E 2585

TAGORE LAW LECTURES—1874-75.

Tagore Law Lectures—1874-75.

THE LAW RELATING TO THE

LAND TENURES OF LOWER BENGAL.

BY

ARTHUR PHILLIPS, M.A.,

LATE FELLOW OF ST. CATHERINE'S COLLEGE, CAMBRIDGE; BARRISTER-AT-LAW; AND OFFICIATING STANDING COUNSEL TO THE GOVERNMENT OF INDIA.

CALCUTTA:

THACKER, SPINK AND CO.,

Publishers to the Calcutta University.

BOMBAY: THACKER, VINING & Co. MADRAS: HIGGINBOTHAM & Co.

LONDON: W. THACKER & Co.

1876.

CALCUTTA :
PRINTED BY THACKER, SPINK & CO.

TABLE OF CONTENTS.

LECTURE I.

THE HINDOO PERIOD.

Page

Scope of the present subject—Nature of sources of information—Express Hindoo law as to land—Menu does not show extent of rights in land—Obligation of cultivator to cultivate—The king's share—The village as referred to in Menu—The village as inferred from observation and analogy—Lord Metcalfe's description of the village communities—Such communities found in all parts of India—The village lands and homesteads—A self-governing corporation—The development from the joint family—The lands at first held in common but divided at an early period—Immigrants—Servile dependants—Three classes of cultivators with interests in the land—Khoodkashts—Their rights regulated by custom—In Southern India—Their right to occupy so long as they cultivated and paid the customary revenue—The transferability of their rights—Rates paid by them—Paid a higher rate than other cultivators formerly—Their privileges—The second class of cultivators—Their rights in the land—What occupation sufficient—Less complete rights than khoodkashts—Assessment upon them—The mere pyekashts—Rates paid by them—Precarious nature of their rights—The village constitution—The village officers—Mode of payment—The servile labourers of the village—The headman—Partly elective and partly hereditary office—The State could dismiss—His functions—His emoluments—In Orissa villages—Dismissal—Mode of assessment of revenue—Mode of payment—When headman refused to agree to assessment—Headman not a farmer of the revenue—But he and the village responsible—Headman long recognised—The putwarry and canoongoe—The zemindar—The chowdhry—The amount of the king's share—Proprietary rights 1

LECTURE II.

THE MAHOMEDAN PERIOD.

The transition from the Hindoo to the Mahomedan period not a sudden one—The Mahomedan invaders of India—Their system non-hereditary—The Hindoo system hereditary—Struggle between the two systems—The Mahomedan system a centralised one—The Mahomedan land theory—The Khiraj—The

Page

Ooshr—The Sowad of Irak—Proprietary rights according to Mahomedan law —The two kinds of khiraj—Implied ownership in different persons—Resemblance of wuzeefa khiraj to the tax paid by the khoodkashts—Extent of proprietary right—Power of alienation—Amount of khiraj—Remission of khiraj —Mode of enforcing payment—Procedure when cultivator made default—Waste land—Similarity between Mahomedan and Hindoo systems—The Mahomedans continued the Hindoo system—The khiraj not formally imposed —Attempted changes—Proprietary rights not disturbed—Proprietary rights gradually affected by the Mahomedan system—The revenue machinery—The headman—The origin of the zemindar—The village community—Summary —The crory—Influence of Mahomedan and English ideas—The zemindar—Descent of a zemindary and talook—Jageerdars—Ala-ood-deen's attempt to curb the zemindars 40

LECTURE III.

AKBAR'S SETTLEMENT.

Akbar's or Todar Mull's settlement for ten years—Four classes of land—Mode of ascertaining average produce for one season—Average of ten years then taken—New assessment lower than former rate—Proportion taken by the State—The rebba—A fixed money-rate the main object of the settlement—The position of the ryot not affected—The Assul toomar jumma—The old methods of rendering the revenue might still be adopted—Remissions and deductions—The settlement made with the ryots direct—The headman—The zemindar—Attempted return to the Hindoo system—The settlement only partially carried out—Commencement of the modern revenue system—Todar Mull's assessment the basis of all subsequent assessments—The fiscal divisions—Khalsa and jageer lands—Khalsa lands—Jageer lands—Havilly lands —The soubah—The circar—The chucklah—Three stages of fiscal division—Zemindaries—A cutcherry attached to each division of the zemindary—Fiscal organization above the zemindar—The crory—The foujdar aumildar—Claims of fiscal officers to hereditary rights—Military force employed in revenue collection—The crory's emoluments—The canoongoe—The putwarry—The chucklah superseded the circar—Attempts at centralization—Hindoos filled the lower revenue offices, and Mahomedans the higher—The aumil—His subordinates 67

LECTURE IV.

THE ZEMINDAR.

Hindoo times—Growth of the zemindar—The office hereditary—Conflict of authorities—Struggle between opposing principles—The zemindar an hereditary revenue contractor—The sunnud—Contents of the sunnud—The arzee —The furd-sewal—The furd-huckeekut—The muchulka—The perwanneh—

Page

Duties of the zemindar—Amount of revenue paid by him—The zemindars ultimately looked upon as landlords—The Nautwars—Zemindars in Behar—The sunnuds of Jaffier Khan—A zemindary alienable—The zemindar's emoluments—Surplus revenue—Settlement with Government—The hustabood—Settlement with the ryots—Mode of enhancing the ryot's rent—Customary rates—The khamar land—Remissions of revenue—Neej-jote and nankar—Extent of nankar—The purjote—Julkur, bunkur, ghasskur and phulkur—Cesses—Allowances to the zemindar—The zemindar's emoluments official in their origin—Dismissal of the zemindar—Allowances to displaced zemindars—Under-renting—The proceedings of Jaffier Khan—His attempt to reduce the zemindar's power—Severe measures adopted—The zemindars regained their power—Discussion of the zemindar's position 95

LECTURE V.

THE TALOOKDAR AND OTHER OFFICERS. THE ASSESSMENT OF REVENUE AND RENT AND THEIR AMOUNT.

The talookdar—One class sprung from the ancient rajahs—Hereditary claim—Another class of modern talookdars—The talookdar's position—The talookdar's emoluments—Subordinate interests—Talooks created by zemindars—Discussion of the talookdar's position—The canoongoe—His duties—His emoluments—Abolition and restoration of the office—The putwarry—His duties—His emoluments—Mode of assessment—The koot and the tookhem rezi—The doul bundobust—The hat-hackcut—Net revenue payable by the zemindar—Khas collection and farming—Accounts—The muzkoorat—Rent and revenue—Settlement with the ryots—Cesses—The condition of the ryots—Rates paid by the ryots—Amount of revenue—The assul—Abwabs—Khasnovecsy—Jaffier Khan's abwabs—Nuzzeranah mocurrery—Zer mathoot—Mathoot feelkhanch—Foujdarry—Chout Mahratta—Ahuk—Nuzzeranah Munsoorgunge—Cossim Ali's abwabs—Serf sicca half-anna—The tuckseem—Proportion of produce taken as revenue 149

LECTURE VI.

