THE RELATIONS

OF

LANDLORD AND TENANT

IN

INDIA.

A SERIES OF ARTICLES CONTRIBUTED TO THE "FRIEND OF INDIA," WITH ADDITIONS AND AN APPENDIX.

SERAMPORE PRESS.

1863.

Price One Rupee.

CONTENTS.

APPENDIX.

THE RELATIONS

OF

LANDLORD AND TENANT

IN

INDIA.

A SERIES OF ARTICLES CONTRIBUTED TO THE "FRIEND OF INDIA," WITH ADDITIONS AND AN APPENDIX.

SERAMPORE PRESS.

1863.

Price One Rupee.

PRINTED BY MARSHALL D'CRUZ.

PREFACE.

THE following Exposition of the Relations of Landlord and Tenant, as they are and as they ought to be in India, and especially in Bengal, appeared originally as a series of Articles in the *Friend of India*. It is now published in a separate form, with the object of informing those in England who are interested in Indian progress, and in the hope that it may be found of some use in bringing about that amendment of the Rent Law of 1859, which judicial authorities so experienced as Sir Barnes Peacock, the distinguished Chief Justice, the Hon'ble Justice Kemp, a Bengal Civilian, and the Hon'ble Sumbonath Pundit, a Hindoo Judge, of the High Court of Bengal, have declared to be necessary.

Serampore, 22nd September, 1863.

CONTENTS.

APPENDIX.

THE RELATIONS

OF

LANDLORD AND TENANT

IN

INDIA.

On the 29th of April 1863 four years had passed since Act X. of 1859, designated as "an Act to amend the law relating to the recovery of rent in Bengal," was sent into the world with the Governor General's eulogistic remarks on its author's philanthropy and on its future happy effect. It has since been extended to the North-Western Provinces. The operation of the Act has been marked by a great increase of litigation, and has everywhere, more or less, produced antagonism between landlord and tenant. Instead of facilitating the recovery of rent in a manner to encourage mutual interests and friendly feelings, so necessary to the peaceful progress of society in an agricultural country, the Act has intensified the former antagonistic interests of the owners as against the occupiers of the land, and has led to bad blood and to a vindictive assertion of rights, injurious at once to the public and private weal. Government has, for the second time, called for reports from its officers on the working of the Act, and these disclose such continually increasing evil results that it must be again altered as it has been already. Without exception there is no question of such vital importance to the present and the future of Western India, and we propose, therefore, to discuss the principles which should guide any alteration by showing—

1st. What were the relations of landlord and tenant in Bengal as created by Lord Cornwallis's grant settlement, and as interpreted by the subsequent laws, prior to 1859.

2nd. How far those relations were changed by judicial interpretation up to 1859.

3rd. In what respects the principles of Act X., by their opposition to the existing state of society and to the laws of political economy, necessarily led to evil results.

4th. The different principles naturally governing the relations of landlord and tenant in a backward state of society, as distinguished from those which govern the same relations in a more advanced stage of civilization.

5th. How far the former principles must still govern those relations in Bengal, and how far they may be superseded by the principles now recognized as best by the highest European authorities on the subject.

If our arguments are correct they will bring to the consideration of the various authorities the ultimate end which, we conceive, should be aimed at. They will give to each part of the country the means of gauging the degree to which the local state of society limits the attainment of that end, while they shew the practical measures to be taken for its present partial adoption, and which shall also gradually lead towards its ultimate full attainment.

CHAPTER I.

LANDLORD AND TENANT UNDER THE CODE OF 1793.

It would be useless to consider the state of the landed tenures before the Perpetual Settlement, further than merely to point out how the conflicting opinions as to the former rights of the Zemindars or of the ryots to the land, and the consequent title of each class to be declared the Landowners in 1793, have influenced the conduct and opinions of officials down to our day. This effect has been maintained by the different principles which guided the settlements of Bengal and of the North-Western Provinces, both under the rule of the same officials. In Bengal the Government gave up all right of property in itself, and divided the country among the Zemindars as owners on a fixed Land Tax for ever. In the North-Western Provinces Government kept itself virtually as sole Landlord, making the people only tenants of larger or smaller holdings on 30 years' leases. Thus in Bengal the Zemindars held the same position to the rest of the agricultural community that Government did in the North-Western Provinces. We do not propose to reopen this question of landed rights prior to the Code of 1793, but to examine the consequences of the landed property thereby conferred on the Zemindars of Bengal whether rightly or wrongly.

The first 48 Regulations of 1793, all passed on the 1st May, constitute a Code which fixed the relations to each other, not only of the Government and the persons whom those Regulations make the "actual proprietors of the soil," but also of the said "proprietors" and of all under them. This Code moulded and governed the relations of landlord and tenant in Bengal till the passing of Act X., and we must therefore consider its general effect. The policy contemplated by the Code of 1793, so far as it can be gathered from the terms of the different Regulations, was to make the Zemindar absolute master of

his estate, subject only to such subordinate tenures as then existed under the names of "Dependant Talookdars," "Mocurrerydars," and "Istemrardars," and to such customary rights as then obtained in the existing hereditary resident cultivators, which would of course also descend to their heirs so long as they continued to reside on and to cultivate the same land. The Code tried to register the then existing subordinate rights which should thus limit the proprietor's power to do as he liked with his own, by establishing a quinquennial register, and by requiring the landowner to give leases in fixed forms in every case, and to keep records of the holdings in each village for the information of the local authorities. This attempt was, however, defeated, partly by the supineness of ignorant and careless landowners, and partly by the backward state of large districts which had to be exempted so soon after as March 1794. In the half century, however, which has since elapsed, the then existing rights, both in under tenures and in ryot holdings, have either registered themselves by litigation or ceased to exist.

Regulation 8 of 1793 is the particular chapter of the Code showing the rights which were to curtail the landowner's power over such parts of his estate as were held by the possessors of those rights. It also enacts the landowner's absolute power of dealing as he pleased with the remainder of his land, and this is further shown to be the intention of the Code by Art. 7 of Regulation 1, by the preambles of Regulation 2, Regulation 3, Regulation 17, and above all by the preamble of Regulation 44. But as Regulation 8 is only a re-enactment of the rules for making the Decennial Settlement in 1789 and 1790, it must be considered as speaking from those dates, and its re-enactment in 1793 as showing how the relations of the landowners with Government above and with their tenants below, had been meanwhile settled. The principles and meaning of Regulation 8 of 1793 are clear. It first divides into distinct estates the separate independent proprietary rights in the Zemindary, making each a distinct property held under the Crown by a distinct proprietor of the soil at a fixed land tax for ever. The remainder of the Regulation then deals with the rights of these proprietors of the soil, as against those under them who are not absolute proprietors of the soil. It recognizes the sub-proprietary tenures before mentioned—Dependant Talookdars, Mocurrerydars, and Istem-

raydars—as exempt from the landowner's absolute rights, and entitled to hold their lands as under-tenures for ever at a fixed rent. It then enacts, section 52, that the "*proprietor of the land is to let the remaining lands of his estate in whatever manner he may think proper*" subject to the following restrictions—to fixing one sum to cover all demands; to giving a lease in every case; to respecting his own or predecessors' leases for terms not exceeding ten years, and to not cancelling any existing leases, by whomsoever given, to the Khoodkast Ryots (commonly described as "resident cultivators") except when paying rent below the current rate or when those leases were improperly obtained.

At the same time with Regulation 8 of 1793, the chapter which defined the then existing rights, was published Regulation 44, the chapter which was to preclude the creation of new rights destructive of the landowner's absolute power over the remainder of his estate. Regulation 44 recites that, "the public demand on the landowners "having been fixed for ever, it is to be apprehended that proprietors, "from improvidence, ignorance or other causes, may be induced to dis- "pose of dependant talooks (i. e. make new ones) at a reduced rent, or "fix the rent of the dependant talooks now existing at an under-rate, "or let lands in farm, or grant cultivating leases to ryots at a reduced "rent for a long term or in perpetuity. Such engagements, if held "valid, would leave it in the power of proprietors to render their pro- "perty of little or no value to their heirs, would endanger the Govern- "ment Revenue, would be an abuse of the great and lasting benefit "conferred on the proprietors by the permanent settlement, and would "be repugnant to the usages of the country, according to which the "certain proportion of the produce of every beegah of land payable to "Government or to the proprietor with whom Government has fixed "the public demand, *leaving him to appropriate to his own use the difference "between the value of such proportion of the produce and the sum he pays*, "is inalienable without the sanction of Government. It is at the same "time essential that proprietors of land should have *a discretionary "power to grant leases and to fix the rents* of their lands for a term suffi- "cient to induce their dependant talookdars, under farmers, and ryots "to extend, and improve the cultivation." The Regulation then forbids the proprietor to give any lease or make any engagement for more

than ten years, and cancels all agreements to renew or any other evasion of this proviso for bringing back, every ten years, the land into the proprietor's hands, to be again "let by him in whatever manner he may think proper," subject to the above mentioned restrictions imposed by Regulation 8.

So far for securing to the landowner a constantly recurring power of letting his land at a higher rent. For the security of Government Regulation 44 cancels even these ten years' leases, as well as every creation of a new Dependant Talook, all leases to under farmers and all pottahs to ryots, whenever the estate shall be sold for the proprietor's default in payment of the Government land tax, and exempts from destruction in that case only the Dependant Talooks existing before 1793 and protected by Section 51 of Regulation 8,—and any building or residence leases since made. The other 46 Regulations of the Code only touch this question of landlord and tenant incidentally, but all tend to show, that though Government was anxious to give fair protection to existing subordinate tenures, it did not intend to allow new tenures to spring up, except under grant from the landowner, and then only for such short and recurring periods as never to grow into rights, restrictive of the landowner's absolute power over the whole of his estate not already subject to existing rights.

And this policy was not only wise but intelligible. Before 1793, Zemindars, Independant Talookdars, Dependant Talookdars, Mocurrerydars, Istemrardars, Khoodkast and Pykast Ryots, were all equally mere tenants-at-will to Government as sole and absolute landowner and lord of the soil, none having more than a customary right to an allowance of a small share of the proceeds from the estate if ousted by Government from the possession of their holdings. The Code of 1793, therefore, was a gift by Government to its different classes of tenants-at-will, of fixed and permanent rights not necessarily inconsistent with or antagonistic to each other. But the whole scope of that Code shows that the greatest boon was to be conferred on those it made the proprietors of the soil, with the politic view of creating a large and rich landed gentry, for the beneficial purposes shown by the experience of Europe to accrue from the existence of such a class. While the proprietors had their land-tax fixed for ever, they were to derive the whole benefit of all increase

in the value of their property, except as to the land then held by Dependant Talookdars, Mocurrerydars and Istemrardars. This benefit was secured by the Code of 1793 and by Regulation 4 of 1794, passed in March following, requiring all the then Khoodkast Ryots to pay the then current rate of the neighbourhood for their first ten years' lease, and the future current rate at each renewal for ten years, leaving the landowner to what, we have seen, the preamble of Regulation 44 calls *his discretionary power to fix the rent* in every other case, to every new ryot, and for every bit of his land not then occupied by the existing Khoodkast ryots. The only restrictions against the landowner evicting his tenants at discretion or demanding whatever rent he pleased, are the sections in Regulations 8 and 44 declaring the Dependant Talookdars, the Mocurrerydars, and Istemrardars perpetual holders at a fixed rent; and section 60, clause 2 of Regulation 8 of 1793, which forbids the landowner cancelling the existing pottahs of the Khoodkast ryots except when below the current rate or improperly obtained.

In 1795, however, Regulation 51 was passed for Benares, the last section of which declares that Pykast as well as Khoodkast Ryots can only be charged rent at the established rates, but that it is optional with the Landowner to evict the Pykast Tenants on the expiry of their leases, "whereas Khoodkast ryots cannot be dispossessed as long as they continue to pay the stipulated rent." This Regulation 51 of 1795, though only applicable to Benares, seems to have been gradually extended by official sympathy with the Ryot to the rest of Bengal, and the Landlord's "*discretionary power to fix the rent*" would thus appear to have been theoretically curtailed. But a little reflection will show that no real or practical change was made. However unbounded a right of "letting the land in any manner he pleased," might be given by the Code of 1793, no Zemindar could of course get more rent than at the market rate of land in the neighbourhood, and the limitation therefore of his right to that market rate, was only the official recognition under another form of the limitation already affixed by nature. On the other hand however, the Zemindar's absolute power to evict at will all his tenants but those who held Khoodkast, was expressly recognized by Regulation 51 of 1795. The result of these various Regulations was that the new Landowner thus

acquired an absolute power over all his property and over all the peasantry thereon, limited as to his power of eviction only by the perpetual Khoodkast grants given by his predecessors, and, as to the amount of rent, by the natural boundary of the market rate.

This argument, that such were the absolute property and plenary power given to the Zemindar, is strengthened by the whole purview of the Code which is inconsistent with any other view, and by the numerous official complaints of the Code as, in this view, sanctioning oppression of the ryot. Mr. Young, in his *Revenue Hand-Book* published in 1855, quotes Lord Hastings' Minute of the 31st December 1819 to that effect, and alludes to many others of the same character. One can scarcely help smiling, in 1863, to see Mr. Young describing Lord Cornwallis's great Code as "now generally admitted to have been a shortsighted, indiscreet and unstatesmanlike measure." But such was undoubtedly the official view of the matter in 1855, which, as we shall shew hereafter, led to judicial decisions in direct violation of the Government pledge to the Zemindars in that Code, and in direct contravention of the wise policy enunciated by its great founders, half a century in advance of the public opinion of their time.

To the above considerations we must add the terms of the various Revenue Sale Laws since 1793, which all purport to put the auction purchaser at a Revenue sale in the same condition as the Zemindar was placed by the Code of 1793. The last of these Revenue Sale Laws, Act 1 of 1845, expressly enacts, by section 26, that the purchaser "shall be entitled to *enhance at discretion* (anything in the existing Regulations to the contrary notwithstanding) *the rents* of all undertenures in the landed estate, and *to eject all tenants* thereof" except the under-tenures above mentioned as protected by the Code of 1793, and "lands held by Khoodkast (resident cultivating) or Kudeemee (old) Ryots having rights of occupancy at fixed rents or at rents assessable according to fixed rules," and building, clearing and mining leases at full rents. When we compare the preceding summary of the Code of 1793, so far as it relates to landlord and tenant, with the above legislative interpretation of it by the Revenue Sale Laws, we think it will be conceded that the object of the Code was to make the landowner absolute master of most of his estate, with power to enhance at

discretion and to eject at will all on his estate, except the persons who were the then co-recipients with himself of the Government bounty, and their heirs.

His position, then, became one most strongly tending to the object prominently put forward all through the Code, the improvement and cultivation of the country. As to the land in his estate then held by the co-recipients with himself of the Government bounty, he could do but little, since his relation to them was that of the Lord of a Manor towards his Copyholders. The detrimental effect on improvement of such conflicting rights in the same soil, Lord Cornwallis and his advisers doubtless well knew, as some of them had estates of their own, and thus had landed experience beyond what has fallen to the lot of our Indian rulers of late years. But while Lord Cornwallis felt bound, by the then existing state of the landed tenures, to saddle the landowner with the impediment of this quasi-copyhold tenantry, he at the same time gave him every facility for bringing the rest of his estate into cultivation, by making him a quasi-freehold owner of the same with *discretionary power to make leases and to fix rent*, so that, as urged by Section 7, Regulation 1, "the proprietors, sensible of the benefit conferred upon them by the public assessment being fixed for ever, will exert themselves in the cultivation of their lands *under the certainty that they will enjoy exclusively the fruits of their own good management and industry.*" This exclusive enjoyment by the landowner of the fruits of improvement of his estate, was not only just but indispensable, since both experience and Political Economy show that, except with that prospect, there will be no improvement at all. At the same time this exclusive enjoyment by the landowner of the fruits of improvement could only be realized by his possessing the natural and unlimited power of fixing the amount of the return, or, in other words, enhancing the rent at discretion up to the natural limit. The more, therefore, a Zemindar's estate was cleared, cultivated, and improved, the more his guaranteed exclusive benefit therefrom took its natural and necessary form of expression in the raising of rent on the ryot, which was so feelingly deplored as oppression by the official voice of India through a period of 60 years, till this misapprehension of political and economical laws received its legislative enshrinement in Act X. of 1859.

Notwithstanding those complaints, however, this it was that raised

Bengal in prosperity so far above every other part of India. This it was that made the increased produce beyond the people's wants seek foreign marts, and thus brought into the country the flood of bullion which, in the last ten years, has so largely raised the prices of labour and produce, to the general welfare of the whole community except those with fixed incomes. This it was that kept Bengal quiet during the mutiny of 1857. And, above all, this it was that, in Bengal, multiplied those with leisure enough to learn, and has begun to create a class of natives to whom the language, the literature, and the ideas of England are becoming as their own; who look to the thoughts of England as to the daily bread of their intellectual life, and whose sons will, we hope, look to the Faith of England as the bright trust of their spiritual future.

CHAPTER II.

JUDICIAL INTERPRETATION OF TENANT RIGHTS IN BENGAL.

THESE rights and relations of landlord and tenant in Bengal, as established by the Code of 1793 and as interpreted by the Revenue Sale Laws prior to 1859, were in accordance with the laws of Political Economy and thus worked easily. They were, however, opposed to the philanthropical support of the Ryot over the Zemindar, which dictated Holt Mackenzie's Act for the settlement of the North West Provinces, and the application of which by Thomason was long considered by Bengal Civilians as the perfection of the landed relations most suited to India. The various peasant rights alleged to have been discovered by our officials in the North West Provinces, were said by the opponents of the North West system to bear characters showing them in many cases to be due rather to a misapplication of English ideas to Native customs, and to unfounded pretensions raised against a Government Landlord, whose officials, so far from opposing such pretensions, were avowedly in search of the same, than to the real relations formerly existing between the Native Nobles and the Ryots in the North West. Whatever might be their origin, however, the peasant rights in the North West Provinces thus became

well known to the Bengal Civilians, while the real relations of Landlord and Tenant in Bengal, as established by the Code of 1793, were gradually lost sight of.

We now have to point out how far those relations in Bengal were changed by the course of judicial interpretation up to 1859.

The recorded decisions of the Supreme Court do not deal with the question as between landlord and tenant out of Calcutta, and we must look, therefore, solely to the decisions of the Sudder Court. These comprise, first, seven volumes of Reports of selected cases extending from 1792 to 1848. The first three volumes from 1792 up to 1824, were published in 1827 by Mr. W. H. Macnaughten, Registrar of the Sudder Court, and are of peculiar value, as containing only those selected cases which were recognized by the Court as having laid down correct principles of law. The last four volumes of the Select Reports, extending from 1825 to 1848, were published from time to time by the Registrar or his Deputy. In 1843 an Act was passed, XII. of 1843, directing all judicial officers to write and sign their own decisions in their own vernacular, and on the 8th of January 1845 the Governor General, as Governor of Bengal, ordered the whole of the decisions of the Sudder Judges, as recorded by themselves in English, to be published. This was done from 1845 up to 1860, and constitutes the Sudder decisions for each year as distinguished from the Select Reports which were only continued up to 1848. The decisions from 1845 are a mass of contradictory decrees of different Judges with co-ordinate authority, applying their varying views to the shifting circumstances of the particular case before them. "Rari nantes in gurgite vasto" are several careful considerations and applications of principles, only to be followed by another decision of some other judge apparently ignorant or careless of the labours of his brethren, overruling the former decision in fact but without even alluding to it, and applying the principles which had been condemned to the *pro re natâ* case before him. This conflict of legal interpretation was unavoidable, so long as the fast changing lists of Sudder Judges were filled up exclusively from men without legal training, who had not been practitioners in the Court, and whose previous avocations had only necessarily brought to their notice the decision of the Sudder so far as their own decrees as Zillah Judges had been confirmed or reversed. But the publication of the mistakes of the

Court was cruel to its members, and the cases giving a correct and careful determination of principles were lost in the mass and ceased to be a guide. This also renders it difficult to state positively what was ruled to be the law as between landlord and tenant, for the later decisions vary on this point as on most others.

