunderbunds, a holding less than 35 Biggahs would hardly suffice to maintain a ryot and his family in comfort." (Statistical Reporter, p. 5, June 1876.)

Again, it appears from the same authority that in the district of Jessore, where in the north the average area of a ryot's holding is 10 Biggahs, and in the south 22 Biggahs, "the northern ryot is evidently not so well-off as the occupants of the recently reclaimed tracts in the south, and *has to live more from hand to mouth.*" (Statistical Reporter p. 42.)

Now as there is not much difference in the character of the soils of Dacca and Jessore, and as the density of population is not greater in Jessore than in Dacca, it cannot be said that while a ryot in Jessore, with a family, *lives from hand to mouth, with a holding of* 10 *Biggahs*, a ryot in Dacca, with the same number of persons in his family, *lives comfortably with a holding of* 5 *Biggahs.* Such being the case, one uniform rule of enhancement, however simple would work unequally in the two districts. The rents, which the ryots of Jessore, with their comparatively large holdings, could bear without much difficulty, would

prove most oppressive to the ryots of Dacca with their very small holdings. The two districts should, therefore, be differently treated as regards enhancement of rents. What has been proved above with reference to Dacca and Jessore, could be proved also with reference to the other districts of Bengal. The circumstances which should regulate rents are seldom common in any two districts, and the best thing that Government can do is to take each district or part of a district separately; and this is what Government proposes to do.

Regarding the above mode of adjustment of rents by Government, the Association simply remark: "The conference do not consider it necessary to make any remarks regarding the preparation of table of rates for each district, because their suggestion for the determination of rent by a division of the gross produce of the land between the landlord and tenant dispenses with the necessity of the table of rates. They need hardly remark that the provisions relating to the preparation of tables of rates do not commend themselves to their approval, in as much as they involve a direct interference of the executive fiscal agency with the determination of rent, which was not contemplated by the Permanent Settlement laws as shewn in Mr. Harington's Analysis of the Regulation." Now, we have already shewn, that the proposal of the Association to divide the gross produce of land between the landlord and tenant according to one uniform standard, could not be adopted without very great injustice to the ryot. The Association have not referred to the portions in Mr. Harington's Analysis which they consider support them in their opposition to the preparation of tables of rates by Government. But we have read the Analysis very carefully, and have found nothing in support of the

tion of the Association. We have proved in the earlier portions of our observations on this subject, that previous to the passing of Act X of 1859, there could be no enhancement on the ground that the productive power of the land or the value of the produce had increased. Act X which gave the zemindars the right to enhance on these two grounds furnished them with no mode of procedure for effecting the enhancement. The High Court subsequently laid down certain rules regarding enhancement. But those rules have been found to be unworkable, and Government is now anxious to remove the grievance under which the zemindars are labouring. In proceeding to legislate on the subject, Government find it impossible, for reasons already stated, to lay down one hard and fast rule for all the districts, and therefore proposes to deal with each district separately. This can only be done through a Commission appointed for the purpose. The Association have not been able to point to any portion of the Permanent Settlement Regulations which prevents Government from adjusting rents in this manner.

We believe, we have succeeded in proving satisfactorily that, under the present circumstances, the only practicable way of solving the rent question is for Government to fix the rates for each district. We are not opposed to enhancement; on the contrary, we think that the case with the zemindars, especially with those with limited incomes, is very hard under the present laws, and that Government should do something to facilitate enhancement of rents. But, at the same time, as we find that the circumstances regulating rents differ in different districts, we approve of the proposal of Government to prepare tables of rates for each district. The zemindars should know that if through their opposition the pro-

continue to labour under their present disadvantages. It may be that the wealthy and powerful zemindars who form the British Indian Association do not much care whether any facilities towards enhancement are afforded or not. But the case is otherwise with the middle classes who form the bulk of landed proprietors in Bengal, and who would hail with joy such a measure as is proposed by Government. But, unfortunately, these classes of land-holders have no Associations which could represent their views. Say what the zemindars may, against the proposal present, we feel convinced that they will ultimately with one voice bless Government, if they find that they can get without trouble 17 annas where they at present get only 16 annas.

We believe, we have satisfactorily proved the unreasonableness of the proposal of the British Indian Association for laying down one simple rule for the determination of rent. We have first stated our objections in a general manner, and this we have done by making extracts from the Rent Commission's Report, which fully expressed our views on the subject. We have then shown how the rule would work in particular cases. We have shown that, as things at present stand, what would be fair for Jessore would not be fair for Dacca, and the same thing could be proved with regard to any other two districts of Bengal. Our readers will find that the proposal of the Association for a more speedy procedure for the recovery of rents than is proposed by Government, is equally one-sided and unreasonable.