THE PAYMENT OF REVENUE. ASSIGNMENTS OF REVENUE.

Payment of revenue—Payment originally in kind—Mode of ascertaining share to be paid—Payment in kind fell into disuse—Remedies for non-payment—Application of the revenue—Jageers—Lakhiraj—Milk—Practice of assigning revenue very ancient—Growth of jageers—These grants usually of revenue and not of land—Zemindar's rights in jageer lands—Milk and muddud-mash grants—Altumghas—Jageers—Purposes for which jageers were granted—The jageer now hereditary and alienable—The conditional jageers—The unconditional jageer—Yetool—Powers and liabilities of the jageerdar—Dues to

Page

zemindars and the State—The Nizam's and Lord Clive's jageer—Tunkas—The sunnud—Seyurghal grants—Ayma grants—Malgoozary aymas—Enams and mauniums—Chakeran grants—Pykes—Services—Ghatwals—Power to resume grant—Alienations of revenue by zemindars—Allowances in the muzkoorat—Dewusthan—Zemindars made very extensive alienations of revenue—Khewut—Rights in land—Express law—Custom—The Hindoo system one of joint property—Want of market for land and of marketable value—The soil itself not claimed by any one—The sovereign's claim to the soil—The zemindar's claim to the soil—The cultivator's claim to the soil . . . 188

LECTURE VII.

THE ENGLISH REVENUE SYSTEM UP TO THE PERMANENT SETTLEMENT.

Early connexion of the English with Bengal—Acquisition of the Twenty-four Pergunnahs—Acquisition of Calcutta—Acquisition of Burdwan, Midnapore, and Chittagong—Accession to the Dewanny—Fiscal machinery—Instructions to the supervisors—Khamar lands—The zemindars—Protection for the ryots—The hustabood—Direct management of the revenue by the English—Revenue farmed for five years—Abwabs and cesses prohibited—Revenue administered from the Presidency—Review of revenue administration—Preparations for a permanent revenue system—Enquiries set on foot—Annual settlements—A permanent plan again contemplated—Settlement for 1188—Register of revenue-free land—Rules for resumption—Settlements for 1191, 1192 and 1193—Centralisation—Instructions for Decennial Settlement—Settlement for 1194—Regulations for the conduct of the collectors—Regulations of 25th April 1787—Legislation of 1790—Summary—Power of alienation restricted—Proprietary rights—The fiscal machinery 231

LECTURE VIII

THE DECENNIAL AND PERMANENT SETTLEMENTS.

The Decennial Settlement preparatory to a Permanent Settlement—Views of Mr. Grant and Mr. Shore—Discussion between Lord Cornwallis and Mr. Shore—The talookdars—Proprietary rights—Result of the discussion—Zemindars forbidden to collect the sayer—Recovery of rent and revenue—Lakhiraj Regulations—Disqualified landholders—Decennial Settlement Regulations—Mokurrerce leases—Istemrardars—Settlement of the land of disqualified proprietors—Settlement with mortgagees and others—Pensions to be paid by Government—Nankar, khamar, and neej-jote—Settlement of rent—Engagements with the under-renters—The landholders—Remedies for recovery of rent—The Permanent Settlement—Introduction of a general code of law—Proclamation of the Permanent Settlement—Assessment on lands farmed or held khas when sold or divided—Further provisions—Object and effect of the Permanent Settlement—Rights of the zemindars—The zemindars not made absolute proprietors—The aurungs of Beerbhoom—Extension of cultivation . 272

LECTURE IX.

Page.

CHANGES IN THE POSITION OF THE ZEMINDAR, INTERMEDIATE TENURE-HOLDER AND RYOT.

The zemindars freed from Government interference—Changes in the zemindar's position—The sayer collections taken away—Regulation IX of 1825, s. 9—Resumption—Remission of revenue—Accounts—Contumacy—Preserving the peace—Exactions and oppression—Cesses—Proportion taken by the State—Disqualified proprietors—Julkur, bunkur, phulkur—General effect of the Permanent Settlement upon the zemindar's position—Position of the zemindar's tenants—Pottahs—Cabooleuts—Dependent talookdars—Separation of independent talooks—Assessment of talooks excluded from the Permanent Settlement—Enhancement—Enhancement by auction-purchasers—Putteedars—Intermediate permanent tenures—Khoodkasht ryots—Mokurreree tenures—Istemrari and mouroosee tenures—Statutory mokurrerce tenures of ryots—Mokurreree intermediate tenures—Mokurreree istemrari—Such tenures proved by long possession—Right of occupancy—Acquisition of the right . 323

LECTURE X.

RELATIVE RIGHTS OF ZEMINDARS AND HOLDERS OF UNDER-TENURES. RIGHTS OF ZEMINDAR.

Right of occupancy—Acquisition of the right—Transferability of the right—Effect of transfer of holding by occupancy ryot—Subinfeudation—Enumeration of sub-tenures—Enhancement and abatement of rent—Right of measurement—Division of zemindaries—Zemindar's right of alienation—Zemindar's power to lease—Succession to zemindaries—Transfer of under-tenures—Registration. 358

LECTURE XI.

THE PUTNEE TALOOK. REMEDIES FOR RECOVERY OF REVENUE.

The putnee talook—Remedies for recovery of revenue—Imprisonment—Sale of land—Dispossession—Attachment of land—Personal liability—Interest on arrears—Sale of estate or tenure—Regulation XI of 1822—Act XII of 1841 and subsequent Acts—Definition of arrear—Payment or tender of arrear—Deposit of arrear by person other than defaulting proprietor—Exemption of certain estates from sale—Annulment of sale—Finality of sale—Registration of shares of an estate—Resale on default by purchaser to pay purchase-money—Registration of talookdary and other similar tenures—Sale of tenures not being estates—Avoidance of incumbrances 395

LECTURE XII.

Page.

REMEDIES FOR THE RECOVERY OF RENT. LAKHIRAJ AND SERVICE TENURES.