One thing, however, is certain, that in the published Select Reports for over fifty years after the Code of 1793, no traces are to be found of anything like a right of occupancy in any one but the holders of 1793. All the numerous cases between landlord and tenant relate either to Lackraj tenures (lands claimed to be held rent-free under grants before the E. I. Company's rule or prior to 1790) or to the under-tenures to which permanency was given by the Code of 1793. And so far was the absolute right of the proprietor of the soil assumed to extend over all his estate not expressly exempted from his control by the Code of 1793, that wherever any of these protected tenures were not brought strictly within the terms of the Code they were set aside in favour of the landowner. From 1793 till 1845 the Select Reports show no vestige of anything like a claim even by any tenant to any right in the landowner's soil, to be acquired by any inherent power of growth or extension, by long holding, or by the law of limitation. On the other hand, many of the cases are totally inconsistent with the possibility of any such right having accrued, grown, or extended since 1793.

Among others, for instance, in 1823 a case was decided in the Sudder Court, which exemplifies the judicial view held at the time of the meaning of the Code of 1793 in this respect. A sunnud or grant had been made by the Zemindar in 1785, creating a certain village a dependant talook at a low rent, with a proviso that more than that small rent should not be demanded of the lessee. The Sudder Judges of 1823, Courtney Smith and his able brother Judges—who had begun their Indian career either before or soon after 1793, and to whom, therefore, the real sense and meaning of the policy of the great settlement had come down as a familiar fact—ruled that neither the sunnud itself, nor this proviso, prevented the tenant's rent being raised to the sum demanded by his landlord, and designated by the tenant as "an endeavour to extort excessive assessment." The sunnud was declared insufficient to make a Mokurreree or perpetual tenure at a fixed rent, because, instead of dating from more than 12 years before the Decennial

Settlement made in 1789 and 1790, or from more than 15 years before the Perpetual Settlement of 1793, it only dated from 6 years before the Decennial Settlement. The proviso in the Sunnud against raising the rent was held void, apparently as beyond the power of the Zemindar before the Code of 1793, and as opposed to the policy of Regulation 44 of that Code forbidding landlords to lease for more than 10 years, and making void all stipulations contrary thereto as evasions thereof. And the fact of the tenant having held at the same low rent from 1785 to 1819, was apparently so little thought to give him any right or benefit against his landlord's power of raising his rent, that it is not even alluded to except as an immaterial feature of the case. (3, Select Reports, page 221.) It may be safely asserted that, up to 1845, the Courts and the people of Bengal were equally ignorant of any right of occupancy except that recognised by the Legislature in the Revenue Sale Law of the same year, Act 1 of 1845, as existing in the Khoodkast ryots, who, as having held by themselves and their ancestors from before the Perpetual Settlement, were in 1845 also called Kudeem or old ryots, and whose Pottahs, according to Section 60 of Regulation 8 of 1793, were not to be cancelled by the landowner except they paid less than the Pergunnah rate or had been improperly obtained. This, of course, limited the rights of occupancy to the descendants of the old resident cultivators still continuing to reside on the same estate and to cultivate the same land as their ancestors did in 1793, for on removal from the old landlord's property, or on ceasing to cultivate the hereditary acres, their privileges as old Khoodkast ryots ceased.

Thus rights of occupancy were merely personal and hereditary, but not transferable, and extended only over the parts of the estate under cultivation in 1793, leaving untouched the landowner's rights over the remainder which had been since brought into cultivation, so far as selecting his own tenants and ejecting those he disapproved of. But in the important matter of fixing the amount of rent for that remainder at his own discretion, the compact between the Zemindars and the Government expressed in the Code of 1793 had already been unwarrantably infringed. As we have already shown, Regulation 4 of 1794 fixed the Pergunnah rates as the rates for all the existing Ryots in Bengal, at the time of the perpetual settlement, which, by analogy with the directions

of Sec. 10 of Regulation 51 of 1795 for Benares, were held to apply to Pykast as well as to Khoodkast Ryots, and which by Regulation 30 of 1803 were also extended to the part of the North West Provinces ceded to us by the Nawab Vizier of Oude. Regulation 5 of 1812 repealed the old restriction against the landowner leasing any portion of the remainder of his land for more than 10 years, which we have seen was only a nominal restriction but really for his benefit, as always bringing the land back into his hands every ten years and thus securing to him periodically the increased yearly value of it. Sections 6 to 10 of that Regulation also virtually extend to all the ryots on the estate, whether old or new, the Pergunnah rate as the limit of rent which the Code of 1793 only imposed as the limit of rent on the Khoodkast ryots of 1793, and which Regulation 4 of 1794 only extended to the other Ryots of 1793. With this exception, however, the absolute right of the landowner over "the remainder of his estate" remained unaffected up to 1845.

This serious infringement of the compact of 1793, by curtailing the landowner's discretionary power of fixing the amount of his rent, was not however felt at that time as a practical grievance. The native landowner was too shortsighted to see the insidious nature of the change in doing away with the marked difference between the old Khoodkast ryots and all new comers, and in obliterating the distinction between those old cultivated parts of the estate where his absolute proprietary rights were controlled by peasant rights of occupancy, and those newer clearances made under the guarantee of the Code of 1793. Nor was the distinction of such paramount importance to the landowner until the great rise in prices of late years. From 1812, when the Pergunnah rate was extended as the limit of rent over the whole tenantry, till 1845 when the landowner's absolute right of "enhancing at discretion the rents of all under tenures in the said estate and of ejecting all tenants thereof" except the old protected tenures dating prior to 1793, was restored to him by Act 1 of 1845, the Pergunnah rate was close upon the rate the land would have brought as yearly rent if let to the highest bidder in open market. The native landowner, therefore, probably saw not the danger of having the Pergunnah rate made the temporary criterion for new tenants as well as for the old Khoodkast ryots.

In 1845 questions began to be raised in the Sudder on the 12 years

law of limitation, both as to whether, after taking the same rent for more than 12 years, the landlord could raise it, and also as to whether, after a tenant had cultivated the same land for more than 12 years, his landlord could evict him. In the Sudder Decisions for 1856 page 621, Baboo Kissenkissore Ghose, the present Government Pleader, whose high character and long experience of the Sudder Court give the weight of authority to his words, is reported to have stated without contradiction, that " this question of limitation," as between landlord and tenant where there was no adverse holding, " was never mooted before 1845. Up to that time, it was considered, such an objection would never be listened to," and certainly the cases in the old Select Reports make it probable that the old Judges who had a personal knowledge of the real meaning of the Code of 1793, would have treated such arguments as summarily as the Courts of Westminster now would in the case of English landlord and tenant. The Judges of the Sudder Court from 1845 to 1856 were, however, more indulgent to this argument in favour of the ryot and against the landowner. On the point of limitation barring the right to raise the rent, the decisions were conflicting, but ultimately it was settled that limitation did not apply to raising the rent.

As to eviction the question first rose in cases where the Zemindar sued to evict his tenant from land held in excess of the area occupied under his lease. In 1846 the Sudder decided that the 12 years law of limitation prevented such evictions after a 12 years' holding. (S. D. 1846 p. 358.) This case is not in the Select Reports for 1846, so perhaps its total misapplication of the law of limitation was then recognized, but still, being published in the Sudder Decisions, it was constantly quoted and ultimately amplified, till it led to the theory of 12 years giving a right of occupancy subsequently enshrined in Act X. of 1859. In 1849 two Sudder Judges out of three held the same doctrine under the same circumstances, on the authority of the case in 1846, deciding " that there is nothing in the law, which authorizes distinction between the claim of a Zemindar suing to deprive a party who had cultivated lands in his Zemindaree without distinct title for more than 12 years of his possession of the lands, and any other claim to which the law of limitation is applicable." (S. D.

In these cases the relation of landlord and tenant existed between the parties, and rent was paid by the one to the other before, up to, and during the continuance of the 12 years; consequently, according to the English law, the question of limitation could not have arisen. Nor do the Judges in any of those cases condescend to show how they bring them within the Indian law of limitation of 12 years from the cause of action, as fixed by the Code of 1793; since, even where a tenant holds over with consent, so long as he pays rent, it is difficult to see how any cause of action accrues to the landlord, either to sue for enhanced rent or for eviction, until the landlord asks for more rent or gives his tenant notice to quit. It is difficult to deduce any principle from these conflicting decisions, but the theory seems to have been that, if a landlord might have raised his rent or might have evicted his tenant 12 years before, and had been kind enough to content himself with the old rent, and to let the tenant stay on, he should be held to have debarred himself thereby from ever afterwards resorting to his undoubted rights. On the other hand the correct principle was applied in a decision passed by the Sudder on 17th December 1855, which ruled that 26 years' possession at the same rent was no bar to the landlord's right to evict, where the holding was by the heirs general of the lessee, and the lease provided that it should descend only in the direct male line of the lessee. (S. D. 1855 p. 589.)

But the misapplication of the law of limitation in the former cases raised one of those inferences which natives are so quick to seize. If a tenant who had held for 12 years could not be evicted, the inference was that he had grown a right of occupancy, and accordingly, at this stage of the gradual curtailment of the landowner's absolute right over his property, we find this doctrine propounded for the first time. On the 8th December 1856 the Sudder reviewed a former judgment on the point. Two of the Judges commented on the cases of 1846 and 1849 and added—"we take it, therefore, that as between Zemindar and tenant, cases may present themselves in which uninterrupted occupancy for more than twelve years may be permitted to bar a suit laid for the ejectment of the latter." While thus upholding the former rulings as to limitation applying to prevent landlord evicting tenant, though there was no adverse holding, those Sudder Judges further held that the tenant in

that case could not be ousted, because he had a right of occupancy as a Kudeem or old ryot though the only lease shown was one of 1814. On this point they say:—

"The next point to be disposed of is the (defendant's) respondent's right of hereditary occupancy; that is, as we apprehend, the right to occupy the land as Khoodkast ryots or resident and hereditary cultivators, having a prescriptive right of occupancy subject to the payment of such rents as may be legally imposed. We are not aware, that all the characteristics that distinguish a tenure of this description have been any where fully laid down either in the law or in recorded decisions. An important element in the definition of this peculiar tenure is the mode of its origin. The validity of certain descriptions of undertenures is determinable by the date of their creation; that is, by their being in force for twelve years preceding the permanent settlement. But the right of a Khoodkast ryot appears to be of a different character. *Its origin is not limited to any given time. It is essentially A RIGHT WHICH GROWS; that is which begins to exist within recoverable memory and which is strengthened and confirmed by the lapse of time.* A Khoodkast ryot is an old resident ryot whose long occupancy of his tenure or jote is fortified by, or is equivalent to, a prescriptive title." (S. D. 1856, p. 958.)

Thus here for the first time, 63 years after the Perpetual Settlement, we have the idea propounded that rights of occupancy could have grown up since the Code of 1793, on other land and in other persons than those protected by the terms of the Code. In other words, it is now first decided that the remaining land beyond that held by the protected ryots, which, by that Code, was given to the Zemindar "as actual proprietor of the soil," and "to be let by him in whatever manner he may think proper," had thus by virtue of that very Code passed out of his control and absolute disposal by the growth of a right of occupancy, in every case where he had allowed a ryot to remain in undisturbed possession for 12 years as his, the landlord's, rent-paying tenant.

No wonder those Judges could not find the characteristics distinguishing a tenure of this description anywhere fully laid down, for till they so declared them on that day they were non-existent. The characteristics of the Khoodkast ryots protected by the Code of 1793 were clear enough. They were the then resident cultivators, co-recipients with the landowner of the Government's bounty, for their then holdings to themselves and to their descendants; but the only characteristic of the anomalous growing Khoodkasts, whose existence was inaugurated on that day, were, as we have

shewn, the inference deducible from the decisions between 1845 and 1856, which, by a misapplication of the law of limitation, decided that "uninterrupted occupancy for more than 12 years should bar a suit laid for the ejectment of the tenant." We will, however, do the Sudder the credit to say that, having made this novel and dangerous discovery, they must have taken great pains to hide it, for neither the index nor the marginal references of the case would lead any one to infer that it propounded a new tenure which would virtually deprive the Bengal landowners of their half century's control over the larger part of their respective properties, and over the greater number of their tenantry.

These efforts of the Sudder seem to have been successful, for, notwithstanding this decision by the highest Court, these new rights remained unknown in the interior, and the control of the landowners over their property continued unaffected, until these new views were incorporated three years later in the Act "to amend the Law for the recovery of Rent in Bengal," Act X. of 1859.

CHAPTER III.

THE NEW RENT LAW TESTED BY POLITICAL ECONOMY.

The previous Chapters have shown the relations of landlord and tenant in Bengal as established by the Code of 1793, and how far those relations had been modified by the course of judicial decisions from 1845 to 1859. We now have to point out in what respects the principles of Act X. of 1859, by their opposition to the existing state of society and to the laws of Political Economy, necessarily led to their present evil results.

Prior to the passing of that Act the Bengal landowner had the virtual control of the whole of his property, except what was under lease from his ancestors and himself. The Khoodkast tenures protected by the Code of 1793, and to which a principle of growth was attached by the Sudder Decision of 1856, were themselves a proof of

this. If those Sudder Judges, or the philanthropic legislators who drew and passed Act X. of 1859, had deigned to send for the next village schoolmaster, or to get a draft of a Khoodkast lease, they would have seen that their theory of Khoodkast was palpably absurd to every native child, one of whose first lessons from the village schoolmaster is the real meaning of Khoodkast and Pykast. Khoodkast is, literally, one who cultivates his own, but Khoodkast ryot is a very different thing. He is a ryot or tenant who cultivates what is so far his own that, by the terms of the Khoodkast lease, he and his have it for ever as tenants so long as they comply with the conditions of the tenure. The invariable conditions of a Khoodkast tenure are :—1*st.*—That the tenant shall live on his landlord's estate and shall pay house rent to his landlord for the homestead in his own occupation : 2*nd.*—That he shall cultivate another portion of the same landlord's estate and pay for it a second or cultivation rent : 3*rd.*—That as long as the tenant and his heirs comply with that double condition they shall hold that residence and that cultivation for ever, or, as the lease always expresses it, from generation to generation.

The variable conditions of the Khoodkast tenure are as to the rent. Sometimes it is made a fixed rent for ever, but more often it is to be at the Pergunnah rate or at a certain proportion of the crop. Thus a Khoodkast tenure is a perpetual holding on conditions at either a fixed or an ascertainable rate. Such leases have been customary from before our rule, but from our accession till 1793 they were all liable to be cancelled as being leases for ever, and therefore larger estates than the grantor, the Zemindar, himself either possessed or could grant. The protection given to those tenures by the Code of 1793 was only equivalent to enforcing on the landowner the good old English rule of law, that a grant beyond the power of the grantor shall yet be good against him, if he at any future time acquires the necessary power. It said "you and your predecessors made Khoodkast leases for ever when you had only power to lease for the period that Government leased to you, but now that from lessees Government makes you proprietors, you shall not cancel those former grants except where the lessees pay an inadequate rent or where the leases were improperly obtained."

Such, therefore, was the state of the Khoodkast ryots prior to 1793. From 1793 to 1812 no Khoodkast ryot properly so called

could be made, for, as the landowner was precluded from leasing for more than 10 years, he could not make a Khoodkast lease which the custom of the country required to be perpetual, and also no tenant would give him the regular double Khoodkast rent for so short a tenure as 10 years. From 1812, when the restriction was repealed, Khoodkast tenures again became common. Now it is enough simply to state in plain English this, the real and only Khoodkast tenure known before 1856, to show the folly of the decision which said a Khoodkast tenure could grow, and also to show how little such a tenure required legislative support. To confer a right of occupancy on a tenure which was of itself perpetual was of course futile, except so far as it would enable the tenant to convert his lease made on conditions into a right to hold absolved from the conditions. It was eminently unjust, as it thereby defeated the useful conditions of actual residence and actual personal cultivation, for which the landowner had given the perpetual lease and subject to which it was held, and created in the conditional lessee an unconditional holding which, under Section 6 of Act X., he can sublet at a high rate on paying to the landowner the small rent fixed by the Act for occupancy ryots. From the late rise in the price of produce, the Khoodkast holding is generally now enough to support two families instead of one, and as soon as that occurs the Khoodkast ryot now sublets the whole or a sufficient portion of the land, and lives in idleness on the difference between the rent he receives and the rent he pays.

But of course the operation of the occupancy clause of the Act does not relate only to the Khoodkast ryots and their perpetual holdings. It refers in a far larger degree to the numerous other classes of holders all included under the generic term of Pykast, and who, before the passing of the Act, were tenants only for the term of their leases or from year to year. In that condition these tenants also of course had to cultivate personally or by their servants, whereas now that they have had new rights of occupancy gratuitously given them, they, like the Khoodkast ryots, underlet their holdings, as soon as the difference between the market rate of the land and the philanthropic rate of rent limited to the landowner from them, enables them to live in idleness. If the Indian legislators of 1859 had ever had anything to do with the Bengal ryot except in an official capacity, they would have known that his highest aspiration was not,

like the French peasant, to have land, but to have a tenant who will bow down to him and call him "Maharaj," and by constantly lording over whom he can gratify his pride. Act X. is thus leading so fast to a universal creation of idle middlemen, and mere drones living on the market rent of an occupancy right thus filched from their landlords, that if allowed to operate much longer it will be more likely to be known to posterity as "the Act for the promotion of idleness and for the creation of useless middlemen" than as "an Act to amend the law for the recovery of rent."

But besides its evil effects on the ryots to whom it gave occupancy rights, its effect on the rest of the peasantry is equally injurious in another way. The market rate of land rent is fast rising as the necessary and only possible expression of the prosperity of Bengal, and is being daily increased by facility of communication, by opening of new markets and by an extending commerce. This rate is thus naturally raised to the non-occupancy ryot, and so far as it is natural such rise is unobjectionable. Land like everything else is worth what it will fetch, and though we cannot agree with Mr. Mill that the State is any more entitled to the increased value of other people's land, arising mainly from the increased prosperity of the country and from the influx of bullion, than to the increased price of other people's bread and beef, we know that an increase in the value of land can only be realised to its owner by his raising his rents. His doing so is mostly a blessing to his tenants as well as to himself, since they are thereby driven to increased industry and to better modes of cultivation, which, while paying a larger rent, also leave a larger profit. So far, therefore, as the increased market rate of land rent is due to natural causes it is simply an unmixed good. But Act X. of 1859, by its mistaken philanthropy to occupancy ryots, has added an unnatural and injurious element, and has thus raised the market rate of land rent for non-occupancy tenants higher than it would otherwise have been. The occupancy ryots, who have been thus secured a large margin from their occupancy holdings, compete with the non-occupancy ryots for any land in the thickly peopled parts of the country that becomes vacant, and, having an exceptional profit thus secured to them from one holding, are able to offer terms for the new holdings beyond what the non-occupancy ryot can afford to pay.

Thus the necessary operation of the principles of Act X. of 1859,

by their opposition to the existing state of society in Bengal and to the laws of Political Economy, is to make idle and useless middlemen of the ryots to whom it gave a right of occupancy, and to raise the price of the rest of the land beyond the reach of the rest of the peasantry. In other words, by trying philanthropically to reduce the rent in certain cases below the market rate, the Act merely transfers the land at a high rent to undertenants, making its pets useless and objectionable middlemen, and raises the rent in the rest of the land above the natural market rate.