In respect of the realization of current rents, i. e. of rents due on account of the preceding 12 months, Government proposes to furnish the landlords with the "sure and safe means" of recovering them by means of distraint of the crops through the instrumentality of the

court. But where a zemindar allows the rents of a ryot to accumulate for more than a year, "he is referred to a regular suit as the means of realizing them." The procedure in the regular suits is also intended to be simplified as much as could possibly be done without sacrificing the ends of justice. Any one acquainted with the working of the moffusil courts will admit that the delay in the disposal of cases is chiefly owing to the number of witnesses that have to be examined and whose depositions have to be recorded at length in each case. The provision in the Bill, whereby the Judge is empowered, instead of taking down the evidence of a witness in writing at full length, "to make a memorandum of what he deposes sufficient to give the gist and substance of his evidence," is calculated to reduce half the work of the Judge. Further, the provision, that "no appeal shall lie in any suit brought for arrears of rent, in which the amount claimed does not exceed ten rupees, and in which no question of right to enhance or vary the rent of a tenant, has been determined," will put a stop to much unnecessary litigation in the majority of *bonâ fide* cases for recovery of arrears of rent. One would have thought that the above provisions were quite sufficient to give the zemindars the facilities they wanted for the recovery of rents, and that they should at least have accepted them as provisional and seen how they worked. But let us hear what the British Indian Association have to say on the subject:—

"The Conference have carefully considered the abbreviated procedure recommended by the rent commission, and they do not hesitate to say, that it does not at all simplify the present procedure. There will be the same law's delay, the same room for legal technicalities, the same harassment, trouble and expense as now. The Conference are of opinion that it would greatly facilitate the

recovery of rent, if the putnee sale-law procedure were made applicable to suits for the recovery of rent from occupancy tenants, and the bill of exchange procedure, adopted in Mr. Mackenzie's Rent Bill of 1879, applicable to the recovery of current rent from non-occupancy tenants. They need not go into details; the prominent features of the two systems are well-known. In both cases a regular suit should be allowed to contest the summary decree. This, the Conference submit, will guard against possible injustice under the summary procedure. As a further preventive of false and vexatious suits, the rent-receiver who may bring such a suit may at the discretion of the court be cast in damages."

The propositions of the Association amounts, as our readers will observe, to this. No sooner a zemindar has claimed a certain rent as due from a ryot, than the ryot must either pay up that rent, or see his holding pass into the hands of another person. If he should afterwards succeed in proving, in the course of a regular suit, to be instituted by him, that the claim of the zemindar was unjust, the court will award him damages against the zemindar. In plain language, the law should, according to the Association, first aid the zemindar in knocking down the ryot, leaving him to rise out of the ground unaided if he can. If the two parties in the contest —the zemindar and the ryot—were equally powerful, even then it would not be fair for Government to give undue aid to one against the other; but, as it is, the proposal of the Association, that the aid of Government should be given to the more powerful in throwing down the less powerful, could only proceed from blind selfishness. That there is not the slightest analogy between a putni-tenure and an occupancy-holding, our readers need hardly be reminded

paid by the zemindar, is fixed for ever, the rent of an occupancy-ryot can be enhanced from time to time. While, again, a putnidar is often a landlord having many ryots under him, and deriving large income from his tenure, the ryot is a mere cultivator, and can with very great difficulty manage to keep body and soul together with his slender earnings.

But, why should the Association be so very anxious for the summary sale of a ryot's holding, when by distraining that royt's crops the rents could "surely and safely" be realized? To us it seems that the object of the Association is not so much to secure a means for the speedy realization of rents, as the possession of a power to easily get rid of refractory or troublesome ryots. It is all very well to say that the ryots whose holdings would be summarily sold, could sue for redress in the Civil Courts; but considering the difference in the respective positions of the zemindar and the ryot, we would not be surprised if the zemindar should always be the victorious party. We know of instances in which zemindars were, by merely holding on inspite of repeated reverses in the Civil and Criminal Courts, ultimately able to dictate their own terms to ryots who showed head against them. It matters very little with rich and powerful zemindars, how much money they lose in protracted litigation; but to the ryots the constant attendance at Court, neglecting their cultivation, and the many expenses attending a law suit which do not appear in a decree, are simply ruinous. But it is not always that the ryots succeed in winning, even though they might have a very good and just cause. We can not, therefore, too strongly warn Government against the proposal of the Association, for first selling out a ryot's holding for arrears of rent on the application of the zemindar, and

then leaving him to contest the legality of the sale by a regular suit.