Remedies for the recovery of rent—Imprisonment and corporal punishment prohibited—Remedy by imprisonment restored—Remedies against khoodkashts—Distraint—Remedies when distraint ineffectual—Distraint under Acts X of 1859 and VIII of 1869 (B.C.)—Ejectment—Personal liability of defaulter—Sale—Avoidance of incumbrances—Stoppage of sale by under-tenant—Sale under Act X of 1859 and subsequent Acts—Stoppage of sale—Sale at instance of sharer in joint estate—Avoidance of incumbrances—Unregistered tenants—Assignments of revenue and resumption thereof—Revenue-free grants made before 12th August 1765—Revenue-free grants made since 12th August 1765 and before 1st December 1790—Revenue-free grants made since 1st December 1790—Badshahee grants—Resumption—Provisions where lakhiraj and proprietary rights are distinct—Requisites of lakhiraj grants anterior to British rule—Further provisions—Cases upon resumption—Lands held upon service tenures—Ghatwallee tenures—Mokuddumee tenures . . . 434

APPENDIX.

I.—A Zemindary Sunnud 478
II.—Two Royal Firmans for a Khankah, a sort of Mahomedan Monastery . 483
III.—An Altamgha Sunnud 484

TABLE OF CASES CITED.

Page.

Abdool Kurreem *v.* Munsoor Ali 394
Afsurooddeen *v.* Mussamut Shorooshee Bala Dabee 381
Ahmudoollah *v.* Mithoo Lal 468
Ajoodhya Pershad *v.* Mussamat Imam Bandee . . . 360, 361, 364
Akhoy Sunker Chuckerbutty *v.* Indra Bhoosun Deb Roy 336
Alimoodeen *v.* Sabir Khan 454
Allender *v.* Dwarkanath Roy 394
Ambika Debi *v.* Pranhari Doss 448
Annundo Chunder Banerjee *v.* Soobul Chunder Dey 448
Anundlall Mookerjee *v.* Kalika Persad Misser 393
Anundmoye Chowdhrain *v.* Ramkunth Sein 469
Attimoolah *v.* Shaikh Saheboolah 356

Baboo Dhunput Singh *v.* Gooman Singh . . 311, 331, 350, 352, 375, 377, 380
Baboo Kooldeep Narain Singh *v.* Mahdeo Singh 474, 475
Baboo Lekhraj Roy *v.* Kanhya Singh 351, 352
Baboo Prosonokoomar Tagore *v.* Rammohun Doss 363, 391
Baboo Run Bahadoor Singh *v.* Mulooram Tewary 381
Baboo Toolsee Narain Sahee *v.* Baboo Modnarain Singh 351
Badaun Koower *v.* Lalla Seetul Pershad 416
Baij Nath *v.* Munglee 375
Baijnath Sahu *v.* Lala Sital Prasad 422
Baikantha Nath Singh *v.* Maharaja Dhiraj Mahatab Chand, Bahadoor . . 445
Bakranath Mandal *v.* Binodram Sen 380
Bama Shunkar *v.* Jamasjee Shaporjee 204, 476, 471
Bamasoondery Dassyah *v.* Radhicka Chowdhrain 380
Beni Madhub Banerjee *v.* Jaikrishna Mookerjee 230
Bharut Roy *v.* Gunga Narain Mohapattur 392, 393
Bheekoo Singh *v.* The Government 468
Bhoor Pasban *v.* Khemchand Mahtoon 331
Bhubo Tarinee Dossia *v.* Prosunno Moyee Dossia 453
Bhugoo Rae *v.* Azim Alee Khan 472
Bibee Kuneez Fatima *v.* Bibee Saheba Jan 471
Bibee Sohodwa *v.* Smith 361, 362, 365
Binode Ram Sein *v.* Court of Wards 476
Bipinbehari Chowdhry *v.* Ram Chunder Roy 374
Bissen Lal Dass *v.* Ranee Khyrunissa Begum 333
Brajanath Kundu Chowdhry *v.* Lakhi Narayan Addi 353
Brindabun Chunder Chowdhry *v.* Brindabun Chunder Sircar Chowdhry . . 458
Butabee Begum *v.* Khooshal 356
Byjnath Mojoomdar *v.* Deen Dyal Gooptu . . . . . .

	Page.
Chittro Narain Singh Tekait *v.* Commissioner of the Sonthal Pergunnahs	476
Chucken Sahoo *v.* Roopchand Panday	330
Chunder Coomar Banerjee *v.* Azeemoodeen	379
Chunder Coomar Roy *v.* Kadermonee Dossee	361
Chunder Coomar Roy *v.* Pearce Lal Banerjee	394
Chunder Nath Roy *v.* Bheem Sirdar	472
Collector of Bareilly *v.* Martindell	201, 470
Collector of Bundlecund *v.* Churun Dass Byragee	471
Collector of Madura *v.* Veeracamoo Ummal	202, 471
Collector of Tipperah *v.* Goluck Churn Shaha	449
Damanulla Sircar *v.* Mamudi Nashio	358, 359
Dariao *v.* Dowluta	358
Degumber Mitter *v.* Chundy Churn Poorkytee	427
Deputy Commissioner of Beerbhoom *v.* Rungololl Deo	476
Dhalee Purmanick *v.* Anund Chunder Tolaputtur	330
Dhunput Singh, Roy Bahadoor *v.* Vellayet Ali	393
Doorga Churn Doss *v.* Mahomed Abbas Bhooyan	381
Doorga Churn Kur Sircar *v.* Anund Moyee Dabia	373
Doorga Persad Bose *v.* Sreekisto Moonshee	454
Doorga Soonderee Debia *v.* Dinobundhoo Kyburto Dass	373
Doorjodhun Doss *v.* Chooya Daye	351, 374
Dowlut Gazi Chowdhry *v.* Moonshee Munwar	456
Doyalchand Laha *v.* Bhoyrubnath Khettry	230
Dumree Shaik *v.* Bissessur Lall	366
Durgaprasad Misser *v.* Brindabun Sookul	230
Durpnarain Raee *v.* Sreemunt Raee	381
Dwarkanath Misree *v.* Kanaye Sirdar	361
Dyaram *v.* Bhobindur Naraen	377
Fagan *v.* Sreemotee Dassee	416
Fatima Khatun *v.* Collector of Tipperah	393
Fitzpatrick *v.* Wallace	356
Forbes *v.* Baboo Lutchmeeput Singh	455, 458
Forbes *v.* Meer Mahomed Hossein	333
Forbes *v.* Meer Mahomed Tuquee	472
Forbes *v.* Protap Singh Doogur	454
Forrester *v.* Secretary of State for India	471
Fuzal Banoo *v.* Azeezunnissa Beebee	469
Gobind Chunder Bose *v.* Alimoodeen	458
Golam Ali *v.* Baboo Gopal Lal Thakoor	334, 352, 382
Golam Sanja *v.* Hurrishchunder Ghose	359
Goor Dial *v.* Ram Dutt	359
Gooroopershad Bose *v.* Bisnoochurn Heyra	322