Another evil effect of the principle, or rather of the want of principle, in act X. is the fear it has created in landowners of having their rights at any time taken away by a philanthropical legislature. It would be difficult to express in stronger terms than the Code of 1793 does, the guarantee to landowners that they and they only should have the exclusive benefit of all clearances and new cultivation of their estates. On this guarantee the landowners of Bengal have in the last half century cleared most of the jungle which then encumbered their estates, chiefly by settling new tenants upon the uncleared parts on favourable terms for some years. They now find that the exclusive benefit therefrom is taken from them, and by far the greater part of it given to their tenants whom they unsuspiciously allowed to occupy the same land for 12 years. This is a lesson which has been deeply taken to heart by the English grantees of waste land: Large tracts of impenetrable forest are now held by Englishmen in different parts of the country, which are likely to remain jungle for years unless cleared by settling ryots upon clearing leases. But these Englishmen have a wholesome dread that if they do so, either the existing Act X. or some new philanthropic law may convert that land into the ryot's property, and thus deprive the owners of it at the time they will want it for their increasing tea, coffee or cotton cultivation. It is of no use to tell them that, by inserting anti-occupation clauses in their clearance leases, they can keep the absolute control in their own hands under Act X. They answer that Act X. transferred virtually the ownership in similar cases from the landlord to the tenant, and that a similar new philanthropic Act, made by men who never owned an acre of land and have no stake in the country, may do away with the effect of non-occupancy clauses, as Act X. did away with the guarantee of the Code of 1793. The consequence is that

they mostly prefer converting their grants into fee-simple, to get rid of the obligation to clear faster than they require the land for cultivation by day labourers, and then allow the jungle to remain uncleared, to their own injury and to the loss of the country, until they want the land themselves, for fear that any other course would some day put them and their estates in the same plight as Act X. has put the Bengal landowners, who were weak enough to clear by settling ryots on the guarantee of the Code of 1793. Thus a wide field of prosperity is unnaturally closed by Act X., at a time when the rise of prices and the influx of capital would naturally lead to its being largely developed, if the existing legislation had been guided by right and Political Economy instead of by a morbid and unintelligent humanitarianism, or if there were any security against similar legislation in future.

We have so far confined ourselves to the necessarily and unavoidably evil results of the principles which are the very foundation of the Act, and have not dealt with the remediable evils arising from its uncertain wording and some of its most short-sighted provisions. Of these the one that has probably done most practical harm is the end of Section 14, allowing the ryot who is sued for enhanced rent after due notice to set up any claim to exemption in answer to that suit, as well as by bringing a separate suit himself. It surely did not require much knowledge of Bengalee human nature to foresee that the result would be a suit in every case, and that an immense impulse would be given to the indigenous sciences of perjury and forgery. Such is the practical result. The rise of prices has of late been so great that, except where a landowner had a paramount motive for keeping his rents low, as a wish to get his ryots to grow Indigo, he naturally would not let his rents stay at their former low rates while he saw his tenants-at-will making large profits from his land. He therefore of course gives them notice of enhancement all round. From that day he gets no more rent high or low. He then has to sue his tenants all round for the arrears of rent at the enhanced rate fixed by his notice. These are the cases erroneously called enhancement of rent suits, and which, since Act X. became generally known to the ryots, have had to be brought by the landlords of Bengal in hundreds of thousands, far beyond the power of the Courts to deal with them.

In almost every case the ryot, even if he first came upon the land last year, sets up every defence given him by Act X. First he says, and calls perjured witnesses to prove, that he has been there 20 years at the same rent, and therefore under Section 4 cannot have his rent raised unless his landlord can rebut the presumption of his having held at that rent from the perpetual settlement. If he has been unlucky enough ever to have had a lease, or to have given to the landlord the counterpart, called a Kubooliut, this is probably produced against him, but even then a long inquiry must be made as to whether it is his or not, for he of course swears it is a forgery of his landlord's. But if he is a new tenant, who has never yet got a lease but has only been let into possession meanwhile, he runs a good chance of being made by the operation of Act X. a virtual landowner at a small fixed rent. If his claim to hold at a fixed rent is defeated, then he asserts himself to have at least a right of occupancy, and thus to be only liable to have his rent raised to "a fair and equitable rate." His 12 years' claim has first to be investigated, and unless that is also defeated then an enquiry as to what is in his case a fair and equitable rent. The landlord shows that the produce is worth Rs. 20 per beegah, and in some few cases even as high as Rs. 80 per beegah, with a clear profit to the Tenant in either case of at least half the amount. The ryot swears, and tries to prove, that he never made any profit at all on the former rent, or at most not enough to keep him and his family in more than one meal of rice per diem. On this conflicting evidence the official has to ascertain what is in this case a fair and equitable rate, but is at the same time expressly forbidden to take as his criterion the only real measure, the market price. Now if this is to continue, and if from a weak fear of stultifying itself Government insists on maintaining in full operation the evil results above shown to flow necessarily and naturally from the principles of Act X., they might at least relieve the Courts from a continuance of the present crush of enhancement cases under Act X., by obliging the ryot to raise these questions *mero motu* in a suit brought by him to set aside the enhancement notice, and not allowing him to raise them in the landlord's suit for arrears of rent.

The similar questions of remediable detail with which the Act bristles, and which are the main subjects of remark in the official reports lately sent in to Government, are too numerous for us to consider

at present. We trust that our *exposé* of the irremediable evils caused by the maintenance of the principles of the Act, will lead to such a reconsideration of the subject as to avoid the necessity of our discussing these minor details, by a total or virtual repeal of Act X., and by the enactment of a measure better suited to the state of the country, and tending, with the advance of agricultural knowledge and with the increase of the general wealth, to create both material and social improvement in the relations of landlord and tenant in Bengal.

CHAPTER IV.

THE PROGRESS OF SOCIETY IN EUROPE AND IN INDIA.

We have already discussed the relations of landlord and tenant in Bengal as moulded by the Code of 1793, by judicial interpretation and by Act X. of 1859. We now have to consider, with a view to the amendment of that Act, the different principles naturally governing these relations in a backward state of society, as distinguished from the principles which regulate the same relations in a more advanced stage of civilization.

In a backward state of society the governing principle is mutual protection from the dangers incident to lawlessness and to the supremacy of might over right. In a more advanced civilization these dangers are abolished by the supremacy of law and order, and then the governing principle becomes pecuniary interest. In every country and every age history marks these two principles as gradually passing one into the other, but the form they adopt in transition depends on the physical peculiarities of the land and on the character of the people. When any race first steps over the dividing gulf from permanent barbarism to progressive civilization, by passing from a pastoral to an agricultural mode of life, separate property in land is first born. At this period occupancy is the only, and at the same time the best, title in the first cultivator, but that title is absolute and entire in him only so long as he continues to cultivate. At this early stage, therefore, the whole property in the land is vested in the first occupier, and at this stage only can the land be said to belong solely to the cultivator. So soon, however, as agriculture has progressed beyond its first steps, the produce of land creates a margin beyond the bare subsistence of the cultivator, and that margin is seized as rent by some superior, the very condition of whose continued receipt of such rent

is protection of the cultivator from all other demands than his own. Thus the second stage is to divide the property in land between the cultivating rent-payer and the protecting rent-receiver. As long as society remains in a lawless and insecure state this divided property in the land works well, because it is the natural expression of the best understood interests of both. This is the feudal state of landed tenures. The Lord affords protection to his vassals, who in return pay him suit and service as well as rent, and form his only defence against his enemies. The vassals pay such surplus of their produce as is necessary for the maintenance of the Lord and of his more immediate retainers, because such payment is the very condition of the Lord's continued power to protect them. And the Lord grants his vassals permanent rights in their holdings, and does not stretch his demand to their utmost ability to pay, because the attachment and willing support of his vassals against his enemies is more important to him than a mere increased receipt of produce in kind.

So far the relations of landlord and tenant are nearly invariable in all countries which have progressed beyond the first stages of agricultural life, and so far those relations are not materially affected by the character of the people or by the qualities of the soil, the paramount interest of security superseding all minor considerations. But as soon as society makes the further step of deriving safety from a Government of law and order, the bond of mutual protection for security between feudal Lord and vassal is destroyed. Pecuniary interests then govern the change of those relations, according to the character of the people, and the degree in which the land's fertility can support a larger or smaller number of families. In this more advanced stage of society, divided and conflicting rights of property in the same soil become an impediment to progress. The objects of landed tenure are no longer the same. Formerly mutual protection was the object; that was best obtained by mutual rights in the same soil, which thus bound Lord and vassal to each other by the strongest ties. So long as the land produced something for the Lord beyond the vassal's wants, it was comparatively unimportant that its chief riches remained undeveloped. In that state of society there were no distant markets, no communications for the transport of produce, and any extra produce beyond that capable of being consumed upon the spot would have been a mere burden. But when pecuniary interests have been substituted for mutual pro-

tection by an orderly Government, commerce leads to the improvement of communications, and to the opening of distant markets; and then the fertility of the soil has to be called upon for the extra supply of wider necessities, for the support of a more active and luxurious life. Conflicting rights of property in the same soil then interfere with the application of capital, and with the exclusive self-interest necessary to stimulate the land to a full production of its treasures, and for this purpose the rights of one of the two feudal proprietors must give place to exclusive property in the other. As the improvement of the soil is better attained by landlord than by peasant ownership, this seems to be the reason for the undoubted fact that the progress of society from the feudal system everywhere tends to the creation of exclusive landlord property in the soil, and to the destruction of all proprietary rights in under-tenures.

In all known countries which have as yet made this change, it has worked itself out from the innate peculiarities of the people, who have regulated it according to the respective power of the different classes and the ideas for the time prevalent among the mass of the community. India and the Anglo-Indian Government are the first example of a country where this change was not evolved from within, but was imposed from without. It is to be hoped it will also be the last example of this momentous epoch of a people's life being tampered with by rulers devoid of any common interests with the ruled, and whose knowledge of their subjects is mainly derived only from the contemplation of those subjects through the perverting medium of litigation.

When evolved from within, the experience of other countries shows that this change works itself out into one of two forms of landed tenure. If the soil is sterile, the people poor, industrious, energetic and independent, and if the change from lawlessness to order and from danger to safety has been made by the eviction of tyrants and strangers as in Switzerland, peasant-cultivating property at once supersedes the former rent-paying feudal subtenure. So also the prevalence of certain ideas, as those of France since the great revolution, may lead to the gradual substitution of peasant-cultivating property for the former rent-paying subtenure. Or a general diffusion of capital among the lower classes by means of an exceptionally prosperous commerce, as in Holland and Belgium, may, combined with great indus-

trial tendencies, lead to the establishment of peasant-cultivating property. In both these latter cases, however, for peasant-cultivating property not to become small landlord-property, the area of each holding must be so small as to leave but a very slender margin beyond the bare maintenance of the cultivating-proprietor's family, or the charges on the property must be such as to absorb all but a bare subsistence. In the latter case, so prevalent in France, the Mortgagee becomes the real landlord and is paid a fixed rent, only disguised under the name of Mortgage Interest.

In all other cases the change from lawlessness and danger to order and security leaves the feudal relations of landlord and tenant subsisting, but changes the motives which govern these relations. As soon as the superior necessity of mutual protection is removed, the ordinary laws of political economy or the selfishness of each member of society inevitably work one way, leading to the extension of the landlord's property and to the destruction of any independent rights or property in the tenant. It is of no use lamenting this, or any other of the developments of God's laws for the action of the human mind and for the production of material results therefrom, which may happen to be beyond our ken or opposed to our shortsighted views of what ought to be or ought not to be. All we can do is to ascertain that such is the fact, and then to recognize it as a necessary element in our calculations towards the end we seek to attain. It is a narrow view of the working of these laws which leads to the general dislike of what are called the cold-blooded doctrines of political economy, as based solely on selfishness, and to the frequent ignorant struggle against the inevitable consequences of those laws. It is only lately also, since Buckle rescued Adam Smith's memory from the charge of governing man's actions solely by those laws, that general perception has been awakened to the degree in which man's moral sentiments, or the unselfish rules which he prescribes for himself from his judgment of the conduct of others, form part, equally with the selfish rule of political economy, in determining his actions. Educated men are beginning to realize the beautiful mechanism by which God works out his purpose in this world through the combined and counterbalancing influence of these two concurrent forces, which he has placed in the mind of his ruling creature, man. As Adam Smith, in tracing out the result of each set

of ideas, wisely kept the one separate from the other, so, in weighing the motives of men which are to guide our future legislation, we must look only to their selfish motives and legislate as if they were guided by no others, knowing at the same time that their moral sentiments will inevitably modify their conduct. We must first see clearly the end we seek to attain. We must then legislate so as to make the selfish motives of men lead them to that end, satisfied that their moral sentiments will prevent their pushing towards that end faster or more exclusively than the public opinion of the country will support.

We find, then, as a fact, that the experience of most countries shows any active progress in society to tend more and more to absolute landlord property in the large landowners, to the destruction of proprietary rights in undertenures, and even to the absorption of small landlord properties in larger ones. Any apparent exceptions to this general tendancy, such as we have mentioned above, if looked closer into, confirm this conclusion. These have all arisen from the transfer of political power from the former Landlords to the former Tenants, and where political power rests there will property in land gravitate, the same selfish motives operating in each case. For a time of course this transfer of property with political power will appear stationary, but the same selfish motives will speedily again lead to the same results. Is it not equally undoubted and inevitable, that the peasant-cultivating proprietor will become the petty Landlord, the more energetic careful and frugal of those petty Landlords will gradually absorb the property of the others, till the lapse of time will again invariably lead to the creation of large properties in the few, with the great mass of the agricultural population depending for subsistence on the cultivation not of their own but of another's land, by the employment first of their Landlord's capital, and afterwards of their own? With the property in the Land firmly established in the Landlord, the degree and duration of the subordinate holdings will then depend on the proportion of capital the Tenant brings to the cultivation, as in England at the present day, where the old tenancies from year to year of farmers without capital are being fast superseded by twenty year leases conferred on farmers with large capital which they engage to employ on the land.

This system, involving the largest production from the soil and the

highest amount of mental cultivation in its occupants, is the as yet only ascertained mode of making the resources of a definite area expand with a fast increasing population. In England, it is the result of the internal force which demands the adoption of this the only means of meeting the daily growing pressure for existence. In Java the same principles, modified to the state of the country, have been applied by the far-sighted Dutch in anticipation of the pressure, with the enormous results in the speedy increase of produce and of population which are known to have resulted therefrom. It is open to us in India to forecast the future and to make way for a more rapid progress in production and population. Or we may wait till the pressure from within calls for, and itself creates, the further measures necessary for such improvement. But the one thing we ought not to allow, is what the occupancy clauses of Act X. do in fact create, namely impediments to the natural progress of society by the creation of new and obstructive rights, throwing a fairly developed Landlord system back into an early stage of peasant property which, under a rule of law and order, cannot but ultimately grow again into the very system we are now destroying, but will only attain that partial development after a lapse of time, the waste of which the fast-growing necessities of India cannot afford.

The end we seek to attain, and the end we also believe God to be working out in the gradual progress of society, is the increased material, social and moral prosperity of all his human instruments. It is therefore palpably shortsighted for us finite creatures to try and work out that end, by opposing the natural progress of society through which infinite wisdom is working out its own results. All we should do is to use the experience of other countries, in guiding us as to the impediments to the progress of society which we can remove, and then leave its direction to a higher power.

CHAPTER V.

THE PROGRESS OF SOCIETY IN INDIA.

If we have succeeded in showing that the progress of society under a strong and secure rule naturally tends to exclusive property in large landowners, to the destruction of proprietary rights in undertenures, and even to the absorption of small landlord properties in large ones,

we now have to apply these principles to the varying stages of society in the different parts of India.

From the earliest ages to the present day the numerous countries and kingdoms which we include under the general term India, have varied among themselves and in the respective characters of their inhabitants, far more than the other collection of countries which we call Europe. Till the last century or two Europe had nothing to compare to the splendour of several of the native courts, whereas for many centuries Europe has not contained in its obscurest depths any approach to the savagery of the different classes of half-wild aborigines, who to this day people large tracts of Indian jungle. In such various conditions of life, therefore, we can study the natural state of the land tenures in every stage of progress, and our first duty is to prevent the clash of different stages until the advance of the local intelligence makes the new motives general and the collision therefore innocuous. The Sonthal Rebellion was the natural resistance of savages against the attack made on their property by Bengal trickery, with the legal weapons of a civilization beyond the comprehension of the barbarians. Since the Sonthals have been governed exceptionally according to the ideas of their barbarism, their progress has been great, and the other semi-savages of India often envy the Sonthal's condition as protected from harm and sitting under his own palm tree, none making him afraid. Various, however, as were the conditions of the different races and countries in India, we found only two laws—the Hindoo representing the patriarchal stage of society, and the Mussulman law designed for a nearly similar condition, but which the position of its professors, as the conquerors of India, had modified exactly as in Spain under the long dominion of the Moors. Both Hindoos and Mussulmans had also been carried, by the progress of society and by the constant wars of their varying rulers, beyond the stage contemplated by Hindoo and Mussulman laws, and into the natural feudal condition of a society full of danger and uncertainty. But though the operation of these laws had thus been modified, the laws themselves remained nominally unchangeable, being each regarded by their professors as divine revelations. One of our mistakes has been to apply these laws according to the letter, regardless of the real change in their operation caused by society having passed in most parts of India into a different stage.

Hindoo society was in the first agricultural stage, or in that where occupancy forms the only title, at the period when the Hindoos were independent; and the Hindoo laws therefore which have come down to us treat of proprietary right in land, mainly as a condition of peasant cultivating property. The laws of the Koran also treat of landed property chiefly as peasant tenures under a despotic ruler. But during the 800 years of Mussulman government in India, the progress of society and the lawlessness and danger of an uncertain rule of varying conquerors, threw society, more or less in different parts of India, into the second or feudal stage in which we found it. The very term ryot, which we miscall tenant, is really a subject or vassal, implying the strictly feudal ideas both of submissive liability to service and of right to protection. Lord Cornwallis and his great advisers seem to have understood, that the mere substitution of the English rule of order and safety for the Mussulman rule of lawlessness and danger, must abolish the feudal motives which then governed the relation of landlord and tenant in Bengal, and must substitute pecuniary interests for mutual protection from enemies. The Code of 1793 wisely lays down the path along which self-interest will drive the progress of society into the third stage for the general good, only breaking the transition to the then peasantry, by retaining to them as tenants against their future landlord the privileges which had already been conceded to them by the feudal interests of the same Lord when they were his vassals. Thus the inevitable change was admitted and guided, and during 50 years from 1793, as we have shown in the *former chapters, its operation*, though bewailed, was not materially impeded. Bengal under this development of landlord rule made rapid steps, and the result was the material prosperity of the Province, the educational progress of her people, and their great improvement in moral and social life beyond their fathers.

In other parts of India, and by Lord Cornwallis' successors, narrower views were entertained. The change of motive from mutual protection to pecuniary interests, which must follow between the native noble and his peasantry on the introduction of English rule, was recognized, but all the efforts of Government were employed to defeat the natural progress of society and to revert to a state of peasant property, impossible with a rich soil like India and among idle apathetic races, except in the first stages of agricultural-life. The

native noble was systematically ruined, and the avowed object was to reduce all landed tenures to peasant cultivating property, and to Government rent disguised under the name of revenue. For this purpose the old Hindoo laws made for society in its first stage were invoked and misapplied to society passing into the third stage, and the village organisation, which had been maintained in the feudal epoch of India as an additional protection, was lauded as the natural and best condition of society under a secure Government. The result was analogous to what would have occurred in England if the Stuarts, on succeeding to the Tudors, had revived the laws of Edward the Confessor, and had destroyed the intermediate progress of society through the feudal ages. The country retrograded visibly in prosperity and in all the arts of civilized life, until the great India of Acbar and Aurungzebe sank to the torpid condition of Thomason's village republics and of Munro's ryotwarree districts.