Having examined at length the main points discussed by the Association in their letter to Government, we shall conclude the discussion by a brief statement of the Association's views regarding some of the minor points.

It being the practice with some unprincipled zemindars to take from their unlettered ryots kabulyats relinquishing their occupancy rights, and these kabulyats, the contents of which the ryots could at first know from the zemindars or their agents, being repudiated afterwards, the Bill very properly proposes that "no such contract shall debar a ryot from acquiring a right of occupancy." But the Association consider this to be "opposed to all received principles of civilized legislation and jurisprudence." They ask the question, why a man should be considered competent to enter into contract of any other description except this." The answer is very simple, there is no room for such fraud and deception in the other cases as in this. The Bill proposes to confer certain rights on the non-agricultural population, who are at present completely at the mercy of the zemindars. But the Association consider the proposal to amount to a confiscation of their rights, and suggests that the chapter relating to the use of land for building purposes be omitted. We do not know why the agricultural ryots should only be protected in their holding, and the non-agricultural ryots be left out of the pale of legislature. There was no such distinction in ancient times; and if the present law regarding the non-agricultural population is defective, there is no reason why the defect should not be removed.

We shall notice one more point urged by the Association before we close. Every one acquainted with

the state of the country, knows the evils of co-partners jointly owning an state-tenure or under-tenure; and the Bill proposes to put certain restrictions to the powers of these co-partners. It provides that a co-partner shall not be able to sue for his share of rent separately, unless (1) the tenant has contracted to pay his share of the rent separately, (2) has been in the habit of paying him separately, or (3) does not pay his share of rent in consequence of collusion with another co-partner. It further proposes, that a single co-partner shall not be able "to bring a tenure to summary sale, or measure the lands, or enhance the rents of the tenants." Now, our readers will observe, that there is nothing in the above provisions which could be fairly objected to, as opposed to the interests of the zemindars, which are also secured by a clause regarding the appointment of a general manager, if the co-partners disagree among themselves regarding the management of their estate. But the Association would have no such restrictions put to the powers of co-partners, but would leave each of them to harass the tenants as he pleased.

We have come to the conclusion of this discussion. When we first took it up we imagined that, though in many points we might differ from the Association, we might agree with them in some; but we regret we have not been able to find a single instance in which we could support the views of the Association.

CONCLUSION.

THE CLASSIFICATION OF LANDS AND ADJUSTMENT OF RENTS.

WHILE examining the British Indian Association's proposal for giving the zemindars a certain share of the gross produce, we pointed out that no general rule of enhancement, however simple it might be, could fairly be applied to all the districts of Bengal, and that each district should be dealt with separately. With this view we supported the proposal of Government to prepare Tables of Rates for each district or segment of a district. As the success of the proposal will, in a great measure, depend on the manner in which the Tables are prepared, we shall try now to explain, at some length, our views on the subject.

In an article on the Rent Question published as a supplement to the *Brahmo Public Opinion* of 6th January last, we said :—

"To any one acquainted with the physical features of Bengal villages, the practical difficulties (for the settlement of Rents) will not appear to be very great. It is not that the different descriptions of land, for which different rates are taken by landlords, are scattered over the village in an irregular or whimsical manner, but that there is a law according to which all the lands of one description are generally to be found together. As a rule, all high lands are in one part of the village, and all low lands in another; or all clayey lands in one place, and sandy lands in another. This is the *general rule*, though there are often exceptions to it. It will be found on

inquiry that this law applies not only to villages taken singly, but often when taken in groups. Such being the case, the classification of lands, similarly circumstanced, according to the character of their soil, becomes practically a matter of not much difficulty. It is true, as the Rent Commissioners report, that a distribution of lands into different classes according to a more extended or more limited classification, prevails in every estate; and that is well known to, and well understood by, the ryots. There is not, therefore, much likelihood of a dispute, regarding classification, arising between the landlord and tenant, in the event of a local inquiry being ordered by Government."

We then proposed that "previous to the settlement of rates," the lands of a particular tract of country similarly circumstanced should be demarcated according to their classes by experienced revenue officers in the presence of the zemindars or their agents and the principal ryots of the village; and maps prepared, whereby the different classes could, afterwards, be easily identified. We also explained our views as to how the rates were to be fixed, and concluded by saying that "the landlord and the tenant should have a *right to object* to the settlement officer's classification and assessment of rates." (Vide pages 39-40 of the Pamphlet containing the supplement).