Page.
Gopal Lal Thakoor *v.* Teluk Chunder Rae 352, 373
Gopee Mohun Roy *v.* Shibchunder Sen 356
Gopee Mohun Thakoor *v.* Radha Mohun Ghose 377
Gorachand Moostafee *v.* Buroda Pershad Moostafee 364
Gouree Pershad Doss *v.* Ranee Shurno Moyee 377
Goursham Jana *v.* Mussamut Kunneeka Debea 476
Government *v.* Dindayal Misser 375
Government of Bengal *v.* Nawab Jafur Hossein Khan 352
Government of Bombay *v.* Damodhar Parmanandas 475
Government of Bombay *v.* Desai Kullianrai Hakoomutrai 477
Govind Persad Pundit *v.* Mussamut Soondree Koonwur Dabea . . . 416
Grant *v.* Bangsi Deo 476
Gudadhur Banerjee *v.* Khettermohun Surma 393
Gureeb Mundul *v.* Bhoobun Sein 356

Haran Chunder Paul *v.* Mookta Soondaree 354
Har Gopal Doss *v.* Ram Golam Sahi 422
Heeroo *v.* Dhoree 357
Hooba Khan *v.* Munsub Ali 359
Huradhun Dutt *v.* Hazee Mahomed 381
Huree Churn Bose *v.* Meharoonissa Bibee 373
Hureehur Mookerjee *v.* Jodoonath Ghose 364
Hureehur Mookhopadhya *v.* Madhub Chunder Baboo 463, 468, 469
Hurlal Singh *v.* Jorawun Singh 209, 210, 473, 476
Huro Doss *v.* Gobind Bhuttacharjee 366
Huro Mohun Mookerjee *v.* Goluck Chunder Sircar 393
Huro Soondaree Chowdhrain *v.* Anund Mohun Ghose Chowdhry . . . 377
Hurrenarain Ghose *v.* Musst. Urnoo Dassee 472
Hurrish Chunder Koondoo *v.* Alexander 356
Hurrymohun Mookerjee *v.* Ranee Lalun Monee Dassee 343
Hyder Buksh *v.* Bhoopendra Deb Coomar 358, 359

Ishen Chunder Ghose *v.* Hurrish Chunder Banerjee 356

Jadub Chunder Halder *v.* Ishoree Lushkur 377
Jewun Doss Sahoo *v.* Shaik Kubeeroodeen 468, 471
Joba Singh *v.* Meer Najeeb Oolah 352
Joogul Kishore Roy *v.* Khajah Ahsanoola 428
Joykissen Mookerjee *v.* Collector of East Burdwan 25, 209, 473
Joykissen Mookerjee *v.* Rajkissen Mookerjee 346, 364
Jugalkishore Banerjee *v.* Abhaya Charan Sarma 366
Juggut Chunder Roy *v.* Ramnarain Bhuttacharjee 361, 373
Juggutmohinee Dassee *v.* Sokheemonee Dossee 316
Jumeer Gazee *v.* Goneye Mundul 365
Jussoda Dossee *v.* Matungineo Dossee 416

Page.

Kalee Churn Singh *v.* Ameeroodeen 356
Kalee Doss Nundee *v.* Ramguttee Dutt Sein 381
Kalee Kishen Biswas *v.* Sreemutty Jankee 356
Kalee Kishore Chatterjee *v.* Ram Churn Shah 354
Kamalakant Ghose *v.* Kalu Mahomed Mandal 330
Kamesha Dassea *v.* Court of Wards 463
Karnakar Mahati *v.* Niladhro Chowdhry 352, 428
Kartick Surmah *v.* Bydonath Saenee 448
Kasheenath Punee *v.* Lakhmanee Pershad Patnaik 374, 393
Katama Natchier *v.* Rajah of Shivagunga 202
Khaja Arathoon *v.* Mussamut Kureemoonissa 382
Khajah Assanoolah *v.* Obhoy Chunder Roy . . . 341, 377, 423, 427, 428
Khukoornissa Begum *v.* Ahmed Reza 359
Kishen Coomar Moitro *v.* Muzhur Ally 440
Kishenkinkur Roy *v.* Brown 429
Kooldeep Narain Singh *v.* The Government 474
Krishna Mohun Shaha *v.* Munshi Aftabuddin Mahomed . . . 445, 449
Kulian Chowdhree *v.* Raja Iqbal Ali 477
Kustoora Koomaree *v.* Benode Ram Sein 473

Lalla Gooman Singh *v.* Grant 473
Leela Dhur *v.* Bhugwunt 375
Luckhee Debea Chowdrain *v.* Sheikh Ahta 331
Luckhee Narain Mitter *v.* Sitanath Ghose 448, 449
Luckhinarain Mitter *v.* Khettro Pal Singh Roy . . . 393, 448, 449
Lukhee Dassee *v.* Khatima Beebee 333
Lukhmeer Khan *v.* Collector of Rajshahye 425

Maharaja Dheeraj Raja Mahatab Chund Bahadoor *v.* The Bengal Government 468, 469, 470
Madhub Chunder Ghose *v.* Nilkant Shaha Roy 373
Mahdub Hossein *v.* Patasu Kumari 211, 475
Madhub Janah *v.* Rajkishen Mookerjee 373
Mahomed Akil *v.* Asadunnissa Bibee 213
Mahomed Bahadoor Mozoomdar *v.* Rajah Rajkishen Singh 382
Mahomed Israile *v.* Wise 468
Mahomed Kadur *v.* Puddomala 373
Mahomed Yacoob Hossein *v.* Shaikh Chowdhry Waheed Ali 350
Mangina Khatun *v.* Collector of Jessore 422
Meah Jan Munshi *v.* Kurrummaye Debi 394, 454
Meer Jasimuddin *v.* Sheikh Mansur Ali 458
Megnath Thakoor *v.* Meliss 330
Meheroonissa Bibee *v.* Hur Churn Bose 458
Mirtenjai Mookerjee *v.* Manick Chunder Dass 377
Mirza Himmut Bahadoor *v.* Ranee Soonect Koer 352