Great efforts have been made to shirk this question and to avoid the inevitable conclusion. The contrast of Bengal to the North Western Provinces, and still more to Madras, has been imputed to every other conceivable reason but the real one, that in Bengal the natural progress of society in the creation of exclusive landlord property in the soil was allowed fair play for half a century after the Code of 1793; whereas, in the other parts of India, the natural progress of society was violently arrested by the creation or the maintenance of peasant property. The difference has been imputed to the perpetual settlement or limit of the Government land tax. But this only shows the real truth more strongly. Madras has had a perpetual settlement or a fixed limit to the land tax longer than Bengal has. But in Madras the perpetual settlement was made with the peasant and as a protection and support to peasant property, whereas in Bengal the perpetual settlement was made with the landlord. Although under the Madras perpetual settlement the peasant landowner has been constantly petted, and in Bengal the landlord owner has had his necessary rights and powers gradually curtailed, still the difference in favour of the landlord owner is undeniable and overwhelming. While in Madras old cultivated lands were abandoned, the jungle disappeared over the greater part of Bengal, commerce increased, capital accumulated, and population became more dense and yet more prosperous. If Madras and the North Western Provinces

are now beginning to improve, it is because the rise of prices, the opening of markets and a somewhat higher cultivation of the soil are fast creating peasant landlordism, which, however great a fall from the late condition of Bengal, is a step of progress in the natural direction, from the peasant cultivating property which has long kept down the natural resources of these fine countries. The member of the village brotherhood whom Government appoints to collect the village land tax, is found to have made himself the landlord of his compeers, and to be daily drawing to himself the proprietary right over the whole village lands. And the old exclusion of strangers from the village brotherhood, maintained by the officials as indispensable to the joint village tenure, is complained of as an impediment to the gratification of the pecuniary motives which a safe Government has substituted, in each villager, for the former motive of mutual protection based on joint property.

Yet in the teeth of this teaching, either because this prosperity in Bengal had not been monopolised by the peasantry, according to the impossible desire of the morbid philanthropy which had gradually permeated the official mind, or else in pure ignorance of the laws of social progress, the effort was made to throw back Bengal society to a condition of peasant proprietary right. The wish to remove the last remaining feudal power of the landlord, that of summoning the attendance of his ryot, was embodied in an Act, the only result of which could be to arrest the natural progress of society by restoring landed property to the peasant, who is without the means or the knowledge required for improvements. The lesson is equally ignored in Sir Charles Wood's late instructions for extending the perpetual settlement all over India. Where the large Landowner's land tax is to be fixed, prosperity will at once take a start. But where the land tax is to be fixed with peasant cultivators, a great increase of prosperity cannot be looked for, till they have passed through the next step of peasant landlordism, and the stronger and more energetic among them has absorbed the others and thus made himself a large instead of a small landowner.

A curious illustration of the benefits incident to this inevitable tendency of the progress of society is afforded, in this very respect of land tenures, by the present condition of England. A hundred years ago England was full of small yeoman freeholds, which have been

gradually absorbed into the larger landed properties by the ordinary working of the selfish laws of political economy. Scotland was even then starving under the rude cultivation of clannish cottiers, and pauper lowland holders of heritable feus. Ireland's cottier peasantry were just renewing a lease of life by the introduction of the potatoe on their half reclaimed patches of bog. Scotch and Irish cottiers have, by the working of the same laws, been cleared off the land they kept unproductive, and have either emigrated or risen from cottiers into day labourers. All this has been a source of constant regret meanwhile. The decay of a

> "Bold peasantry, the country's pride,
> Which once destroyed can never be supplied,"

has been made the theme of much humanitarian nonsense in the interval. But it is certain that if the landed tenures of Great Britain were now in the same condition as in the middle of last century, she could not support half her present population; that famine and misery would be yearly decimating her people; that she would never have attained her present commercial and manufacturing supremacy; and that all the new regions of the world, which she has since peopled with her redoubled energy, would be still lying waste under their former savage rulers. What can better show the difference in wisdom between God's laws and those of man, than that such motives led, and were indispensable to lead, to such results?

If, in the middle of last century, shortsighted strangers had imposed their foreign ideas upon our people, had given fixed tenures and rights of occupancy to Scotch and Irish cottiers, had curtailed the powers of landowners, and had thus devoted the land to a continuance of its then execrable husbandry, it is difficult to overestimate the fearful consequences which must have ensued. But fortunately in England the laws of the country were not imposed from without, but were evolved from within, and were therefore the natural expression of public opinion guided by self-interest, and the spontaneous groove into which the progress of a fast changing society ran. As such they undoubtedly sinned against the philanthropy of many, but, while made on selfish or politico-economical principles, their operation was tempered by public opinion influencing the moral sentiments of those who employed them. This, without any but passing and in most cases chiefly sentimental injury to some few classes or individuals, has

led to the present glorious condition of England's power and prosperity.

So in India we see God's wisdom counteracting man's folly in the unexpected working of Act X. of 1859. The peasant cultivating property, which the Act was intended to secure, would have been, as long as it continued, a direct injury to the country at large. But the peasant landlordism, which the Act is really fast creating, is far the lesser evil of the two. Peasant landlordism, though open to nearly every other scientific reproach, has the advantage in India of being the only Landlord able to demand a very high rent without exciting philanthropical objections, and thus to lead to greatly increased production. Till the passing of Act X., the cultivator's rent being unwisely limited to the Pergunnah rate, the peasant paid the landowner about an average of a rupee a beegah all over Bengal, and only produced beyond that enough for his own wants, for fear of raising the Pergunnah rate. Now that he has got rights of occupancy given him with leave to underlet, he at once makes over his land to some other, universally on the tenure called "Adhie." This consists in the peasant landlord supplying the seed and lending the plough bullocks. The cultivator has to repay from the crop first twice the amount of seed supplied, then a certain proportion more for the loan of the bullocks, and lastly has to pay half the remainder of the crop for rent. Under this system of course the land has to be made to yield more than when it had only to support one cultivating family and to pay one rupee of rent, but the surplus produce is thus diverted to the support of a host of idle and useless middlemen, instead of going to the head Landlord and thus putting him in a condition to accumulate capital for the improvement of the estate, and for the general good purposes inevitably resulting to a country from the accumulation of capital in intelligent hands.

Though this creation of peasant landlordism is much less injurious than peasant cultivating property, still it throws society back, and is much less beneficial than the large landlord property to which Bengal had before attained. It leads inevitably, as we have shown, to the same result at a later period, as soon as there has been time for some few of the peasant landlords to absorb the others. Act X., however, not only creates the evil now, but secures a permanent new growth of the evil in the continuously accruing new rights of

occupancy conferred by its provisions. May the country at least be saved from the consequences of a longer persistence in this suicidal policy, by a general recognition of its pernicious effects, and by the consequent cessation of attempts to resist the natural progress of society!

CHAPTER VI.

PEASANT RIGHTS IN BENGAL.

In the preceding Chapters we have considered the bearing of the Code of 1793 on the relations of landlord and tenant in Bengal, and have pointed out the motives which govern these relations in different stages of society, as well as the injurious effects of Act X. of 1859 in throwing society back. Before we offer suggestions for the amendment of Act X., however, we must first ascertain exactly the materials on which our legislation is to work, since Act X. itself is our warning that the best intended legislation, unsupported by such knowledge, works in a manner directly opposed to the wishes of its framers.

What were the actual peasant rights in Bengal both at the perpetual settlement and up to Act X.? This lies at the root of the subject, as being the natural development of the existing progress of society, and as such the surest guide to our future legislation. The answer will also enable us to meet the arguments of those who cannot deny our abstract of the Code of 1793 and of the subsequent judicial interpretation, but who resist the inevitable conclusion by saying that some rights of occupancy have, notwithstanding, all along existed and been claimed by the Bengal peasant, and that therefore the mere silence of the Code of 1793 on the subject is not conclusive as to the rights of the peasantry. Comments have also been made to the effect, that the Code of 1793 meant by the general term Khoodkast any occupancy rights which might afterwards be found to exist, and which the despatch of the Court of Directors of 29th September 1792 said "were not and could not then be ascertained," and that the Code consequently was so framed as to leave peasant rights for future recognition when the Revenue officers should be able to discover them. It is also said that the permanent settlement of Bengal deprived the Government of any further interest in the Bengal land tenures, and that consequently the officials never

made any further inquiries as to the peasant's rights in Bengal. Such undoubtedly has been the official theory of late years, and particularly since Holt Mackenzie's Act, as applied in the North Western Provinces, had led to the discovery and to the record of peasant rights there. The inference therefore arose that similar peasant rights had all along existed in Bengal, and that inference was, as we have shown, first judicially recognized in 1856 and then legislatively enacted by Act X. of 1859. As this argument of the hidden rights of the Bengal peasants will no doubt bear strongly on any alteration of Act X., we shall first of all consider what degree of truth may underlie it.

The first point that naturally excites wonder is that if such rights really existed as then acknowledged facts, previous to the Code of 1793 there should be any doubt about them. If the French were to conquer England and Ireland and then enquire as to our landed tenures, there could be no doubt that they would immediately discover the rights of copyhold tenants in England, and the tenant right of the north of Ireland. But if philanthropists among them were to contend that the land did not of right belong to the present English and Irish landlords, but to the peasantry, because the Saxon Franklin had been deprived of his rights by the Norman conqueror and because the Celtic landowner had been unjustly ejected by Strongbow's followers, by the English of the Pale, and by the Crown grantees under the Tudors and the Stuarts, no doubt the French would have much difficulty in ascertaining whether these rights did or did not exist. They would of course find plenty of claimants both in Ireland and in some parts of England, who would loudly proclaim, and in some cases even prove, their ancestors' proprietary holdings, and who would be discreetly silent as to the means by which those holdings, or at least the proprietary right therein, had passed to their present landlords. Some Cynic might perhaps object, that if the rights claimed were more, or other, than mere rights of property which by one means or another had passed to the present landlords, these rights would at least have a name and some late recognition in the public life of the people whose conquest had just been effected, and that if actually existing there could be no doubt about the fact and no difficulty in ascertaining it.

Now this was exactly the case in Bengal before the perpetual settlement. Mr. Grant and the other supporters of the peasant's right

to be declared the landowner instead of the Zemindar, set up the same antiquated claims on behalf of the Bengal peasant. They were obliged to admit that, in the actual state of things as we found them, such rights were at least dormant if not obsolete, but this of course was attributed to the usurpation of the Zemindars. The East India Company was urged by them to act on claims of right instead of on existing facts, and to declare the peasants of Bengal the landowners, dismissing the Zemindars, whom they called Tax Collectors, with some pecuniary compensation. A policy of the same kind was initiated in Oudh by Lord Dalhousie on the annexation of that country, when his officials began ripping up titles and taking the land from its actual possessors to restore it to claimants, alleging that they or their ancestors had been wrongfully dispossessed. As the time of this change in Oudh was favorable to revolt, the rebellion broke out there with the completeness and unanimity which we all remember, and was only stayed by Lord Canning's proclamation of a general confiscation, and by the Oudh leaders being informed that this was merely a means of setting the proceedings of Lord Dalhousie's revenue officers aside, and of thus restoring the estate to the actual possessors at the time of the annexation. Since this has been carried out and the country has been remade into large landlord estates, Oudh has not only been peaceful but is one of the most rapidly progressive of our Indian provinces.

But Lord Cornwallis, backed by Lord Teignmouth then Mr. Shore, and by his other eminent followers, was too wise to act on antiquated claims instead of on existing facts, and therefore he made the Zemindars landowners instead of the peasants, while at the same time he recognised such rights in the peasantry as had an actual existence and a name. Although the Court of Directors, in deciding between the supporters of the peasantry and the supporters of the Zemindars as landowners, might say that the rights of the ryots "were not and could not then be ascertained," there is no reason to believe that Lord Cornwallis and his supporters had any doubts as to their then existing rights, whatever opinion might be entertained as to the former rights of which they had been deprived during the 800 years of the Mussulman conquest. The existing rights then claimed were all comprised under the two heads of Khoodkast ryot and Pykast ryot, and, till Act X. of 1859, neither ryot nor Zemindar in Bengal

knew of any other ryot tenure than some form of one or other of these two generic terms. Till the perpetual settlement the officials in Bengal performed for Government much the same duties as a Dewan or Head Steward now does for the Zemindar landowner, and to them those terms, with all the incidents attaching thereto, must have been much more familiar than they could possibly be to the later officials who only dealt with the Zemindar, and the expression of whose ignorance culminated in the doctrine that a Khoodkast ryot's tenure grow.

Our contention is not as to what may have been or what even probably were the rights of the peasantry 800 years ago, but as to what were their actual, effective and recognized rights in 1793. We contend that, although the Code of 1793 is wisely silent as to any theoretical and obsolete rights in the peasantry of Bengal then set up for them by Mr. Grant and his supporters, it deals with all the actual, known rights then practically owned by them. These were known by the framers of the Code of 1793, as well as by the whole native population of Bengal, only as some form of either Khoodkast or Pykast ryot tenure. The various forms of local holding bore many names and differed in many respects, but whether each of such forms came under the head Khoodkast ryot or Pykast ryot, depended on certain invariable attributes and carried with it certain acknowledged rights. The distinction depended on whether the ryot resided on his holding or not. The Landlord's object was to get permanent tenants on whose continued cultivation he could rely, and whose attachment to their homes would prevent their deserting his property, whenever his increasing demands, based on the increasing prosperity and abundance of money in the neighbourhood, gave them an opportunity of getting better terms elsewhere. There was also the collateral object of, by this means, getting even at first a somewhat higher rent in the aggregate, for the rent charged on the portion of the Holding occupied as *Bastoo* or Homestead was always higher per acre than the cultivation rent of the other portions of the land. To obtain the security of permanent cultivation by permanent residence, the custom had grown up of granting to such resident cultivator an indefeasible right to his holding so long as he paid the stipulated rents and continued to reside personally on his holding. This was the Khoodkast ryot tenure where the ad-

vantage of fixity to the peasant was made to correspond with the landlord's security by the tenant's continued residence and cultivation, and to cease with the tenant's removal. Under this tenure the peasant had no power of underletting or otherwise alienating any portion of his landlord's land in his occupation, but merely had a permanency as long as he afforded to his landlord a corresponding security by his continued residence and cultivation.

Attached to this double residence and cultivation were the *Bastoo* or Homestead rent and the various other cultivation rents for the separate portions of the holding fitted for different crops. In each case however, whether of a Khoodkast resident cultivator with a permanent tenure or of a Pykast non-resident cultivator whose tenure was only at will or for the term of his lease, these different rents, whether for residence and numerous kinds of cultivation, or only for numerous kinds of cultivation without residence, were all totalled in the landlord's books, and the receipt given only for the lump sum. Thus it did not appear from the receipt held by the tenant whether he was a Khoodkast ryot with a permanent tenure or a Pykast ryot with only a temporary tenure. The real nature of his tenure was ascertainable by the entries in his landlord's books, and by the palpable fact of his residence on his holding, and was of course well known to the whole neighbourhood of peasants. This will be better understood by reference to the series of Zemindary papers for one estate which are in the Appendix.

The first is the *Chitta* or Field Book of the estate, preceded by the map, showing the division of the estate into forty lots, and giving the name of the occupant of each lot, its position with respect to the other lots, its length, its breadth, its superficial area and the sort of land of which it is composed. The superficial area in each page is added up at the bottom, and the total of each page again summaried into heads reproducing the same total.

This is followed by the *Ekjai Chitta* or aggregate of the Field Book, showing first the aggregate of each of the four pages of the Field Book which are then added together into totals, and followed by the total of the estate showing that and the totals of the aggregate of each page of the Field Book to correspond.

This is followed by the *Khuttian* or Ledger setting forth under the name of each tenant the numbers of the lots in his occupation, the

measured area of each lot and the kinds of lands composing each lot, the areas of the lots in his occupation being totalled at bottom and shown to correspond with the totals of the different kinds. The different pages of the ledger are then summaried in the *Ekwal* or total aggregate of land in each tenant's holding in the estate, and the aggregate shown to correspond both in the entire area and in the particular sorts of land with the area before shown in the *Ekjai Chitta* or aggregate area of the lots.

Having thus doubly specified the particulars of each holding in the estate, the next paper is the *Jummabundee* or particulars of rent of different tenants on the estate. This sets forth, under the name of each Tenant, the particulars and area of his holding with the rate of rent per Beegah for each different sort of land in his occupation, and then the amount payable by him for the area of each sort held by him. This is followed by the *Jumma Wasil Bakee*, or Rent Roll of the estate, shewing each tenant's name, the area of his holding, the yearly rent payable by him as abstracted from the *Jummabundee*, the amount paid, the balance due, interest thereon, total receivable for last year, the amount collected, the rent for the current year, and the final balance due for last year and for this.

Now from these papers it is easy to specify which are Khoodkast Ryots and which are not.

The *Ekwal*, or aggregate holdings of each tenant, shows that all but one of the ten ryots in this estate's papers hold Homesteads, and the *Chitta* or Field Book shows that certain among the 40 lots are the Family Houses of the different ryots.

All these ten therefore, except Ram Doss who has no Homestead, are Khoodkast ryots, though a question might arise with regard to Ram Paul, whose Homestead is entered in the Field Book as "Lot No. 7. Holding of Ram Paul, Family House of his under-tenant Ram-Hurry Doss." According to this he would have forfeited his permanent right by ceasing to be a personal resident, but in the happy-go-lucky way the natives manage these things, no doubt as long as by some one continuing to reside there the Landlord ensures the continuance of his cultivation, he cares not to look farther.

But as a question of right this was quite clear and undoubted all over Bengal and Behar, that wherever the ryot settled and set up his household gods on his landlord's land which he cultivated, there he had a

permanent indefeasible Khoodkast holding so long as he continued to reside, and to pay Homestead rent as well as cultivation rent according to his lease, or according to the usual rate in the neighbourhood. This holding was of equal force and permanence the first day of its existence as after 50 years, and had itself nothing whatever to do with lapse of time, prescription, length of possession or any other question depending on such considerations. It depended solely on the grant of the landlord according to the custom of the country wisely making the tenant's interest in such holding co-extensive with the landlord's advantage.

On the other hand it was equally clear and undoubted all over Bengal and Behar, that wherever the ryot did *not* set up his household gods on his landlord's land, there the custom of the country gave him no claim whatever to his holding beyond the terms of his lease, or, if he had no lease, beyond his landlord's will. It was equally clear that in Bengal and Behar at least, till Act X. was passed, there was no more idea that any lapse of time could alter or enlarge this Pykast interest, than there now exists any such idea in England as to tenancies at will or tenancies from year to year acquiring any extra force from lapse of time or from long continuance of possession. In fact the idea was to the Bengalee mind absurd. How could any lapse of time change a Pykast or non-resident holding into a Khoodkast or resident holding, the only holding according to his ideas that could confer a permanency of title in the holder?

Of course it was but in a few cases, whether Khoodkast or Pykast, that the ryot had an actual lease. The various Regulations requiring landlords always to give leases had always come to nothing against the enormous number of ryots and the general ideas of the people. But whether there were a lease or not was immaterial, for the permanency of the tenure, or its mere temporary character, depended on the plain, palpable and incontrovertible fact—did he or did he not reside on his holding?