Now a Settlement of the Rent question in the manner suggested by us will be found to be the best possible remedy for the cure of the present evil. It will introduce no new changes, but accept classifications, well known to, and accepted by, both landlords and tenants. It will fix the rate of rent payable for each class, and prevent all future disputes regarding classification by preparing maps showing the different classes. It will,

besides, prove advantageous in several ways by enabling Government to collect information, in the course of the settlement, regarding ryotee holdings, character of soil and produce, which it would not be possible to obtain under any other scheme.

It will appear from what has been stated above, that the classification, according to our scheme, is not intended to be roughly and hastily done. As, however, we may be misunderstood by some of our readers, we shall try to explain our views more clearly. We have said that generally speaking all the lands of one description are found to lie in one place, though there are exceptions to this rule. Now by requiring the classification to be, in the first place, made in the presence of the zemindars and the ryots, and then allowing both the parties the right to object to it, we have, we believe, provided sufficient safeguards against any possible error on the part of the settlement officer. The following example will illustrate our meaning.

Suppose the village under settlement is Bishtopur. The settlement officer previous to proceeding to the spot will get himself provided with a copy of the Thackbust map of the village, and obtain from the Mehalwar Registers the names of the proprietors of the Mehals included in the village. He will then call upon the proprietors to produce the Chittas (measurement papers), Khyetans (abstracts of Chittas) and Jummabandees (Rent Rolls) of their respective Mehals. From the Chittas the settlement officer will find how the lands in the village have been classified. He will find whether all the *nal* lands (i. e. lands under cultivation) have been, as is sometimes the case, included in one class or divided into different classes. In the latter case, he will determine from the Chittas, as much as possible, the relative positions of the different

classes. He will then fix a day for proceeding to the village to make the classification, and call upon the zemindars and ryots to remain present on that day at a particular place. On the appointed day he will inspect the lands of the village, and in the presence of both zemindars and ryots, make a *provisional* classification of the different descriptions of lands in *blocks*. These blocks will be shown in the Thackbust maps by the Ameens accompanying the settlement officer. The settlement officer will then fix a date, when he will proceed to make the classification final, and make it known to landlords and tenants, who will be allowed to prefer, within the prescribed time, any objection they may have to the classification. On the appointed day the settlement officer will again proceed to the village, taking with him all the petitions of objections presented to the provisional classification. He will decide all these objections on the spot in the presence of both the parties. Any changes effected in the classification at this second inquiry will be shown in the map, which will then be final as regards classification. The rates will be fixed by the settlement officer for the different classes of lands shown in the map after due inquiry. As the settlement of many villages will be taken up at a time, the settlement officer and his establishment will have sufficient work to keep them constantly occupied, and there will be no loss of time by allowing the zemindars and the ryots to raise any objection to the first provisional classification. The settlement officer must be, as we said in the Supplement, a very experienced person, and be possessed of much tact and patience. He must also be a man of active habits, and be a good rider or walker. The success of the scheme will greatly depend on the men intrusted with the carrying out of it.

We have studied the subject very carefully, and can, from our experience in the management of land, confidently assert that the above will not only be a complete settlement of the Rent question, but will prove advantageous in various other ways. It will enable Government to obtain much valuable information from the zemindars' papers, as well as from local inquiry regarding ryotee holdings, and other agricultural matters, the knowledge of which will sooner or later be necessary on the part of Government for the solution of many economical questions. The average extent of ryotee holdings in any particular tract of country could be known from the Chittas and Khyetans, prepared by zemindars from time to time after measurements by Ameens without a knowledge of which there can not be any satisfactory adjustment of rents. Further, the nature and character of the soil in the tract of country under settlement, together with information regarding the principal crops produced therein, and the area covered by each kind of crop, would be known in a satisfactory manner and shown in the maps. The more we think of the above scheme, the more we feel convinced that the carrying out of it will prove of immense benefit to the country. As all the advantages pointed out by us could be secured at a very moderate cost per square mile, and as the cost would be borne not by any one particular zemindar, but by all the zemindars whose estates might be under settlement, we hope the scheme will merit at the hands of Government the attention it deserves. If Government be not prepared to introduce this mode of settlement in all the districts at once, they may, as an experimental measure, first introduce it in selected areas.

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