Page.
Mirza Nadir Beg *v.* Muddurram 366
Modhoosoodun Koondoo *v.* Ramdhun Gangolee 458
Mohan Ram Jha *v.* Baboo Shib Dutt Singh 422
Moharaja Sreesh Chunder Rae *v.* Madhub Moochee 472
Mohima Chunder Dey *v.* Gooroo Dass Sein 377, 458
Mohummud Ismail Jemadar *v.* Rajah Balungee Surrun . 200, 204, 352, 354, 470
Mohunt Sheodass *v.* Bibi Ikram 469
Mojon Mollo *v.* Dula Gazi Kulan 394, 454
Mooktokashee Dossia *v.* Brojendro Coomar Roy 394
Moolchund *v.* Chutree 356
Moolook Chand Mundul *v.* Modhoo Soodun Bachusputty 382
Moonshee Buzlool Rahman *v.* Pran Dhun Dutt 433
Mrityunjaya Sircar *v.* Gopal Chandra Sirkar 455
Mudhoosoodhun Chuckladar, *In re* 469
Mugnee Ram Chowdhry *v.* Gunesh Dutt Singh 469
Mukandi Lal Dubei *v.* Crowdy 359
Mukinbanoo Deo *v.* Kostoora Koonwaree 213, 476
Munee Kurnika Chowdhry *v.* Anund Moye Chowdhry 377
Muneerooddeen Mozoomdar *v.* Parbutty Churn Ghose 391
Munceruddeen *v.* Mahomed Ali 391
Munrunjun Singh *v.* Raja Leelanund Singh 473
Munsurnath Chowdhry *v.* Bhowany Churn 477
Mussamat Ameeroonissa Begum *v.* Maharajah Hetnarain Singh . . . 352
Mussamat Farzhara Banu *v.* Mussamat Azizunnissa Bibi 469
Mussamut Kustoora Koomaree *v.* Monohur Deo 473
Mussamut Lakhu Kowar *v.* Hari Krishna Sing 352
Mussamut Neynum *v.* Muzuffur Wahid 408
Mussamut Qadira *v.* Shaik Kubeeroodeen Ahmed 471
Mussamut Taramonee Dossee *v.* Birresur Mozoomdar 360
Mussamut Teetoo Koonwaree *v.* Surwan Singh 473
Mutty Lall Sen Gywal *v.* Deshkar Roy 463, 468
Nanku Roy *v.* Mohabir Prosad 361
Naragunty Lutchmeedavamah *v.* Vengama Naidoo 202, 471
Narendra Narayan Roy Chowdhry *v.* Ishan Chundra Sen . . 361, 362, 365
Nidhi Krishna Bose *v.* Ram Doss Sen 356
Nilmoney Singh Deo *v.* Ramgolal Singh Chowdhry 471, 472
Nobeen Kishen Mookerjee *v.* Shib Pershad Pattuck 392, 393
Nobinchunder Roy Chowdhry *v.* Pearee Khanum 469
Nobo Coomar Ghose *v.* Kishen Chunder Banerjee 393
Nuddear Chand Poddar *v.* Modhoo Soodun Dey Poddar 391
Nuffur Chunder Shaha *v.* Gossain Jysingh Bharattee . . . . . ?
Omesh Chunder Roy *v.* Dukhina Soondery Debia 469
Oolagappa Chetty *v.* Arbuthnot 292, 319
Ooma Churn Biswas *v.* Shibnath Bhagchee 381

Page.
Parbati Churn Mookerjee *v.* Rajkrishna Mookerjee 469
Parbutty Bewah *v.* Woomatara Dabee. 230
Pearee Mohun Mookerjee *v.* Rajkishto Mookerjee 353
Permanund Ghose *v.* Shoorendranath Roy 357, 372
Petumburee Dossea *v.* Chuckoo Ram Singh 393
Pran Bhandu Sircar *v.* Surbasundari Debi 454
Pratap Narayan Mookerjee *v.* Madhu Sudan Mookerjee 469
Prem Sookh Race *v.* Kishen Gobind Biswas 448
Punchanun Bose *v.* Peary Mohun Deb 380
Punchanund *v.* Hurogopal Bhadery 377
Pundit Sheo Prokash Misser *v.* Ram Sahoy Singh 359
Pureejan Khatoon *v.* Bykunt Chunder Chuckerbutty 381

Radha Mohun Surma Chowdhry *v.* Gungapershad Chuckerbutty . . . 331
Radhica Chowdhrain *v.* Bama Sundari Dasi 342, 376
Raghub Chunder Banerjee *v.* Brojonath Koondoo Chowdhry 393
Rajah Anundlal Deo *v.* Government 474
Rajah Deedar Hossein *v.* Ranee Zuhoor-oon-Nissa 391
Rajah Leelanund Singh *v.* Doorgabutty 473
Rajah Leelanund Singh *v.* Surwan Singh 375, 473
Rajah Lilanund Singh *v.* Kunhya Lall 212, 474
Rajah Lilanund Singh, Bahadoor, *v.* Government of Bengal, 210, 312, 322, 327, 390, 473, 474
Rajah Lilanund Singh, Bahadoor, *v.* Thakoor Munorunjun Singh, 211, 352, 354, 423, 473, 475
Rajah Madho Singh *v.* Rajah Bidyanund Singh 330
Rajah Modenarain Singh *v.* Kantlall 351
Rajah Neelanund Singh *v.* Nusseeb Singh 212, 474
Rajah Nilmoney Singh Deo *v.* The Government 468
Rajah Satyasaran Ghosal *v.* Mohesh Chunder Mitter . . . 352, 423, 428
Rajchunder Roy *v.* Kishen Chunder 381
Rajkishen Roy *v.* Bydonath Nundee 341
Rajkishore Dutt *v.* Bulbhudder Misser 456
Rajkishore Raee, *In re* 469
Rajkishore Raee *v.* Soomer Mundle 469
Rajmohun Mitter *v.* Gooroo Churn Aych 382
Ram Baksh Chatlangi *v.* Hridoy Mani Debi 448, 454
Ram Chunder Chuckerbutty *v.* Gopaul Mirda 472
Ramchunder Dutt *v.* Jogesh Chunder Dutt 341
Ram Churn Bysack *v.* Lucas 381
Ram Dayal Sing *v.* Baboo Latchmi Narayan 350
Ram Gobind Roy *v.* Syud Kushoffodaza 422
Ram Gopal Chuckerbutty *v.* Chunder Nath Sein 472
Ram Mungul Ghose *v.* Lukhee Narain Shaha 354
Ram Shunker Race *v.* Prem Sookh Race 448
Ranee Shurnomoyee *v.* Blumhardt 379
Ranee Surnomoyee *v.* Maharaja Sutteeschunder Roy, Bahadoor . . 423, 428

Page.
Rani Durga Sundari *v.* Brindabun Chundra Sirkar Chowdhry . . 360, 364
Rani Swarnamayi *v.* Gauri Prasad Dass 377
Rao Ram Shunker Raee *v.* Moulvee Syud Ahmad 469
Rawat Urjun Sing *v.* Rawat Ghunsiam Sing 390
Roop Moonjuree Kooeree *v.* Beer Chunder Jobraj 353
Rummun Sing *v.* Maharaja Eshree Pershad 391
Runglal Chowdhry *v.* Ramanath Dass 477
Rungolall Deo *v.* Deputy Commissioner of Beerbhoom 213
Rushton *v.* Girdharee Tewaree 379
Ruttun Monee Dabee *v.* Kumolakant Talookdar 357, 373