On the other hand the Pykast ryot's tenure had no conditions of either personal residence or personal cultivation attached to it, and conferred no right of permanent holding whatever. A Pykast ryot as such was always liable to be evicted by his landlord, though, according to the custom in most parts of the country, as long as he remained he could only be made to pay the rate usual in the neighbourhood. The

Pykast ryot, in whatever of the various forms of Pykast holdings known by different names in different parts of the country he might hold, made no pretence even to any permanence of holding, except so far as he could get a lease from his landlord either for a term or from generation to generation. In either of these cases his tenure remained a Pykast tenure, but became of course good for the term of lease. He could then underlet it, or sell it, or deal with it as he pleased, which was never in the power of the Khoodkast ryot to do, as his perpetual holding by virtue of his tenure was strictly conditional on his personal residence and personal cultivation.

The only other form of peasant holding in Bengal was what was called Lackraj or rent-free. This not unlikely was one of the oldest peasant tenures in the country, as where the family of the original first occupant of unowned land had continued to cultivate their ancestral acres without acknowledgment of a superior, this would naturally be the form their holding would assume. But this form had also been largely made as gifts to inferiors, and as all such gifts were invalid according to the practice of the Mussulman Government, we continued the prohibition, and in 1793 annulled all such holdings as had not been recognised by our predecessors. The number of these valid holdings paying no rent is also comparatively so small that they need hardly be taken into account, and, like the petty yeomen freeholds of England, they do not affect the question of landlord and tenant.

Now this agrarian knowledge, so new to our English officials of this day, though familiar to every Native peasant, was A. B. C. to the framers of the Code of 1793 and also to their opponents, between whom the only question was whether these Khoodkast double rents and Pykast single rents, formerly paid to the Zemindars merely for transmission to the Mussulman Government, should be made fixed for ever, and thus the property in the land be vested in the ryots; or whether these rents should be allowed to remain as they were, mostly depending upon the usual rate of rent in the neighbonrhood; and the amount payable to Government by the Zemindar, instead of depending on his collections from the ryots, should be fixed at one sum for ever, thus vesting the property in the land in the Zemindar. As far as we are aware there was no suggestion on either side as to any rights of occupancy in the ryot. The question was as to

who was most entitled to the new right of property about to be conferred by the Government. The liabilities, the duties, and the rights of the Khoodkast ryots and of the Pykast ryots are assumed as common knowledge all through the argument. The question was only whether, from the known and existing state of things, there was more reason to believe that the ryots had been the real landowners robbed of their property by the Zemindars, or the Zemindars had been the real landowners robbed of their rights by the Mussulman Government. We are therefore clearly of opinion that the expression in the letter of the Court of Directors, that the rights of the ryots are not and cannot at present be ascertained, referred to the rights of property claimed for them, and not at all to the existing rights attaching to their tenures as either Khoodkast or Pykast ryots, and which could no more be unknown to the Civil Servants of those days than to the manager of any Zemindar at the present day.

So much was this general knowledge assumed that, while it underlies the whole Code of 1793, a stranger in 1863 could not gather it plainly from any of the expressions of the Code, though the existence of such knowledge is incidentally shown two years later by Regulation 51 of 1795 for the province of Benares. Section X. specifies the different rights of the ryots in Khoodkast and Pykast holdings, viz. that the Khoodkast ryots, as long as they are Khoodkast or resident and cultivating on the same landlord's property and therefore paying two rents, have permanent rights and are not liable to be evicted; but that Pykast ryots, though only liable to pay the pergunnah rate of rent, as long as they are allowed by their landlords to remain, have no rights beyond the terms of their leases, when it is at the option of the landlord to renew the lease or to eject the ryot.

We say, therefore, advisedly that the rights and incidents of each of these kinds of ryot holdings, under one or other of which generic terms every Bengal ryot holding comes, by whatever name it may be called, were well known to the framers of the Code of 1793, and that such rights and liabilities were intended to be thereby dealt with according to the existing custom of the country. This shows that, even at that time, society in Bengal had passed into the third or landlord stage. Rights of occupancy existed, but only as the acknowledged incidents of a particular tenure, which it was wholly in

the landlord's power to give or to refuse, and except as under that tenure the relations of landlord and tenant in Bengal in 1793 were exactly the same as they have been in England for 200 years. The Code merely consented to the custom, which was simply that every ryot who lived on the land he cultivated had a permanent tenure, as long as he and his descendants paid the usual rents and complied with the double condition of actual residence and actual cultivation; and that every ryot who did not so live had no right beyond the term of his lease or the will of his landlord, but was also free of all conditions. These very sensible tenures involved the only right of occupancy to which the Bengal ryot has ever laid claim, at least since our rule in Bengal. Wherever he has set up his household gods on his holding, and pays a residency rent as well as the different cultivation rents, there he claims and insists on his legal right of occupancy, even if his tenure first began yesterday. Wherever he does not live on the spot and pays rent only for cultivation, there, till Act X. gave him an advantage he never before dreamt of, he always acknowledged his landlord's absolute right to eject him at the expiry of his term, but of course urged, as any English farmer would, his long holding as a moral claim for his landlord's consideration and for a renewal of his lease.

The important, most important, difference between this old customary right of occupancy and that given by Act X., is that in the former case it was at the landlord's option to create new conditional rights of occupancy or not, whereas under Act X. unconditional rights of occupancy grow up daily against him all over his estate, and filch his property from him bit by bit. This difference is of paramount importance in the progress of society. So long as the landowner desired to attract hands to his estate, he was obliged to make Khoodkast ryot tenures, but as soon as his estate was well enough peopled he then let his land only on Pykast ryot tenures. Thus he conferred occupancy rights or not according to the requirements of the estate, and to the condition of the labour market, while the consequence was the improvement and extension of cultivation. But what occupancy rights existed were derived from him and did not grow adversely to him, and therefore did not lead to contest as the occupancy rights under Act X. have done. The very ryots for whose benefit Act X. was passed have in many cases been made sufferers by it, for the

old well-known occupancy rights enjoyed by their fathers and themselves were entirely changed by the occupancy and other clauses of Act X. of 1859. The Khoodkast ryot was deprived of the permanency of his tenure till he had been 12 years in possession, and was relieved from all the former conditions of that tenure. The Pykast ryot who had been 12 years in possession had a permanent tenure granted him, which neither he nor his landlord had contemplated, and which if his landlord could have foreseen he would certainly not have allowed him to acquire. And lastly these new rights were conferred in terms which purported to be only the ratification of old rights, and thus had a retrospective effect, in every case in which the landlord had not had the supernatural foresight to insert in his lease clauses against an unknown and unimaginable acquirement of a right by 12 years' occupancy.

CHAPTER VII.

THE TRUE LAW OF LANDLORD AND TENANT.

The real occupancy rights of the Bengal Peasants, and the real relations between them and their landlords, have been shown, marking distinctly the stage to which society in Bengal had attained before the incongruous operation of Act X. It now remains to consider the principles on which Act X. should be amended, for the interests of both the ryot and the landowner.

This will depend on whether it is to be made a general law of landlord and tenant for all India, which is much needed, or merely a law for Bengal. The existing Act, though made for Bengal, is much better suited to the districts of Madras and Bombay or to the North Western Provinces, to which it has been extended. In Madras the rent for each field is fixed for ever, and the old Government tenant is solely entitled to it whether he cultivates or not. In Bombay the same ryotwarree tenure exists, though there the rent is fixed for only 30 years. In the North-Western Provinces the rent is similarly fixed for 30 years, and the particular kind of occupancy rights by lapse of time intended to be confirmed by Act X. has really existed for many years in these Provinces, though it never existed in Bengal. In Bombay, Madras, and the North Western Provinces too, where Government is the real landlord, peasant rights do not excite, for self-evident reasons, [illegible] the same contest between the Government landlord and its peasant

tenants, as between the private landlords of Bengal and their peasant tenants. We may doubt whether these peasant rights in the North West do not bear a character of general equality and absence of distinctive privileges more in accordance with European than with native ideas; and therefore we may suspect that, as in Bombay and Madras, the present form of peasant tenure is rather due to the English officials who settled those ryotwarree and joint village communities, than to the natural growth of native customs. But even if this be so, it only strengthens those rights, as conceded by the Government landlord against itself, and we should be the last to urge the Government landlord to withdraw any such concessions on its own property. We only contest the right of the Government to force private landlords to concede similar interests to their peasant tenants, where certainly no such interests had any existence before Act X.

In both the Government property extending over the greater part of India, and in the private properties covering Bengal, Oudh, and some other parts of India, as well as interspersed with the Government properties all over Hindoostan, some general law of landlord and tenant is much required, in a form to aid the progress of society which is being now rapidly evolved by Railways and other powerful agencies from the old, stationary condition of things. The peasants in the ryotwarree and village settlement districts are fast refusing to continue the Bœotian condition of cultivating proprietor, which Anglo-Indians insist on maintaining is their proper and happiest state. The high prices of Cotton and other staples are fast raising the produce of land, whose rent to Government is fixed either for ever or for a long period, into sufficient for more than one family's sustenance. And so soon as that occurs, the ryot with whom that rent was so fixed at once makes himself a peasant landlord with a tenant under him; and no man will less understand any attempt to curtail his absolute property over the land, or will more firmly resist any claim to limit his right to exact such rent as he pleases, to put on such other pressure as suits him, as well as to change at will the tenant thus subject to his caprices. For these new peasant landlords and their new tenants, as well as for the old landowners and their tenants throughout India, one common law, but adapting itself to the varying condition of each district, is much needed.

This general law, we think, should deal only with the relations of

landlord and tenant, in the state of absolute landlord property, to which the larger part of Bengal had attained before Act X. and to which all other parts of India are now rapidly tending. Another exceptional law of landlord and tenant should at the same time be passed for the more backward stages of society, where rights exist in the tenants not derived from the landlord. And means should be provided for facilitating the gradual change of backward districts under the exceptional law, into forward districts under the general law, according as the progress of society leads naturally to that change.

Our meaning will perhaps be best understood by an English analogy. The general law of landlord and tenant in England is applied to the freehold estates of private landowners whose absolute and sole power over their estates is acknowledged, and the exercise of whose undoubted rights of raising the rent at will, and of evicting all tenants at the end of their term, is maintained unquestioned, whether such rights be exercised arbitrarily or with consideration for old tenants. But there is also an exceptional law of landlord and tenant for the more backward stages of copyhold tenures in private Manors. There the tenants have rights as against their landlord, which descend from the feudal stage of society, and the landlord has feudal claims on and powers over his tenants; which competing rights and powers are recognized by the Courts of Justice, but can only be exercised in the feudal tribunals of the Manor Courts. The law of change from the more backward to the more forward stage of society was first facilitated, and has of late years been enforced, by a series of Enfranchisement Acts, the effect of which is to oblige the Lord of the Manor and the copyhold tenant to divide the land heretofore in the possession of the copyhold tenant, according to the respective preponderance of their conflicting interests in the land, regulated by the local custom of the particular Manor; and to make the former Lord of the Manor and the former copyhold tenant uncontrolled freehold owner of the portion of land thus allotted to each. This division is now enforced in England, on the economic ground that conflicting and independent rights of landlord and tenant in the same soil are alike injurious to the sharers and to the public, and that it is better for all concerned that each should be absolute master of half than a conflicting sharer in the whole.

This is the analogy we would apply to India and to every rented

estate therein, whether belonging to Government, to large landowners, or to peasant landlords. We would make a general law applicable to every tenant's holding, where the landlord's property in the soil was absolute and the tenant had no permanent rights either adverse to, or given him by, his landlord. We would make an exceptional law applicable to every holding where the tenant either had rights not derived from his landlord, or had permanent rights given him by his landlord and adverse to his landlord's absolute power over the land; and we would give either landlord or tenant of every holding under the exceptional law the power of forcing a division of that holding, each becoming the absolute owner under the general law of the portion of the holding allotted to him.

We would give the absolute landlord under the general law uncontrolled power of raising the rent at will and of summarily evicting his tenant on the expiry of his term, as well as summary power of recovering his rent by distraint, but would deprive him of all feudal power whatever over his tenant. His remedies would then all lie out of Court, and his tenants without rights must either agree to his terms or go elsewhere. This would only recognize the general right over his property claimed by every peasant landlord, and now willingly conceded to him though grudged to the large landowner; but it would relieve the peasant landlord's tenant from the hardest part of his burden by removing his peasant landlord's constant authoritative supervision, and by giving him, the real ryot deserving of pity, some protection from the petty meddling of his village tyrant. The landlord's own self-interest, whether he were peasant proprietor or large landowner, would be ample security against his exercising his mere power of fixing the rent and of choosing his tenant in a manner to drive the peasantry from his estate; and short of that the fullest exercise of those rights would be for the public weal, as we formerly showed had been the case in Great Britain.

We would limit the landlord's claim for rent from tenants of holdings under the exceptional law to one-fourth of the produce, with such customary feudal powers as existed in Bengal before Act X. for ascertaining and realizing that proportion. We would make all such existing holdings permanent without reference to the lapse of time, and would give power to the landlord to create at will, but only by registration, new holdings of this exceptional character, and permanent

from their creation, but would prevent any new rights of this kind growing up against the landlord by limitation or prescription. Thus in these exceptional holdings also as the attributes would be fixed, the only question for the Courts would be whether the holdings came under the general or the exceptional law. And finally we would enable either landlord or tenant of an exceptional holding to force the other to enfranchise, by having their respective interests in the holding valued, and by dividing the land accordingly, or by the one buying out the other.

By these means all the land not under exceptional holdings, would be under the absolute control of the person most interested in its improvement. The land under exceptional holdings, where conflicting rights in the same soil naturally retard its improvement, would be divided and would pass under the general law as soon as the progress of society made the separate and absolute ownership of half preferable to a controlled and conflicting interest in the whole. And yet, until that stage of society was attained, and so long as the landlord's interests required it, he would still make exceptional holdings, which in a backward state are almost indispensable to the first settlement of waste land and to the clearing of jungle, though in a more advanced stage the conflicting interests therein lead to contest and prevent improvement. The natural progress of society, and the change from the exceptional to the general law of landlord and tenant, would under this system be further promoted, by the feudal power of the landlord over the tenant ceasing with the destruction of the exceptional holding, and the new and absolute landlord's right of property in the former tenant beginning from the division of his former controlled though protected tenure.

Such are the considerations we would suggest to the reflections of those entrusted with the responsible duty of regulating the future landed progress of India. But we will also, before we close this subject, submit to them in the concluding Chapter certain axioms which we consider govern these questions, and the reception or rejection of which have, in the present state of society in India, a great importance in determining the future landed relations on which must depend the rapid progress and prosperity, or the slow growth and consequent waste of wealth, of agricultural countries.

CHAPTER VIII.

THE PRINCIPLES GOVERNING THE RELATION OF LANDLORD AND TENANT.

THE confusion of ideas shown by the enactment of the occupancy and the criterion of rent clauses of Act X. requires that public attention should be recalled to some of the axioms which govern all treatment of the question of landlord and tenant.

The axioms of land-tenures, like those of other branches of political economy, express only the certain and unavoidable results of the motives by which men's actions are governed; whether we hold that these motives, as inherent in our nature, must be the best for the ends we are appointed to carry out, or whether we still nourish the amiable belief that we can better these ends, and still attempt to divert the motives of men and to regulate the march of events by Act of Parliament. These axioms, based of course on the laws of political economy, may be charged with selfishness as their basis; and exalted principles of disinterested benevolence, the greatest good of the greatest number, and a preference of public to private interests, can easily be descanted on as what ought to guide the State in fixing the relation of landlords to their tenants. To this there is one plain answer, that whatever high motives the State may choose to inculcate, it cannot alter human nature. Motives of self-interest are the only ones which will govern the business relations of men, whether with regard to land or other objects of desire. Laws aiming at more than this only transfer, like Act X., from the superior to the inferior the exclusive privilege of availing himself of benefits from the wants of others. But in whatever hands that privilege is left, the same motives will alone operate between those who let and take land, as rule the mutual conduct of those who sell and buy beef or bread. We have learnt to see that the greatest good of the greatest number not only would not be promoted by the distribution of bread and beef, either gratuitously or at forcibly reduced prices, but that, as in the case of the Lancashire operatives, feeding men except by the produce and at the rate of their own labour inevitably and speedily leads to demoralization, and to the direct injury not only of the public but above all of the very objects of charity proposed to the benefited. But we find a difficulty in opening our eyes to the same conclusions in the matter

of land. Let us examine whether the same laws are not as inevitable and as beneficial in the one case as in the other.

I. The first axiom which seems to arise from the history of land tenures in various countries, is the fallacy of thinking that to raise the rent is oppression. It is mere property. It is just or unjust, it is a right or a theft, according to where the property is placed, but it can never be oppression. It is because our philanthropical notions, not in India corrected by personal interest in our officials, have encouraged the idea that the perpetual settlement of Bengal was a mistake, and that the property which ought of right to have belonged to the peasant was thereby wrongly given to the Zemindar, that the notion of oppression has been attached to raising the rent. We show this conclusively by not attaching any idea of oppression to the peasant's dealings with the land in his holding. We say there justly that it is open to him to do what he likes with his own, and that if he prefers letting it to personally cultivating it he is free to do so. We add that his choice between cultivating and letting will probably depend on the terms he can get; that if he asks too much, those who do not like his price will go where they can get the land they want cheaper, leaving him no option but to cultivate it himself; but that there is no reason why he should take less from A. than B. would give. In all this we only express the idea that the property in the land really belongs to the peasant. Now if the property be either entirely or *pro tanto* in the peasant, it is not only unjust but a theft in the Zemindar to take so much of his property from him as is measured by the rise in rent. But if the whole property in the soil, whether rightly or wrongly, was given by the Government to the Zemindar 70 years ago, it seems equally unjust and can hardly be less a directly unjustifiable taking away of so much of the Zemindar's property, to forbid his raising the rents to what he pleases or to what he can get in open market. In either case it is not oppression, but a mere question of property, which, in this land of indefinite sub-infeudations and ever lengthening lines of middlemen, cannot perhaps be defined better than as a right to increase the rent paid one from below, without a liability to one's own payments above being increased.

This Indian fallacy, that raising the rent is oppression instead of a mere synonym for property, is exactly like the old European fallacy about corn, and the prejudice against a landowner raising his

rent seems as unreasonable as the former prejudice against those who raised the price of bread. In the last century even our Judges of Assize used to inveigh to the local Grand Juries against the forestallers and regraters, who had bought up all the corn and would not sell it to the people even at highly increased rates. This was stigmatized as oppression of the worst kind; they were charged with starving the poor, and if England had been under a despotic, paternal Government no doubt laws would have been passed confiscating the corn merchant's property, and really starving the people by obliging the holders to sell grain below its market value or not to sell it at all. But as English laws were made by men who, even when mistaken, had a personal and instinctive respect for the rights of property, the corn factors were allowed to benefit their country, by holding on till the rise of prices attracted supplies from other quarters, with no worse punishment than the general execration of their countrymen. The same ignorance of the beneficent working of politico-economical laws led many of the North-West Civilians to propose, in the famine of 1860-61, that the Bunniahs should be obliged to open their stores and to sell at fixed prices. Lord Canning was wiser than his servants, and expressly forbade any such suicidal interference with the laws of supply and demand; thus securing to the famine districts the large imports of food attracted from other districts by the high prices, and thus more effectually opening the local Bunniah's stores at reasonable rates than any official order could have done.

This fallacy as to corn is now exploded among all Englishmen with any pretence to be statesmen, but Act X. shows that the exactly similar fallacy as to land still reigns supreme among Anglo-Indians. We concede that in a fully cultivated country, like England, where land by its limited extent becomes a virtual monopoly, rise of price cannot bring fresh land into the market for cultivation. Even there, however, it works in the same manner, sending the surplus population to earn increased comforts in new countries like America and Australia, where fresh land is thus brought into the labour market. But in a country like India, one-third of whose fertile surface only asks the aid of man to pass from a wilderness into a garden, nothing is more certain than that the rise of land rent leads to large cultivation of waste lands. For this reason few things could be more in-

jurious to the whole people, than legislative attemps to keep down the market rate at which land will let. Every landlord who raises his rent not only enforces industry instead of idleness on his tenantry; not only secures their gaining extra profit as well as his getting extra rent; but leads directly to other landowners cultivating their wastes, and thus finding extra employment by dispersion and by improved cultivation for the thickly crowded people, whose competition in small spots sinks the means of all to starvation point.

While such is the general undeniable law, by which absolute landlord property and the raising of rents to the standard of the market rate, beyond which no man can raise them, work for the general good, we admit that where the customs of a country and the ignorance of its people have given a deleterious joint property in the same land to landlord and tenant, such customs must not be violently infringed. Existing rights were wisely respected by the great framers of the Code of 1793, and if the restrictions of the Code, against the further creation of similar deleterious joint ownerships, sinned like Act X. against the wise rule of leaving the regulation of men's affairs to be settled by their interests, it sinned at least in furtherance of, instead of in opposition to, the progress of society. But though the rate of progress, depending on the increase and extension of knowledge and of civilising education, ought not to be forced on beyond the wishes of the people, by the rulers whose more advanced thought shows them the advantages of systems more in accordance with the laws of political economy, still less ought the rulers of such countries to be as unwise as the people. And still less ought they to throw back society by giving new occupancy rights by lapse of time, and by thus creating a perpetual increase and accession of such deleterious joint ownerships over districts, which even the ignorance of the ruled has already carried beyond that point of progress.

II. The second axiom shown by the operation of Act X. as well as by the principles of political economy, is the fallacy of any fair and equitable rate of rent except the market rate. Land like everything else is worth what it will fetch, and that is determined by a variety of causes which adjust the market rate with a nicety no human ingenuity can imitate. More than the market rate no man can get for his land; less than the market rate is anything but fair or equitable to the owner of the land, and is an indulgence *pro tanto* to

the tenant, or a gift to him of so much of the property in the land. If the market rate is, say, half the gross produce and the landowner lets his land to a tenant permanently for one quarter of the gross produce, he simply gives the tenant the difference and makes him a joint owner with his landlord of the profits. It may be necessary for the landowner to do this, to bring people to clear and settle his estate, but the option ought to be left with him to make such holdings, instead of allowing them to grow up against him; and wherever such do not exist, no attempt should be made to regulate the amount of rent by official decisions as to what is fair and equitable, but the landlord and tenant should be absolutely uncontrolled on this point.

The landlord will not ask more from A. than he can get from B., and if A. will not give that he should be directed to go elsewhere. Landlords have no wish to drive tenants from their estates; on the contrary they have the strongest interest to keep them there, except when, as under Act X., their so doing transfers their estates, bit by bit, from their own sole and exclusive property, into a joint property between themselves and their former tenants. But, under Act X., it is often worth while to take less from B., an outside stranger, than A. the old tenant will give, for the danger of retaining the old tenant is made great by the occupancy clauses, and he is consequently put at a disadvantage by the exceptional legislation in his favour, unless the property has been sufficiently transferred to him by the occupancy clauses to enable him to set his landlord at defiance. An attempt is made by Act X. to settle this question of rent, by requiring a lease in every case, but though leases for a term of years should be encouraged, this is not to be done by vague legislative directions to all landlords to give pottahs, nor by tenant suits for pottahs, the former of which are inoperative and the latter unjust to the landowner, but by giving to the landlord who has a Kubooliut, or counterpart lease from the tenant for a term, advantages in speed and effectiveness for the recovery of his rent, which are denied to the landlord who prefers keeping his tenants as tenants at will.

III. The third and last axiom, which seems to flow from the former two, is that all legislative attempts to interfere between the owner of land and those who wish to cultivate that land are necessarily futile for that purpose, and only effective to transfer the proper-

ty in the land. Act X. attempted to interfere in this manner between the landlord and the cultivator. Its only real operation has been to make many of the former cultivators joint owners with their former landlords, and to introduce, under the old ryots as peasant landlords, a new set of cultivators on terms quite outside the Act. Should we be weak enough to maintain Act X. so as gradually to extend the paternal guardianship of growing occupancy clauses and fair and equitable rents to these new cultivating sub-tenants of the former tenants, we should only thereby repeat the same operation. We should only thereby further curtail the absolute ownership given to the Zemindar by the Code of 1793, take from the ryots joint ownership with the Zemindar given by Act X., and make over what these two lose to the new cultivating pet as a third sharer. He would of course, as soon as possible, again create a new sub-sub-tenant to himself on the principles of political economy, free from the philanthropical but impracticable restraint of fair and equitable rates of rent, and for 12 years also uninjured by the operation of the occupancy clauses.

For these several reasons we trust that the occupancy clauses of Act X. of 1859 will be speedily repealed, that their injurious operation in favour of the former cultivators may not be allowed gradually to extend to the new cultivating undertenants of the former cultivators, and then unto their sub-sub-tenants, and so *ad infinitum*. Let those peasants who have established their rights of occupancy under Act X., and those Khoodkast ryots whom it has released from the former conditions of their tenure, enjoy in peace what they have thus had given them out of the landowner's property. But, as we value the prosperity of India, let us stop its further action of adding, every 12 years, a new link to the ever lengthening chain of idle and useless middlemen, whithout capital, without knowledge, and without industry, the deteriorating type of a deteriorating society. Let us free the natural actions and relations of men with regard to land from all restraint, as we have freed transit and commerce from the shackles they formerly bore. Let us respect landed as well as other kinds of property, and leave the proprietor to deal with it as he pleases, even at the risk of his offending our moral sensibilities. Let us teach the peasantry to respect the Landlord's absolute right of property

as we respect and maintain all real and proper rights in them. Let us support the real old customary rights of the peasants, without inventing new rights for them equally uncalled for and injurious. Instead of setting up the ryots against their landlord's rights of property and removing them from landlord's control before their condition of society attains the stage where such control ceases of itself, let us teach the ignorant, and of late much deluded, peasantry of Bengal that we are firmly determined to maintain their landlord's rights against them, and to enforce peace and submission on their part, and the dangers of all kinds created by Act X. may yet pass away with but slight injury.

Let us then pass measures suited for both the more backward and more forward stages of Indian land tenure, in accordance with the laws of political economy, and in help of the natural progress of society and of the new influences now acting on Indian life. If but left free, it is easy to foresee but would be difficult to exaggerate the glorious future of material, social and moral improvement now dawning on this splendid empire. Unless we curb them by ill-advised restrictions, the great resources of the Indian soil will every day be made more largely available for the relief of England's wants and for the welfare of India; while England will daily more richly repay these material supplies, not only with material returns, but with the golden rain of her many influences for the moral and social regeneration of her children in the East.

All this is involved in, and can only be achieved by, the natural progress of society, as directed in accordance with the laws by which men are moved to action. The most important of these is the law of necessity by which men are incited to labour, and it matters not that, in opposition to the modern theories of equality, the very elements of our nature create one man's necessity from another man's selfish assertion of unequal and exceptional rights. Adam Smith revealed to men the law that labour is the price of all things, and the experience of ages shows that the labour of the many must progressively be more and more applied to the benefit of the few, whose selfish interests again react to promote increased industry with larger comforts in the many.

Most thinking men have no doubt occasionally questioned why man should not have had his wants supplied by nature without la-

bour; why he should not, like the beasts of the field, have been provided with unbought clothing; and why he should not, like them, have had a perpetual feast spread out for him over the face of the earth. The Garden of Eden made this the dream of the earliest ages; and the punishment, that man should eat his bread in the sweat of his brow, shows a like early recognition of God's laws, without the perception that those laws were given in mercy. It is only lately, as the more advanced dwellers on this earth are passing from the youth into the manhood of knowledge, that the deepest thinkers have taught us to realize the fact that this divine law of labour is the very element of progress, the one condition by which alone we are gradually raising soul, mind and body more and more above the level of the beasts that, perish. The better we realise this fact, the more widely we contemplate the ultimate operation of the motives implanted in our hearts, so much the more do we see that personal interests, whose first selfish results are summarised in the rules of political economy, have a wider range than our intentions, and confer blessings on others beyond our thoughts; and so much the more do we humbly and unresistingly bow to the dictates of a wisdom beyond our comprehension, although its real character appears to be just opening to our perception.

It is in the firm belief that these laws, and these alone, can work to good, and to the real good of none more than the poor and ignorant, that we call attention to them. It is in the conviction that the progress of society, as it pleases God to direct it, is not only inevitable but beneficial, that we question the right of man to retard it by puny efforts of well meant but narrow and injurious legislation. And it is because the miracle of our acquisition and retention of India portends, as we believe, the gradual awakening of all Asia to a higher life and to a purer faith, that we appeal to those in whose hands the destinies of India are placed, to remove all restrictions from the free action of natural laws in the landed relations; since, in an Agricultural country, these are what soonest bring home to the largest masses new ideas and the desire of progress following fast on the first sense of change.

CHAPTER IX.

THE LAST DECISION OF THE BENGAL HIGH COURT ON THE LAW OF LANDLORD AND TENANT.

SINCE writing the preceding Chapters, the Chief Justice and two Judges of the High Court of Bengal have delivered an important decision, the substance of which will be found in the Appendix,* under Act X. of 1859. The decision was given on appeal from the Additional Judge of Nuddea, Mr. Elphinstone Jackson, now himself a Judge of the High Court. In the first suit Mr. Jackson reversed the decision of the lower Court, and decreed a smaller sum than the native judge. On the first appeal the Chief Justice condemned the principle of Mr. Jackson's judgment, declared that under Act X. of 1859 the rent of an occupancy tenant should be increased, on cause shewn, to a fair and equitable amount absolutely, and not proportionally to the increase of the value of produce; expressed the opinion that one rupee a biggah was a fair rent; and remanded the case for re-settlement on the absolutely fair and equitable principle. Mr. E. Jackson thereupon decreed *less* than on the first occasion, and disfigured his judgment by unjudicial remarks and an assumption of extra-judicial power. Again the case was appealed by Mr. Hills, but, utterly worn out by litigation, he asked for such a decision, however unjust to himself, as would not necessitate a remand to Courts where political economy seems to be as little respected as law or judicial dignity.

The Judgment of the High Court is one of vast importance. The most violent partisan on either side is silenced by the fact that Justice Sumbonath, the only native Judge; Justice Kemp, confessedly the most able of the Judges who are familiar with Lower Bengal; and the Chief Justice, have been unanimous in the decision. Experience, law and political economy have all united, as far as Act X. would allow them, in the judgment. Then the plaintiff, Mr. Hills, is a landlord whose motives no one, save the Additional Judge, has ever ventured to question, and whose character for liberality stands so high that Sir John Grant publicly eulogised him when the indigo disturbances were at their

---

* B page 74.

height, and the more violent of his brother landlords sneered at his weakness or condemned his folly. As the High Court remarks, even if Mr. Hills meant to remit part of his tenants' rent as a consideration for sowing indigo, for which he offered twice the price of any other planter, there is nothing immoral or illegal in such an intention. But such was not Mr. Hills' object.

The native journals, in their remarks on the award of one rupee of rent per biggah, or an increase of 10½ annas, as harsh and oppressive, shew as great ignorance of the facts of the case and of political economy as the Additional Judge whose statement they echo. In the first place the raising of rent is no more a hardship to the tenant, than the rise in the price of rice, or wheat, or shoes, if the causes are similar. Rent is property, vested in the landlord by the State seventy years ago, and not taken from him altogether even by Act X. A fair rate of rent rising with the progress of society as it is affected by the growth of wealth, is a boon to the individual tenant, by preventing him from such idleness as ruins the Assamese, and from such oppressive under-letting of his holding as is the custom of the Khoodkast tenant whose rent is fixed. The fair rise of rent moreover extends cultivation, brings waste lands under the plough and so adds to the general wealth and prosperity of all classes. Nor can it be asserted that sixteen annas a biggah, or even nineteen to which the Court declared Mr. Hills entitled, is too much. The lands in question were half a century ago covered with jungle, and abandoned to the wild boar. Mr. Hills, with his hired labourers, brought them under cultivation, he settled these labourers upon them at the trifling rent of 5½ annas a biggah, and suddenly, when he had returned to England to end his days, in one hour Act X. declared that every labourer who had squatted on the same land for twelve years could not be removed if he paid the market rate of rent, but gave no facilities to the landlord for securing that rate. The increase from 5½ to sixteen annas is no more oppressive than in the parallel case of waste land, which is worth nothing till cleared and for a few years after clearance, but when covered with tea, as is now the case at Darjeeling, yields an enormous rental. All that the High Court has allowed Mr. Hills is only ten annas eight pie out of a proved increase of fifty-two annas. The land is Mr. Hills', and the Court says to the

cultivator of it—'give the landlord less than a sixth of the increase of your gross proceeds—we allow you the rest for the extra cost of the cultivation.' Who believes that the tenant is not a greater gainer by this than he ought to be? As the Court put it—a tenant, "who, if the Permanent Settlement had not been carried into effect, would probably have been allowed for the out-goings of one biggah a sum not exceeding one-half of the gross produce thereof, and would have had to pay the other half to the Government as revenue, cannot be said to be over-assessed when he is allowed to retain at least five-sixths of the gross proceeds for his labour and profits on capital, and called upon to pay something less than the other one-sixth as rent to the zemindar who has been declared to be the proprietor of the soil and who has to pay the Government revenue out of his rent." Before the perpetual settlement, Mr. Shore tells us, the tenant paid one-half of the produce of his labour, and Mr. Grant asserted the right of the State, from philanthropic motives, to only one-fourth.

The great principle of the High Court's decision, to which we have alluded as new, is contained in the following sentence. "The ryot contends that a share of the net profits ought to have been reserved for him, that he, being a ryot possessing a right of occupancy, had an interest in the land. The present case is that of a ryot having a mere right of occupancy, and not a right to hold at a fixed rate of rent. It is a mistake to suppose that such a ryot has any interest in the land which gives him a right to a share of the rent. *He has merely a right to occupy the land in preference to any other tenant, so long as he pays a fair and equitable rent.*" Again;—"He may or may not, according to circumstances, be entitled, on account of increased expenditure, to a share of the increase of proceeds, but *he is not entitled to a share of the net proceeds or rent of the land.*" To a large extent this removes from Act X. the objections we have brought against it, on the ground of equity under Lord Cornwallis' code, and of political economy as obstructing the progress of society. An occupancy thus differs from a non-occupancy tenant in having the *preference* to the land on which he has squatted for twelve years, at the market rate. The landlord, like the baker, has a commodity to sell for one rupee—he gives his oldest customers the preference, but if they decline to buy they cannot object to another purchaser taking their place. This

does not affect the Khoodkast tenant who sits for ever at a fixed rent, nor the Lakraj holder who sits rent-free. These are the classes whose rights Lord Cornwallis and the Court of Directors desired to protect. With all others, till 1859 gave twelve years squatters a right of occupancy, it was expressly declared by Section 52 of Regulation VIII. of 1793, that the proprietor is to deal "in whatever manner he may think proper," subject to the provision of respecting old leases for not more than 10 years and giving new ones. While the Sudder Judges of 1856 created a growing right of twelve years occupancy, the statesmen of 1793 would not allow a landlord to grant a longer lease than ten years, that he might have the power of reviewing his rents every decade. The communistic wrong of the twelve years occupancy has now been modified as far as it is possible to do so, by the declaration of the High Court that it involves merely a preference given to the old tenant to hold at the market rate.

We need not say with what pleasure we see the highest authority in the country endorsing all we have said of Act X. and calling for reform;—"It is not for us in this place to comment upon the acts of the legislature or to suggest amendment of the law. We have merely to administer it as we find it. But we think that we may fairly point to this case as an example of the difficulties which have been created by some of the provisions of Act X. of 1859, and of the vast amount of litigation, harassing both to land-owners and ryots, which must necessarily arise unless that Act be amended." This was the complaint of the tenantry of Kishnaghur lately,* regarding an Act passed by misguided philanthropists in their favour. All are now agreed—landlord and tenant, legislature and judge, revenue officers and outside spectator—that the Act is evil, and has done an amount of wrong for which they were not prepared. The High Court's decision will only modify the wrong; it may possibly add to the litigation. A native paper remarks that it has given satisfaction to neither landlord nor tenant, but does not see that all Acts which set class against class and ignorantly interfere with the laws of society, will inevitably sow discord, ending in ruin and perhaps revolt. The Act can only be amended by its total abolition. The occupancy clauses are as unjust to property, as the rules for decreeing enhance-

* Appendix C page 79.

ment of rent are impracticable in the midst of a litigious population, and when administered by judges who groan under their own inability to decide cases which ought to be left to the mutual interests of landlord and tenant. Respecting all Khoodkast tenures, and even all occupancy rights already registered by litigation, let the Indian Government, like the English, declare that landlord and tenant shall, in Bengal as in Ireland, be as completely left alone as the seller and the buyer of bread.

APPENDIX.

A.

SERIES OF LANDLORD'S PAPERS AND ACCOUNTS.

এ

উত্তর।—NORTH.

Page 1.

CHITTA OR FIELD BOOK OF MOUZA HURREEPORE, PERGUNNAH RAMPORE, ZILLAH HOOGHLY, THE PROPERTY OF BABOO CHUNDER NAUTH CHOWDRY.

12th Maugh 1265 B. S.

	Length.	Breadth.	Superficial area.	Sort.
Measurement commenced from the North Eastern corner of the Estate. South of the boundary Pepul Tree and West of the boundary Line.				
No. 1.—Holding of Komul Paul His Family House	B. C. 1 0	B. C. 0 10	B. C. 0 10	Homestead.
No. 2.—South of the same Holding of ditto	0 10	0 10	0 5	Compound.
East of this is the boundary Line—South, land of Rampaul.				
No. 3.—West of the same Holding of ditto	2 0	1 0	2 0	Low land fit for paddy.
No. 4.—East of the same Holding of Ram Paul	0 9	0 5	0 2¼	Grass for thatching.
East of this is the boundary Line.				
No. 5.—South of the same Holding of ditto	1 5	1 0	1 5	Sugar-cane.
East of this is the boundary Line.				
No. 6.—South of the same Holding of ditto	3 0	1 0	3 0	Garden.
No. 7.—East of the same Holding of ditto Family House of his under-tenant Ram Hurry Dass	0 8	0 5	0 2	Homestead.
No. 8.—North of the same Holding of Chand Sirkar	1 0	0 15	0 15	High land fit for Cereals.
East of this is the boundary Line.				
			7 19¼	

Homesteads	...	0 12
Compound	...	0 5
Garden ...	...	3 0
Sugar-cane	...	1 5
High land for Cereals	...	0 15
Grass for thatching	...	0 2¼
Low land fit for paddy	...	2 0
		7 19¼

Page 2.

	Length.	Breadth.	Superficial area.	Sort.
	B. C.	B. C.	B. C.	
No. 9.—Holding of Chand Sykar His Family House	0 10	0 10	0 5	Homestead.
No. 10.—South Eastern corner of same Holding of ditto	1 0	1 0	1 0	Cotton.
East of this is the boundary Line.				
No. 11.—Holding of ditto	1 10	1 0	1 10	Low land fit for paddy.
East of this is the boundary Line.				
No. 12.—West of the same Holding of Nujjy Sheik	1 0	1 0	1 0	Bamboo.
No. 13.—Holding of ditto His Family House	0 12	0 10	0 6	Homestead.
No. 14.—East of the same Holding of ditto	2 0	1 0	2 0	Jute.
East of this is the boundary Line.				
No. 15.—South of the same Holding of ditto	4 0	0 10	2 0	Low land fit for paddy
East of this is the boundary Line.				
No. 16.—Holding of Doolal Manjee His Family House	1 0	1 0	1 0	Homestead.
East of this is the boundary Line—South boundary Drain.				
No. 17.—West of the same Holding of ditto	1 0	1 0	1 0	Compound.
South of this the boundary Line.				
No. 18.—East of the same Holding of ditto	1 0	1 0	1 0	Garden.
East of this is the boundary Line.				