Saddanando Maiti *v.* Nourattan Maiti 351
Sadhan Chunder Bose *v.* Gurucharan Bose 393, 453
Samiraddi Khalifa *v.* Harischunder 454
Sarkies *v.* Kali Coomar Roy 394
Sartuckchunder Dey *v.* Bhugut Bharut Chunder Singh . . . 473, 476
Satkowree Mitter *v.* Useemuddeen Sirdar 445, 458
Shahaboodeen *v.* Futteh Ali 458
Shah Uzeezoollah *v.* The Collector of Sheharanpore 471
Shamchand Kundu *v.* Brojonath Pal 457
Sheik Afzal Ali *v.* Lalla Gournarain 453
Sheik Mahomed Chaman *v.* Ramprosad Bhagat 357
Sheik Peer Bux *v.* Sheikh Meahjan 356
Sheik Rujub Alee *v.* Mallick Juffer Alee 403
Shib Kumar Toti *v.* Kali Prasad Sen 373
Shib Lall Sing *v.* Moorad Khan 471
Shumboonath Biswas *v.* Larmour 416
Shuroop Chunder Bhoomick *v.* Ragar Pertab Chunder Singh . . . 445
Siboo Jelya *v.* Gopal Chunder Chowdhry 356
Smith *v.* Baboo Nundun Lal 381
Sonaoolah *v.* Ranee Rajeshuree 393
Sonatun Ghose *v.* Moulvi Abdul Farar 462, 464, 468, 470
Soorasoonderee Debea *v.* Gopal Lall Thakoor 377
Sorobur Singh *v.* Rajah Mohendernarain Singh 352
Soudaminee Debee *v.* Suroop Chunder Roy 230
Sparrow *v.* Tanajee Rao Raja Sirke 471
Sreemunt Lall Ghose *v.* Shama Soonduree Dossee 422
Sreeram Bose *v.* Bissonath Ghose 361
Sudanund Mytee *v.* Nowruttun Mytee 374
Suddye Purira *v.* Boistub Purira 364
Sujeeoonlal *v.* Laljee 403
Suroop Chunder Mozoomdar *v.* Jardine, Skinner & Co. 337
Surwan Singh, *In re* 375
Syud Ameer Hossein *v.* Sheo Suhae 357

Page.
Tara Pershad Roy *v.* Soorjokant Acharjee Chowdry 359
Tekayet Jugomohun Singh *v.* Rajah Leelanund Singh . . 472, 473, 474
Thakoorain Mussamut Roop Nath Konwur *v.* Maharaja Juggunnath Sahee Deo . 470
Thakooranee Dassee *v.* Bisheshur Mookerjee 12, 17, 70, 74, 76, 118, 190, 219, 221, 223, 312, 313, 314, 315, 336, 350, 359, 378
Thakoor Chand Banerjee *v.* Shurnumnissa Khatoon 393
Thakoor Chunder Poramanick, *In re* 230
Thakoor Doss Roy Chowhry *v.* Nubeen Kishen Ghose 429
Timmarasa Puranik *v.* Badiya 374
Tirthanund Thakoor *v.* Paresmon Jha 457
Troylochotaran Chowdhry *v.* Muthoora Mohun Dey 379
Tweedie *v.* Ram Narain Doss 381

Umirthnauth Chowdhry *v.* Koonjbehary Singh 349, 467
Unide Rajaha Raje Bommarauze, Bahadoor, *v.* Pemmasamy Venkatradry Naidoo 199, 201, 471
Unoda Pershad Banerjee *v.* Chunder Sekhur Deb 353
Unopoorna Dossee *v.* Oomachurn Doss 361
Unopoorna Dossee *v.* Radha Mohun Pattro 366

Venkataswara Yettiapah Naicker *v.* Alagoo Moothoo Servagaren . . . 471

Waheb Ali *v.* Sadiq Ali 456
Watson *v.* Collector of Rajshahye 392
Watson *v.* Ram Soonder Panday 392
Wilson *v.* Collector of Rajshahye 446
Woomanath Tewary *v.* Koondun Tewary 356

ERRATA AND CORRIGENDA.

Page 18, line 10 from top, *for* "northern" *read* "Northern."
„ 40, line 11 of heading, *for* "formerly" *read* "formally."
„ 61, line 7 from bottom, *for* "chucklah" *read* "circar."
„ 108, line 4 from bottom, *insert* a comma *after* "able."
„ 132, line 11 from bottom, *for* "themselves;—" *read* "themselves."
„ 134, line 13 from bottom, *for* "unecessary" *read* "unnecessary."
„ 135, line 9 from bottom, *for* "or fallow of" *read* "of fallow or."
„ 337, line 4 from bottom, *for* "Deceninal" *read* "Decennial."
„ 434, last line of heading, *for* "Mokuddum" *read* "Mokuddumee."

LECTURE I.

THE HINDOO PERIOD.

Scope of the present subject—Nature of sources of information—Express Hindoo law as to land—Menu does not show extent of rights in land—Obligation of cultivator to cultivate—The king's share—The village as referred to in Menu—The village as inferred from observation and analogy—Lord Metcalfe's description of the village communities—Such communities found in all parts of India—The village lands and homesteads—A self-governing corporation—The development from the joint family—The lands at first held in common but divided at an early period—Immigrants—Servile dependants—Three classes of cultivators with interests in the land—Khoodkashts—Their rights regulated by custom—In Southern India—Their right to occupy so long as they cultivated and paid the customary revenue—The transferability of their rights—Rates paid by them—Paid a higher rate than other cultivators formerly—Their privileges—The second class of cultivators—Their rights in the land—What occupation sufficient—Less complete rights than khoodkasts—Assessment upon them—The mere pyekashts—Rates paid by them—Precarious nature of their rights—The village constitution—The village officers—Mode of payment—The servile labourers of the village—The headman—Partly elective and partly hereditary office—The State could dismiss—His functions—His emoluments—In Orissa villages—Dismissal—Mode of assessment of revenue—Mode of payment—When headman refused to agree to assessment—Headman not a farmer of the revenue—But he and the village responsible—Headman long recognised—The putwarry and canoongoe—The zemindar—The chowdhry—The amount of the king's share—Proprietary rights.

Scope of the present subject.