		11	1
Homesteads	...	... 1	11
Cotton	...	... 1	0
Low lands fit for paddy		... 3	10
Bamboo ...	...	... 1	0
Compound	...	... 1	0
Garden ...	...	... 1	0
Jute ...	...	... 2	0
		11	1

Page 3.

	Length.	Breadth.	Superficial area.	Sort.
	B. C.	B. C.	B. C.	
No. 19.—West of the same Holding of Ram Dass	2 10	2 0	5 0	Low land fit for paddy.

South of this is the boundary Drain.

No. 20.—West of the same Holding of ditto	2 0	1 0	2 0	High land fit for Cereals.

South and West of this is the boundary Line.

No. 21.—North of the same Holding of ditto	2 0	0 15	1 10	Garden.
No. 22.—East of the same Holding of ditto	2 0	1 0	2 0	Sugar-cane.
No. 23.—North of the same Holding of Sham Mundle	1 0	1 0	1 0	Homestead.
No. 24.—East of the same Holding of ditto	3 0	2 0	6 0	Low land fit for paddy.

West of this is the boundary Line.

No. 25.—North of the same Holding of ditto	1 0	1 0	1 0	Garden.
No. 26.—East of the same Holding of ditto	2 0	1 0	2 0	Grass for thatching.
No. 27.—East of the same Holding of Radhanauth Ghose	3 0	1 0	3 0	High land fit for Cereals.
No. 28.—East of the same Holding of ditto	2 0	1 0	2 0	Cotton.
No. 29.—North of the same Holding of ditto	1 10	1 0	1 10	Homestead.
No. 30.—Holding of ditto	1 0	0 15	0 15	Compound.
No. 31.—West of the same Holding of Nazer Mundle	1 0	1 0	1 0	Homestead.
No. 32.—North of the same Holding of ditto	2 0	2 0	4 0	Bamboo.
			32 15	

Sugar-cane ...	...	2 0
Low land for paddy ...	...	11 0
High land for Cereals	...	5 0
Gardens	...	2 10
Homesteads ...	...	3 10
Grass for thatching ...	...	2 0
Cotton	...	2 0
Compound ...	...	0 15
Bamboo	...	4 0
		32 15

Page 4.

	Length.	Breadth.	Superficial area.	Sort.
	B. C.	B. C.	B. C.	
No. 33.—East of the same Holding of ditto	0 10	0 10	0 5	Homesteads.
No. 34.—East of the same Holding of Komul Paul	1 0	1 0	1 0	Betel leaves.
No. 35.—North of the same Holding of Nazer Mundle	1 10	1 0	1 10	Garden.
No. 36.—East of the same Holding of Nazer Mundle	1 0	1 0	1 0	Unculturable.

North of this is the boundary Line.

No. 37.—West of the same Holding of Panchoo Dhoba	2 0	1 0	2 0	Low land fit for paddy.

East of this is the boundary Line.

No. 38.—West of the same Holding of ditto	1 10	1 0	1 10	Uncultivated land.

North of this is the boundary Line.

No. 39.—South of the same Holding of ditto	1 0	0 10	0 10	Homestead.
No. 40.—West of the same Holding of ditto	1 0	1 0	1 0	May be rendered fit for cultivation.
			8 15	

North of this is the boundary Line.

West boundary Drain.

Homesteads	0 15
Betel leaves	1 0
Garden	1 10
Unculturable	1 0
Low land fit for paddy ...	2 0
Culturable	1 10
May be rendered fit for cultivation	1 0
	8 15

EKJAI CHITTA.

AGGREGATE OF LAND IN EACH PAGE OF THE CHITTA.

No. of Pages.	Land Measured.	Cultivated Lands.	Homesteads.	Compound.	Garden.	Low lands fit for paddy	High lands fit for Cereals.	Cotton.	Sugar-cane.	Jute.	Betel Leaves.	Grass for thatching.	Bamboo.	Uncultivated Land.	Culturable.	May be rendered fit for Cultivation.	Unculturable.
1	7 19¼	7 19¼	0 12	0 5	3 0	2 0	0 15	0 0	1 5	0 0	0 0	0 2¼	0 0	0 0	0 0	0 0	0 0
2	11 1	11 1	1 11	1 0	1 0	3 10	0 0	1 0	0 0	2 0	0 0	0 0	1 0	0 0	0 0	0 0	0 0
3	32 15	32 15	3 10	0 15	2 10	11 0	5 0	2 0	2 0	0 0	0 0	2 0	4 0	0 0	0 0	0 0	0 0
4	8 15	5 5	0 15	0 0	1 10	2 0	0 0	0 0	0 0	0 0	1 0	0 0	0 0	3 10	1 10	1 0	1 0
	60 10¼	57 0¼	6 8	2 0	8 0	18 10	5 15	3 0	3 5	2 0	1 0	2 2¼	5 0	3 10	1 10	1 0	1 0

THE EKJAI CHITTA OR THE TOTAL OF THE AGGREGATE OF LAND IN EACH PAGE OF THE CHITTA.

Name of the Village.	Total of Land Measured.	Total of Cultivated Land.	Homesteads.	Compound.	Garden.	Low Lands fit for paddy.	High Lands fit for Cereals.	Cotton.	Sugar-cane.	Jute.	Betel Leaves.	Grass for thatching.	Bamboo.	Uncultivated Land.	Culturable.	May be rendered fit for Cultivation.	Unculturable.
Hurreepore	60 10¼	57 0¼	6 8	2 0	8 0	18 10	5 15	3 0	3 5	2 0	1 0	2 2¼	5 0	3 10	1 10	1 0	1 0

KUTTIAN OR LEDGER.

KOMUL PAUL.

Nos. of the Chitta.	Land measured.	Homesteads.	Compound.	Low land fit for paddy.	Betel leaves
No. 1	0 10	0 10	0 0	0 0	0 0
No. 2	0 5	0 0	0 5	0 0	0 0
No. 3	2 0	0 0	0 0	2 0	0 0
No. 34	1 0	0 0	0 0	0 0	1 0
	3 15	0 10	0 5	2 0	1 0

RAM PAUL.

Nos. of the Chitta.	Land measured.	Homesteads.	Grass for thatching.	Sugar-cane.	Garden.
No. 4	0 2¼	0 0	0 2¼	0 0	0 0
No 5	1 5	0 0	0 0	1 5	0 0
No. 6 =	3 0	0 0	0 0	0 0	3 0
No. 7	0 2	0 2	0 0	0 0	0 0
	4 9¼	0 2	0 2¼	1 5	3 0

CHAND SIRKAR.

Nos. of the Chitta.	Land measured.	High land fit for Cereals.	Homesteads.	Cotton.	Low land fit for paddy.
No. 8	0 15	0 15	0 0	0 0	0 0
No. 9	0 5	0 0	0 5	0 0	0 0
No. 10	1 0	0 0	0 0	1 0	0 0
No. 11	1 10	0 0	0 0	0 0	1 10
	3 10	0 15	0 5	1 0	1 10

NUJJY SHEIK.

Nos. of the Chitta.	Land measured.	Bamboo.	Homesteads.	Jute.	Low land fit for paddy.
No. 12	1 0	1 0	0 0	0 0	0 0
No. 13	0 6	0 0	0 6	0 0	0 0
No. 14	2 0	0 0	0 0	2 0	0 0
No. 15	2 0	0 0	0 0	0 0	2 0
	5 6	1 0	0 6	2 0	2 0

DOOLAL MANJEE.

Nos. of the Chitta.	Land measured.	Homesteads.	Compound.	Garden.
No. 16	1 0	1 0	0 0	0 0
No. 17	1 0	0 0	1 0	0 0
No. 18	1 0	0 0	0 0	1 0
	3 0	1 0	1 0	1 0

PANCHOO DHOBA.

Nos. of the Chitta.	Land measured.	Low land fit for paddy.	Land Culturable.	Homesteads.	May be rendered fit for Cultivation.
No. 37	2 0	2	0 0	0 0	0 0
No. 38	1 10	0 0	1 10	0 0	0 0
No. 39	0 10	0 0	0 0	0 10	0 0
No. 40	1 0	0 0	0 0	0 0	1 0
	5 0	2 0	1 10	0 10	1 0

RAM DASS.

Nos. of the Chitta.	Land measured.	Low land fit for paddy.	High land fit for Cereals.	Garden.	Sugar-cane.
No. 19	5 0	5 0	0 0	0 0	0 0
No. 20	2 0	0 0	2 0	0 0	0 0
No. 21	1 10	0 0	0 0	1 10	0 0
No. 22	2 0	0 0	0 0	0 0	2 0
	10 10	5 0	2 0	1 10	2 0

SHAM MUNDLE.

Nos. of the Chitta.	Land measured.	Homesteads.	Low land fit for paddy.	Garden.	Grass for thatching.
No. 23	1 0	1 0	0 0	0 0	0 0
No. 24	6 0	0 0	6 0	0 0	0 0
No. 25	1 0	0 0	0 0	1 0	0 0
No. 26	2 0	0 0	0 0	0 0	2 0
	10 0	1 0	6 0	1 0	2 0

RADHA NAUTH GHOSE.

Nos. of the Chitta.	Land measured.	High land fit for Cereals.	Cotton.	Homesteads.	Compound.
No. 27	3 0	3 0	0 0	0 0	0 0
No. 28	2 0	0 0	2 0	0 0	0 0
No. 29	1 10	0 0	0 0	1 10	0 0
No. 30	0 15	0 0	0 0	0 0	0 15
	7 5	3 0	2 0	1 10	0 15

NAZER MUNDLE.

Nos. of the Chitta.	Land measured.	Homesteads.	Bamboo.	Garden.	Garden unculturable.
No. 31	1 0	1 0	0 0	0 0	0 0
No. 32	4 0	0 0	4 0	0 0	0 0
No. 33	0 5	0 5	0 0	0 0	0 0
No. 35	1 10	0 0	0 0	1 10	0 0
No. 36	1 0	0 0	0 0	0 0	1 0
	7 15	1 5	4 0	1 10	1 0

EKWAL, OR THE TOTAL OF LAND ACCORDING TO THE HOLDING OF EACH TENANT.

Names of Tenants.	Totat Land Measured.		Homesteads.		Compound.		Garden.		Low land fit for paddy.		High land fit for Cereals.		Cotton.		Sugar-cane.		Jute.		Betel Leaves.		Grass for thatching.		Bamboo.		Land Culturable.		May be rendered fit for Cultivation.		Unculturable.	
	B	C	B	C	B	C	B	C	B	C	B	C	B	C	B	C	B	C	B	C	B	C	B	C	B	C	B	C	B	C
Komul Paul...	3	15		10	0	5	0	0	2	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0
Ram Paul ...	4	9¼	0	2	0	0	3	0	0	0	0	0	0	0	1	5	0	0	0	0	0	2¼	0	0	0	0	0	0	0	0
Chand Sirkar	3	10	0	5	0	0	0	0	1	10	0	15	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Nujjy Sheik...	5	6	0	6	0	0	0	0	2	0	0	0	0	0	0	0	2	0	0	0	0	0	1	0	0	0	0	0	0	0
Doolal Manjee ...	3	0	1	0	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ram Dass ...	10	10	0	0	0	0	1	10	5	0	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Sham Mundle	10	0	1	0	0	0	1	0	6	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	0
Radha Nath Ghose ...	7	5	1	10	0	15	0	0	0	0	3	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Najer Mundle	7	15	1	5	0	0	1	10	0	0	0	0	0	0	0	0	0	0	0	0	0	0	4	0	0	0	0	0	1	0
Panchoo Dhoba ...	5	0	0	10	0	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	10	1	0	0	0
Total	60	10¼	6	8	2	0	8	0	18	10	5	15	3	0	3	5	2	0	1	0	2	2¼	5	0	1	10	1	0	1	0

JUMMABUNDEE, OR PARTICULARS OF RENT OF MOWZA HURREEPORE, PERGUNNAH RAMPORE, ZILLAH HOOGHLY, PROPERTY OF BABOO CHUNDER NAUTH CHOWDRY, ZEMINDAR.

KOMUL PAUL.

	Bigga.	Rate.	Rupees.
Homestead	... 0 10	@ 6 Rs.	3 0 0
Compound	... 0 5	„ 4 „	1 0 0
Low land fit for paddy	... 2 0	„ 2 „	4 0 0
Betel leaves	... 1 0	„ 10 „	10 0 0
	3 15		18 0 0

RAM PAUL.

	Bigga.	Rate.	Rupees.
Grass for thatching	... 0 2¼	@ 1 Re.	0 1 9
Sugar-cane	... 1 5	„ 3 „	0 3 12
Garden	... 3 0	„ 3 „	0 9 0
Homestead	... 0 2	„ 6 „	0 9 6
	4 9½		14 14 6

CHAND SIRKAR.

	Bigga.	Rate.	Rupees.
High land fit for Cereals	... 0 15	@ 1 8 Rs.	1 2 0
Homestead	... 0 5	„ 6 0 „	1 8 0
Cotton	... 1 0	„ 3 0 „	3 0 0
Low land fit for paddy	... 1 10	„ 2 0 „	3 0 0
	3 10		8 10 0

NUJJY SHEIK.

	Bigga.	Rate.	Rupees.
Bamboo	... 1 0	@ 4 0 Rs.	4 0 0
Homestead	... 0 6	„ 6 0 „	1 12 9
Jute	... 2 0	„ 1 8 „	3 0 0
Low land fit for paddy	... 2 0	„ 2 0 „	4 0 0
	5 6		12 12 9

RADHA NAUTH GHOSE.

	Bigga.	Rate.	Rupees.
High land fit for Cereals	3 0	@ 1 8 Rs.	4 8 0
Cotton...	2 0	„ 3 0 „	6 0 0
Homestead	1 10	„ 6 0 „	9 0 0
Compound	0 15	„ 4 0 „	3 0 0
	7 5		22 8 0

NAZER MUNDLE.

	Bigga.	Rate.	Rupees.
Homestead	1 5	@ 6 Rs.	7 8 0
Bamboo...	4 0	„ 4 „	16 0 0
Garden	1 10	„ 3 „	4 8
Unculturable	1 0	.....	.....
	7 15		28 0 0

PANCHOO DHOBA.

	Bigga.	Rate.	Rupees.
Low land fit for paddy	2 0	@ 2 Rs.	4 0 0
Culturable	1 10	.....	.....
Homestead	0 10	„ 6 „	3 0 0
May be rendered fit for Cultivation ...	1 0	.....	.....
	5 0		7 0 0

DOOLAL MANJEE.

	Bigga.	Rate.	Rupees.
Homestead	1 0	@ 6 Rs.	6 0 0
Compound	1 0	„ 4 „	4 0 0
Garden	1 0	„ 3 „	3 0 0
	3 0		13 0 0

RAM DASS.

	Bigga.	Rate.	Rupees.
Low land fit for paddy	5 0	@ 2 0 Rs.	10 0 0
High land fit for Cereals	2 0	„ 1 8 „	3 0 0
Garden	1 10	„ 3 0 „	4 8 0
Sugar-cane	2 0	„ 3 0 „	6 0 0
	10 10		23 8 0

SHAM MUNDLE.

	Bigga.	Rate.	Rupees.
Homestead	1 0	@ 6 Rs.	6 0 0
Low land fit for paddy	6 0	„ 2 „	12 0 0
Garden	1 0	„ 3 „	3 0 0
Grass for thatching	2 0	„ 1 „	2 0 0
	10 0		23 0 0

JUMMA WASIL BAKEE OF MOWZA HURREEPORE, PERGUNNAH RAMPORE, ZILLAH HOOGHLY—THE PROPERTY OF BABOO CHUNDER NAUTH CHOWDRY, FOR 1862.

Names.	Quantity of land.	Rent.	Unpaid Balance of last year's.	Principal.	Interest.	Total of Rent receivable.	Collection.	Rent for the current year.	Rent of last year.	Balance.	Balance of current year.	Balance of last year.
Komul Paul ...	3 15	18 0 0	10 0	8 0	2 0	28 0 0	25 0	17 0	8 0	3 0 0	1 0 0	2 0
Ram Paul ...	4 9¼	14 14 6	2 0	1 8	0 8	16 14 6	15 0	14 0	1 0	1 14 6	0 14 6	1 0
Chand Sirkar ...	3 10	8 10 0	1 8	1 0	0 8	10 2 0	10 0	8 10	1 6	0 2 0	0 0 6	0 2
Nujjy Sheik ...	5 6	12 12 9	1 4	1 0	0 4	14 0 9	14 0	12 12	1 4	0 0 9	0 0 9	0 0
Radhanath Ghose	7 5	22 8 0	5 0	4 0	1 0	27 8 0	27 0	22 0	5 0	0 8 0	0 8 0	0 0
Nazer Mundle	7 15	28 0 0	2 0	1 8	0 8	30 0 0	29 0	27 8	1 8	1 0 0	0 8 0	0 8
Panchoo Dhoba	5 0	7 0 0	2 0	1 8	0 8	9 0 0	8 8	6 8	2 0	0 8 0	0 8 0	0 0
Doolal Manjee	3 0	13 0 0	3 0	2 0	1 0	16 0 0	15 0	12 0	3 0	1 0 0	1 0 0	0 0
Ram Dass ...	10 10	23 8 0	2 0	1 8	0 8	25 8 0	25 0	23 0	2 0	0 8 0	0 8 0	0 0
Shamu Mundle ...	10 0	23 0 0	1 8	1 0	0 8	24 8 0	23 0	22 0	1 0	1 8 0	1 0 0	0 8
	60 10¼	171 5 3	30 4	23 0	7 4	201 9 3	191 8	165 6	26 2	10 1 3	5 15 3	4 2

B.

THE GREAT RENT CASE.

(Before the Hon'ble Sir Barnes Peacock, Kt., Chief Justice, and the Hon'ble F. B. Kemp and Sumbonath Pundit, Puisne Judges.)

ON the 2nd instant Sir Barnes Peacock, C. J., delivered judgment in a special appeal under Act X. of 1859 from a decision passed by Mr. Elphinstone Jackson, Additional Judge of Nuddea, dated the 26th January, 1863, modifying a decree of Moulvee Etazad Hossein Khan Bahadoor, Deputy Collector of that district, dated 21st December, 1861.

Mr. James Hills (plaintiff,) appellant, vs. *Ishur Ghose* (defendant) respondent. *Mr. Doyne, Mr. Woodroffe* and *Mr. Mirfield*, for appellant. *Mr. R. E. Twidale*, for respondent.

"The plaintiff seeks to recover rent at an enhanced rate for twenty-one biggahs, two cottahs of land for the year 1260. The ground upon which enhancement is claimed is, that the value of the produce has increased independently of the agency or the expense of the ryot. The rent formerly paid was at the rate of five annas four pie per biggah. Upon the first trial of the case in appeal before the Additional Judge of Nuddea, he found that the value of the produce of the *matan* lands had doubled, and that the plaintiff was entitled to double the former rental. The Judge, consequently, fixed the amount of rent at ten annas eight pie per biggah. The decree came before the High Court upon special appeal, and we held that the rent was not necessarily to be increased in the same proportion as that in which the value of the produce had increased, and in that proportion only; but that it ought to be enhanced to a fair and equitable rate not exceeding one rupee per biggah, the amount claimed by the plaintiff, and not exceeding the amount of the old rent with the whole or such portion of the increase added to it as would render it fair and equitable. The Judge has now fixed the rate at nine annas a biggah. He has found that on a cultivation of sixteen biggahs the average gross proceeds amount to Rs. 148, and the out-goings to Rs. 135. The difference, amounting to Rs. 13, he takes as the rent of twenty-three biggahs to allow for fallow and the inequality of the two

distinct descriptions of crops which are obtained from the lands. This gives the nine annas a biggah, the amount fixed."

"The following issues were fixed for decision in the lower Court:—"1.—Whether the value of produce had increased, and if so, to what extent, and under what circumstances; and whether there was reasonable ground for concluding that such increase would be permanent? "2.—Whether, looking to the costs of production and all out-goings connected with the produce, the plaintiff's demand of one rupee per biggah was fair and equitable; and if not, what was a fair and equitable rate of rent for defendant's *matan* lands?" As to the first issue, the learned Additional Judge says:—"I have already recorded my opinion that the value of produce has increased, and it remains to consider whether such increase has been permanent up to this time, and whether it may be expected to continue in future years. There are two distinct descriptions of crops obtained from the lands in defendant's village:—First, the single *dhan* crops; secondly, the double *dhan* and cold weather crops."

After examining in detail the judgment of the Lower Court and the objections to it advanced by both parties, the Chief Justice came to the decision that "the out-goings, instead of amounting to Rs. 135, will amount to only Rs. 120-8, and the net out-turn, instead of being Rs. 13, will be Rs. 28. This sum, if taken instead of Rs. 13 as the rent of 23 biggahs, gives Rs. 1-3-5 instead of nine annas as the rent per biggah. The sums which we allow as out-goings are:—

1st. Wages of ryot, ...	Rs.	36	0
Additional labour, ...	,,	12	0
Boy and bullocks,...	,,	12	0
Interest on half the above sum at 50 per cent. for half year, as allowed by the Judge, ...	,,	8	0
Seed, ...	,,	16	0
Sum deducted from interest on stock as allowed by the Judge on account of a house for the ryot, but which cannot be wholly disallowed in this case without remand to ascertain whether it should be added to wages,...	,,	7	8
Interest on stock as allowed by Judge at 50 per cent. after deducting Rs. 7-8 included on account of allowance for a house in the Rs. 36-8 allowed by the Judge, ...	,,	29	0
	Rs.	120	8

If, in consequence of the risks contemplated, the proceeds of sixteen biggahs should be diminished to the extent of 10 per cent., the gross proceeds would amount in round numbers to Rs. 133 instead of Rs. 148. If Rs. 27-8 be deducted on account of rent from that sum, there would remain a sum of Rs. 105-8 to cover the out-goings. That sum would be sufficient to cover all the out-goings except interest on stock at 50 per cent. But if the rate of interest on stock were reduced to 25 per cent., instead of being allowed by us on account of out-goings, it would be reduced from Rs. 29 to Rs. 14-8, and the out-goings would then amount to Rs. 105-8 instead of Rs. 120, and the balance of gross proceeds, after deducting the Rs. 27-8 on account of rent, would be equal to the out-goings reduced by allowing 25 instead of 50 per cent. for interest upon stock. The interest allowed in that case at the rate of 25 per cent. would be sufficient to give 12 per cent. profit on capital expended, (a rate equal to the Court's rate of interest) and 13 per cent. for renewal of stock. Thus, if the loss intended to be provided against by the allowance made by the Judge on account of risk, should happen, the ryot would receive on all capital invested a profit at the rate of 12 per cent., and also 13 per cent. for renewal of stock. On the other hand, if the loss should not happen he would

get 37 per cent. profit on capital and 13 per cent. for wear and tear, or to replace his stock. Surely, then, he cannot be entitled, at the expense of the land-owner, to the sum allowed by the Judge for risk, when the only risk to be incurred is that he may possibly get only 25 per cent. instead of 50 per cent. on the capital employed. We cannot look to the fact that the ryot is conducting the business with borrowed capital. If he is obliged to borrow he must make such a bargain with the mahajun as will throw upon him who receives the profits of the capital the risk which is run by so employing it. If the ryot makes an improvident bargain with the mahajun and consents to bear the risk whilst the mahajun is to receive interest for his money at the rate of 37 per cent. the land-owner ought not to suffer on that account by being allowed a lower rate of rent. But the mahajun, when he lends the capital at 37 per cent. interest, does in reality run whatever risk there may be of the crops being injured by rains or other casualties, and consequently not producing sufficient to repay the capital with 37 per cent. interest thereon. The legal liability of such a person as the ryot is found to be, to pay the money whether the crops fail or not, even if such be the strict terms of his contract with the mahajun, is merely nominal, and cannot be considered by the mahajun of any value. It is not material to determine in this case whether the sum of Rs. 28, according to the first calculation which we have made, or the sum of Rs. 27-8 according to the last calculation, should be allowed to the land-owner as rent for the twenty three biggahs of land; either of these sums would give him an amount of rent exceeding what he asks. The last calculation was made rather for the purpose of showing the correctness of the first; according to either of the calculations the rent would amount Rs. 1-3 a biggah, without taking fractions of an anna. We think that that amount is a fair rate of rent for the *matan* lands and that the plaintiff is entitled to have the rent for the *matan* lands held by the defendant enhanced to one rupee per biggah. This is less than one-sixth of the gross proceeds, and allows him only ten annas eight pie out of the Rs. 3-4 increase per biggah; the remainder of such increase, amounting to Rs. 2-9-4, being allowed to the tenant on account of out-goings."

The Additional Judge says—"I am convinced that the rate in question—that is, nine annas a biggah, will fall hard upon no ryot; the smallest farmer will be able to pay it; the poorest ryot will not be injured by it. I do not mean to lay down that the latter class of ryots might not pay a higher rate. But the plaintiff, Mr. Hills, has made no distinction whatever; and, therefore, on his general evidence, I can only declare a general rate which will include all ryots." The rate of rent which the landlord has a right by law to demand does not depend upon the size of the holding or the circumstances of the ryot. What is a fair and equitable rate for one ryot for lands of a similar description and with similar advantages in the same neighbourhood, must also be fair and equitable for another, so far as the landowner is concerned. No such distinctions were made when the government assessed the land-tax and received the revenue through the zemindars, and no such distinctions ought to be made now.

In the other judgment to which we have referred, the Judge says, "My firm conviction is that such a rent as one rupee per biggah is more than the ryot can pay." Further in the judgment now under consideration, he says, "As to the rate of one rupee per biggah, my impression is that its immediate imposition would at once drive the ryots from their homes or place them at the mercy of Mr. Hills, who would grant them remission of rent on their agreement to sow Indigo." We confess that we do not feel any apprehension that the rent of one rupee per biggah is too high or more than the ryot can pay, or that the imposition of it will drive them from their homes. Looking at the importance of the case, we have given it our most careful attention, and we have no reason to believe that our decision will impose any hardship upon the ryots. But even if, unfortunately, we had come to a different conclusion, we should have been bound to administer the law without regard to consequences.

Taking the calculations of the Judge, and allowing Rs. 148 as the gross produce of sixteen biggahs or rather of twenty-three biggahs, which, according to the calculation must be held by the ryot in order to enable him to obtain those proceeds, the nine annas per biggah which the Judge has allowed for rent is not quite one-fourth of the gross proceeds, whereas, formerly, the ryots were generally taxed in the proportion of one-half of the produce of their land. Mr. Shore, in his minute with reference to the revenue assessments says—"To form a correct judgment of the weight of the assessment upon the country generally, we ought to possess the following *data*:—First, a knowledge of the rents actually paid by the ryots compared with the produce of their labour; second, accurate accounts of what the zemindars and farmers collect, and of their payments to government; third, detailed accounts of the alienated lands, showing the quantity of them, the persons to whom they were granted, the dates of the grants, and those by whom they are now held, in order to determine how far a resumption should take place. All the material part of the information is wanting, and to procure it would require much time and indefatigable research. But there are certain points connected with it which we ascertained, and these may enable us to adopt some probable conclusion though less certain than what premised information would afford. I believe that the ryots in Bengal are generally taxed in a proportion of one-half of the produce of their labour, and we must therefore admit that the assessment with respect to them is full as it ought to be, supposing it even to be one-third; that it is so seems to be the general opinion whether the stated proportion be just or not. Mr. Grant, in his observations on the revenue of Bengal, considered the right of government limited to a fourth part of the actual gross produce of the soil subject to a deduction of 20 per cent. for charges of zemindaree agency and other disbursements; whilst Mr. Shore declared his opinion that the revenue to be thus derived after providing for the necessary allowances would fall short of its actual amount." Mr. Colebrooke, in his remarks on the husbandry of Bengal, speaking of the tenure for payment in kind, says—"In the rule for dividing the crop, whether under special engagements or by custom, three proportions are known:—

For the Landlord.	*For the Tenant.*
One-half.	One-half.
One-third.	Two-thirds.
Two-fifths.	Three-fifths.

These rates; and others less common, are all subject to taxes and deductions similar to those of other tenures, and in consequence another proportion engrafted on equal partition has in some places been fixed by government in lieu of all taxes, such, for example, as nine-sixteenths for the landlord and seven-sixteenths for the husbandman." There can be no doubt that these rates were very heavy upon the ryots, and that when the rent was paid in kind, the zemindar as well as the tenant ran the risk of failure in the crops. But there is a wide difference between one-half or even one-fourth and one-eleventh of the gross proceeds.

Again, if the calculation of the Judge be correct as to the amount of out-goings, the expense of cultivating sixteen biggahs of land is equal to the rent of 240 biggahs at the rate of nine annas per biggah; and it should be borne in mind that out of this rent the government revenue has to be paid by the zemindar. The plaintiff, it must be admitted, is merely a *dur putneedar*, but that makes no substantial difference, for his title to receive the rent is derived from the zemindar. The increase in the value of produce is Rs. 3-4 per biggah—that is, one rupee four annas per biggah for the rice crop and two rupees per biggah for the cold weather crops. Of this the Judge allowed three annas eight pie to the landlord as an increase to his rent; the remainder, amounting to Rs. 3-0-4, per biggah allotted to the tenant on account of out-goings.

We refer to the above points, not with a view to show that, excluding the item for risk, the sum allowed by the Judge for out-goings is too high, but merely to show that a ryot, who if the Permanent Settlement had not been carried into

effect, would probably have been allowed for the out-goings of one biggah a sum not exceeding one-half of the gross produce thereof, and would have had to pay the other half to the government as revenue, cannot be said to be over-assessed when he is allowed to retain at least five-sixths of the gross proceeds for his labour and profits on capital, and called upon to pay something less than the other one-sixth as rent to the zemindar who has been declared to be the proprietor of the soil and who has to pay the government revenue out of his rent.

The ryot contends that a share of the net profits ought to have been reserved for him, that he, being a ryot possessing a right of occupancy, had an interest in the land. The present case is that of a ryot having a mere right of occupancy, and not a right to hold at a fixed rate of rent. It is a mistake to suppose that such a ryot has any interest in the land which gives him a right to a share of the rent. He has merely a right to occupy the land in preference to any other tenant, so long as he pays a fair and equitable rent. The ryot in his first objection has confounded the net proceeds, after deducting the out-goings or expenses of cultivation, with the amount of the increase in the value of the produce. He may or may not, according to circumstances, be entitled, on account of increased expenditure, to a share of the increase of proceeds, but he is not entitled to a share of the net proceeds or rent of the land. If the rent be fixed at one rupee a biggah, he will, as already shown, receive Rs. 2-9-4 per biggah out of the Rs. 3-4 increase whilst the landowner will receive only ten annas eight pie per biggah out of the increase, in addition to the former rent.

The ryot complains that the Judge has not taken into consideration the ordinary rate of profits derived from agriculture in the neighbourhood. But the Judge has done this as well as the evidence would enable him, and has allowed the full rate of interest or profit—viz., 37 per cent., which is usually taken by those whose capital is so employed. He may have allowed too high a rate; and the plaintiff complains that he has done so; but this is in favour of the ryot, and not to his prejudice. The ryot also complains that the Judge has not taken into consideration the rise in wages, or the decrease in the productive powers of the land; that he has not made him an allowance for a cart or for the labour and expense of carrying the produce to market or converting it into money; and that he has not allowed him a chowkeydar for watching the crops. These are all questions of fact with which the Judge has substantially dealt, and they form no ground for special appeal.

Both parties complain that the Judge has fixed the rent for ten years. This is clearly an error on the part of the Judge. He says, "I do not look upon it that I am fixing a rate for one but for ten years. That is the intent with which I have come to the conclusion. Though, under the law, I have no power to fix the rate for any special length of time, still the law never could have intended that this sort of enquiry should be carried on from year to year, or that it should be admitted at all except on very clear proof and under very clear circumstances." The Judge is quite right in supposing that a fresh enquiry is not intended to be carried on every year. When once the rent is fixed it will continue to be the rent of the holding until fresh circumstances arise which will justify enhancement under Section 17 or will entitle the ryots to claim an abatement. These suits are not suits by ryots for delivery pottahs, but by a land-owner, in some cases to recover rent at enhanced rates, and in others for *kabooleuts* at enhanced rates. A land-owner cannot compel a ryot who has a right of occupancy to continue his holding for ten years against his wish and the rent cannot be fixed for such a period in a suit by the landowner. In a suit by a ryot having a right of occupancy, for the delivery of a pottah, if the parties do not agree as to the term, the Collector may fix such a term as he may think proper not exceeding ten years, subject to the proviso contained in Section 76, Act X. of 1859. But this does not extend to cases in which a landowner sues for a *kabooleut*. The difference between the two cases is this, that a right of occupancy is the right of the ryot. It does not also give the land-

lord a right to compel him to continue his occupation. The Judge, therefore, cannot fix the term either in those cases in which the landlord sues for rent, or in those in which he sues for *kabooleuts*. In those cases in which the land-owner sues for rent, we declare that he is entitled to rent at the rate of one rupee per biggah for the *matan* lands, that being the full amount claimed. As to the other lands, the rent now remains as heretofore; no ground for enhancement having been proved as regards such lands. In those cases in which the land-owner sues for *kabooleuts* we declare that he is entitled to a *kabooleut* at one rupee per biggah for *matan* lands, and for the other lands at the old rate of rent. If the ryots refuse to execute *kabooleuts*, the decree will have the effect given to it by Section 81 of Act X. of 1859. Mr. Hills does not press for costs against the ryots; each party will, therefore, in this and in the other cases, bear his own costs, both in this Court and in the lower Courts.

Having decided the case, there is one point upon which we think it right to remark. In one part of his judgment, which we have already quoted for another purpose, the Judge says, "As to the rate of one rupee per biggah, my impression is that its immediate imposition on the ryots would at once drive them from their homes, or place them at the mercy of Mr. Hills, who would grant them remission of rent on their agreement to sow indigo. The ryots openly assert that Mr. Hills' demand is made with 'that view.'" We think that such a remark was improper, and ought not to have been made. The Judge should have decided the question of right without considering the object with which Mr. Hills had demanded that which he considered to be his right. The Judge should not have given heed to the assertions of the ryots as the intentions of Mr. Hills. Even if that gentleman had the intention of granting the ryots remission of the rent to which he was justly and lawfully entitled, as an inducement or consideration to them for sowing indigo, there was nothing illegal or immoral in such intention. However impartial a Judge may be, it behoves him always to be careful in his remarks that he do not lead the litigant parties to believe that his judgment has been influenced by extraneous circumstances. That the observations to which we have alluded have had that effect in the present case, is evident from the fifth ground of appeal on the part of the plaintiff, in which it is said that "the Judge, as appears by his own judgment, has allowed his mind during the inquiry to be unduly influenced in favour of the ryots by considerations foreign to the enquiry before him, and by statements wholly unwarranted and unsupported by any evidence as to the plaintiff's demand of one rupee per biggah being made for the purpose of placing the ryots at the mercy of the plaintiff and enabling him to compel them to sow indigo." We have no doubt that the remark in this case was made without due reflection, but we did not consider it right to pass it over in silence.

It is not for us in this place to comment upon the acts of the legislature or to suggest amendment of the law. We have merely to administer it as we find it. But we think that we may fairly point to this case as an example of the difficulties which have been created by some of the provisions of Act X. of 1859, and of the vast amount of litigation, harassing both to land-owners and ryots, which must necessarily arise unless that Act be amended."

C.

EXTRACT FROM THE "HUMBLE MEMORIAL" OF THE KISHNAGHUR ASSOCIATION TO THE LIEUTENANT GOVERNOR OF BENGAL.

The President of the Association is the Rajah of Kisnaghur, and its object is declared to be, "to promote the improvement of every section of the people of the district." "Your memorialists cannot but avail themselves of this opportunity to allude to the deplorable state of feeling at present existing between the planter zemindar and the ryot. The Indigo planter cannot, indeed, generally speaking, now force the ryots to take his advances and cultivate the plant. But the defective state of the law has enabled him to ha-

pass them in his capacity of landlord. Your memorialist of course allude to the thousands of enhancement cases which, during the last three years, have been carrying desolation and ruin to the homes of tens of thousands of Her Majesty's Native subjects."

"The high prices, ruling during the last five years have enabled the planter zemindar, shorn of the profits of the Indigo trade, to claim enhanced rates of rent, and he has not neglected his opportunity. Last year, however, was a comparatively cheap year, and this year promises to be cheaper still, and if the ryots avail themselves to any considerable extent of the corresponding provision in his favor ("the value of the produce of the land having decreased by any cause beyond the power of the ryot, he shall be entitled to an abatement of the rent previously paid by him") there will be almost as many "abatement" cases as the former years have witnessed in the institution of claims for enhancement. Year by year, therefore, these antagonistic descriptions of law-suits may be expected to keep the numerous extra Deputy Collectors at work, and help to perpetuate that feeling of irritation between landlord and tenant which both parties equally deplore. But as yet it is the landlord who has assumed the aggressive, and the result is, as has been remarked by intelligent observers, that great majority of the smaller holdings in the district are in a most remarkable manner undergoing a change of proprietors. A change of ownership on such a large scale may well be called a revolution, but happily, as it is being effected in this district, it has been a revolution unattended with any exhibition of brutality on the part of those who have suffered most by it. Your memoralists conceive that this is creditable to the Bengal tenantry, as it is an unmistakable index of their respect for law to which, under exceedingly trying circumstances, they have hitherto yielded a most self-denying obedience. Next year, however, your memorialists fear, will bring into view the other side of the difficulty. The anticipated low state of the corn market threatens to produce many "abatement" cases, and they may be as harassing to the zemindar as the "enhancement" cases have been to the ryot. It may be that this will not happen in fact; but if it should not, the absence of litigation will not be attributable to the state of the law; it will be the consequence rather of the sheer inability of the ryot, more especially after the protracted exhaustion of the last years. His time and resources wholly devoted to securing what he has traditionally been taught to look upon as his own, he has not been able to cultivate his field, and his pecuniary means are absolutely nothing. It would be no wonder, therefore, if, after maintaining the unequal struggle so long, he should be found unable to carry on further litigation even at a time when such litigation should hold out a prospect of relief. But the law clearly leaves an opening for a perpetual repetition of the mutually ruinous strife, and your memorialists beg to think that the interference of the Legislature will be required for healing the wound. They do not presume, however, to indicate the direction your Honor's action should take, they content themselves with merely pointing out the evil, and hope and pray that your Honor's rule may be the happy means of effecting a healthy adjustment of the mutual rights of landlord and tenant."

(48)