THE subject of the present course of Lectures, the Land Tenures of Lower Bengal, requires I think a word of preliminary explanation. The term 'tenure' is not perhaps strictly applicable in India, but it is one which is used in the legislation relating to the land, and is a convenient term, liable to little misconception. I mean to include in the term 'Land Tenures' the rights and interests in and relating to the land in India, and the relations with respect thereto between the persons entitled to those rights and interests. We shall find that the State, the zemindar and

LECTURE I.

the cultivator stand in certain relations to the land, and have certain rights and interests in it, and also have certain relations with each other which are not perhaps exactly those of the landlord and tenant of English Law. I shall endeavour to show what those relations are, and what are the rights of the various parties. I shall also endeavour to show how those rights and relations are created, modified, transferred, and extinguished. It is a wide and difficult subject: one which high authorities have pronounced incapable of satisfactory treatment.[1] All I can hope to do is to clear away a little of the confusion with which the subject abounds. In order to do this, and to come to some understanding of the true principles of the law on the subject, I shall have to treat it to a certain extent historically: not indeed with reference to points of antiquarian or historical or political interest—that would be beyond my province; but in order to show what was the state of the law at the commencement of the British rule, and to explain the subsequent modifications of the law, I must attempt to place before you the Hindoo system of Land Tenures as far as I can ascertain it, and the changes introduced under Mahomedan rule, so as to show what the law on the subject was at the British accession to the Government. The same historical treatment will be useful also, although not so necessary, in bringing down the law to the present time.

Nature of sources of information.

I shall then first endeavour to describe the Hindoo system of Land Tenures. The materials for such a description are very scanty: we have extremely little accessible information of a direct nature: our main reliance has to be

[1] See the Preface to Mr. Justice Markby's Lectures on Indian Law (Calcutta: Thacker, Spink & Co., 1873).

placed upon facts, first recorded in comparatively late times, and such remains of ancient institutions as are still existing; and from these meagre indications we have to infer as best we can the state of things centuries before. A few passages in Menu, modern descriptions of the village communities and the land system, with such relics of these as are still existing, are practically all we have to rely upon. Few records of Hindoo times have reached us, and those that have come down to us contain no information on our present subject. Antiquarian research may perhaps in time throw light upon those remote ages, but at present we have to grope in darkness. With respect to Mahomedan times the case is somewhat better, for the Mahomedans kept records of important matters; but the confusion which characterised much of Mahomedan rule in India pervades their histories. Moreover the Mahomedans did not introduce any new system of Land Tenures as we shall hereafter see: and it does not appear to have occurred to them to give any full description of the system they found in existence. It is for these reasons that the subject of Indian Land Tenures is so difficult and almost impossible to treat satisfactorily. At the best our information is vague, but oftener full of contradictions; and one is haunted by a suspicion that anything like a definite account of the matter must be wrong.

Express Hindoo law as to land.

The Mahomedans, as I have said, did not introduce a Land or Revenue system of their own, but adopted the system they found in existence. Hence it is necessary to endeavour to ascertain what that system was. With this view we naturally turn to the written Hindoo law, and especially to Menu. From Menu however we obtain little help. We find only casual mention of rights in land: the

LECTURE I.

general theory of land rights is not touched upon, but only some special cases. Thus Menu says, that "sages pronounce cultivated land to be the property of him who cut away the wood, or who cleared and tilled it;"[1] a general principle which has been recognised in Germany, Java, and Russia,[2] and indeed in most countries, and which is expressly enunciated in Mahomedan law also, but which does not enable us to advance much in our present enquiry. It leaves open the question what right of property is acquired, whether absolute and exclusive, or only limited:—whether in the soil itself or only the right to cultivate it. This question has to be answered in the silence of express law by a reference to the actual practice and the ideas of the time. Menu also speaks of the owner of land, and appears to contemplate exclusive and perhaps individual rights in land, although we get no further information as to their nature. The owner of a field is directed or advised to keep up sufficient hedges;[3] he is entitled to the produce of seed sown by another in his land unless by agreement with him;[4] and to the produce of seed conveyed upon his land by wind or water.[5] The case of a dispute between neighbouring landholders or villages as to boundaries is contemplated;[6] and a penalty provided for forcible trespass upon another's land.[7] These passages show that some kind of exclusive right was contemplated,

[1] Menu, Chap. IX, sl. 44 (Sir Wm. Jones' translation).

[2] See three articles by M. de Laveleye in the Revue des Deux Mondes for 1872, entitled Les Formes Primitives de la Propriété, Tome 100, p. 526.

[3] Chap. VIII, sl. 239.

[4] Chap. IX, sl. 49, 52, 53.

[5] Chap. IX, sl. 54.

[6] Chap. VIII, sl. 245, 246.

[7] Chap. VIII, sl. 264.

and appear to recognise a right beyond that of the village, but whether in the family or the individual is not clear. The sale of lands is also spoken of in connexion with the sale of metals.[1]

Menu does not show extent of rights in land.

But these passages fail to inform us whether the owner spoken of had anything more than a right to cultivate and appropriate the produce, and such possession as might be necessary for that purpose. The nature of the proprietary rights before the British accession we shall have to discuss hereafter, when we have before us the whole native system as far as we can ascertain it; but I have called attention to this point here because it is one which we must keep in view throughout.

Obligation of cultivator to cultivate.

Besides the owner's rights in the land Menu recognises an obligation upon him to cultivate the soil. It is said, "if land be injured by the fault of the farmer himself, as if he fails to sow it in due time, he shall be fined ten times as much as the king's share of the crop that might otherwise have been raised, but only five times as much if it was the fault of his servants without his knowledge."[2]

The king's share.

The king's share here mentioned is to be one-eighth, one-sixth, or one-twelfth, according to the nature of the soil and the labour necessary to cultivate it;[3] but in times of prosperity the king should only take one-twelfth,[4] while in times of urgent necessity he may take one-fourth;[5] this is the king's due on account of the protection he is bound to afford to the cultivator.[6] The king is also entitled on

[1] Chap. VIII, sl. 222.
[2] Chap. VIII, sl. 243.
[3] Chap. VII, sl. 130.
[4] Chap. X, sl. 120.
[5] Chap. X, sl. 118, 120.
[6] Chap. X, sl. 118, 119.

LECTURE I.

the same grounds to half of "old hoards and precious minerals in the earth."[1]

The king is therefore clearly recognised as entitled to a share in the produce; he is bound to protect the husbandman, and the husbandman is bound to cultivate, in order that they may jointly have increase of the land. This would seem to indicate something less than an absolute or exclusive right to the soil in either. The share of the king is what we shall meet with in all our future enquiries as the land revenue or mál.

The village as referred to in Menu.

There is also mention in Menu of the village system. The lord or superintendent (*adhipati*) of a village (*gram*) is spoken of,[2] and he is to have the share of the king in food, drink, wood and other articles as his perquisite.[3] Above him the superintendent of ten villages is to have the produce of two plough-lands (*i.e.*, as much as can be tilled by two ploughs, each drawn by six bulls); the superintendent of twenty villages to have the produce of five plough-lands; the superintendent of one hundred villages, that of a small town; and of a thousand villages, that of a large town.[4] Traces of these divisions are found in the Mouzah (or village), the Pergunnah, and the Circar.

The village as inferred from observation and analogy.

The village referred to in Menu was, we can hardly doubt, the well known village community, the constitution and position of which are so important in the Hindoo land system; the village in fact is the key to that system. From the slight reference to it in Menu we have to pass by a long stride of centuries to what has been observed in such recent times

[1] Chap. VIII, sl. 39.
[2] Chap. VII, sl. 115.
[3] Chap. VII, sl. 119.
[4] Chap. VII, sl. 118.

as the period since the British rule. It is from such observations, with the aid of analogies from similar institutions existing in modern times in other countries, that we have to construct the idea of the village community of Hindoo times. It cannot be considered a very satisfactory process, but it is the only method open to us; and when we come to consider the matter carefully, we find some of the difficulties, which appear most formidable, tend to disappear. For instance Hindoo society is by its very constitution profoundly conservative, and is therefore likely to have retained the characteristic features of its institutions in something like their primitive form. Again the village community is one of the least changeable of all its institutions: this is the reason that it has survived all the shocks of conquest and civil strife, and the fanaticism of proselytising rulers whose ideas were to a great degree repugnant to such institutions. And if the village communities had the strength to resist these influences, it is natural that they should be rendered more intensely conservative thereby, and should as it were crystallize in the shape in which they were found, and undergo little further change. As Lord Metcalfe says:[1] "The village communities are little republics, having nearly every thing that they want within themselves, and almost independent of any foreign relations. They seem to last where nothing else lasts. Dynasty after dynasty tumbles down; revolution succeeds to revolution; Hindoo, Patan, Mogul, Mahratta, Sikh, English, are all masters in

Lord Metcalfe's description of the village communities.

[1] In his Minute of November 7th, 1830, in the Appendix No. 84 to the Report of the Select Committee of the House of Commons on the affairs of the East India Company, dated August 16th, 1832, cited in the Selections from Government Records, Vol. I, p. 446, and in Elphinstone's History of India, p. 68, Fifth Edn.

LECTURE I.

turn; but the village communities remain the same.[1] In times of trouble they arm and fortify themselves. An hostile army passes through the country; the village communities collect their cattle within their walls, and let the enemy pass unprovoked. If plunder and devastation be directed against themselves, and the force employed be irresistible, they flee to friendly villages at a distance; but when the storm has passed over they return and resume their occupations. If a country remain for a series of years the scene of continued pillage and massacre, so that the villages cannot be inhabited, the scattered villagers nevertheless return whenever the power of peaceable possession revives. A generation may pass away but the succeeding generation will return. The sons will take the places of their fathers; the same site for the village, the same positions for the houses; the lands will be reoccupied by the descendants of those who were driven out when the village was depopulated; and it is not a trifling matter that will drive them out, for they will often maintain their post through times of disturbance and convulsion, and acquire strength to resist pillage and oppression with success." Even the cupidity of invaders would hesitate to attack the constitution of societies so tenacious of their organisation and yet so harmless. Consequently we have grounds for believing that the societies of this kind which have been observed and described furnish a safe basis for constructing an idea of the village communities as they existed in Hindoo times.

Such communities found in all parts of India.

Such communities have been found in almost all parts of

[1] See the Fifth Report of the Select Committee of the House of Commons on the affairs of the East India Company with its appendices, Vol. II., p. 575. I cite from the Madras Edition of 1866, and I shall in future cite it as the Fifth Report.

India, preserving their ancient organisation in many respects. Those in the south of India, where Mahomedan rule was less complete, are amongst the nearest to what is believed to be their ancient form.[1] These communities have also been found in a flourishing condition in the Delhi territory,[2] and in the North-Western Provinces generally:[3] but Sir George Campbell considers the Punjab villages to be the most perfect specimens, and those of the south of India to be a comparatively decayed type.[4]

The village lands and homesteads.

These communities inhabited the village homesteads, which were collected together, and cultivated the village lands, some of which were detached and at a considerable distance. There was also a certain amount of waste or uncultivated land included in the village lands.[5] The waste is however considered by some to belong to the State,[6] but probably the question is only a branch of the general controversy as to the proprietary right. It is sufficient for our present purpose that they were included within the village boundaries. In some cases part of the

[1] Fifth Report, Vol. II, p. 86. The Report of the Select Committee of the House of Lords (1830) in the evidence of Colonel Briggs, 4137.

[2] Selections from Government Records of the N. W. Provinces (Mr. Thomason's Despatches), Vol. I, 80, 86, 147, 447, 448. I shall refer to this work in future as Thomason's Selections. Select Committee of the House of Commons (1832), Mr. Fortescue's Evidence, 2230.

[3] Directions for Revenue Officers in the N. W. Provinces (Calcutta, 1858), p. 8.

[4] See his Essay on Indian Land Tenures in the Cobden Club Essays. 1st Series (Macmillan and Co., London, 1870), 2nd Edition, pp. 160. See Rustic Bengal by J. B. P. in the Calcutta Review for 1874.

[5] Land Tenure by a Civilian (Calcutta: Samuel Smith & Co., 1832), pp. 7, 21. Fifth Report, Vol. II, 571. Orissa, by W. W. Hunter (London: Smith, Elder & Co., 1872), Vol. II, p. 206. Thomason's Selections, 83, 84.

[6] Colonel Briggs's Evidence before the Select Committee of the House of Lords (1830), 4137, 4140.

LECTURE I.

village lands was separated from the rest by intervening land of another village,[1] and the villages were not always locally compact, but their boundaries scarcely ever varied.[2]

A self-governing corporation.

The Hindoo village community was a little republic or corporation[3] which was almost self-governing. The Hindoo village had a non-Aryan predecessor in Orissa in the Kandh hamlet, but that wanted the corporate life of its successor, and was merely a collection of families.[4]

The development from the joint-family.

The Hindoo village appears to have grown out of the joint-family, the unit of Hindoo society. The Hindoo race seems to have colonised as well as conquered the country, and the joint-family with its developments to have gradually formed a village.[5] This is shown by the fact that all these village communities preserve a tradition of descent from a common ancestor who founded the village.[6] This would account for the corporate life and unity which the Kandh hamlet lacked.

The same feature of common descent also characterised the agrarian communities of France in their primitive form.[7] And we can follow the process of expansion from a family into a community in the Slave villages described by M. de Laveleye. Again new villages would probably be

[1] Directions for Revenue Officers, 31.

[2] Fifth Report, Vol. II, 571.

[3] *Ib.*, 575. Orissa, Vol. II, 206. Maine's Village Communities (London: Murray, 1871), 175. Directions for Revenue Officers, 50.

[4] Orissa, Vol. II, 208 to 210.

[5] Maine's Village Communities, 175. Campbell's Cobden Club Essay, 161. Fifth Report, Vol. II, 628. Evidence of Mr. Fortescue before the Select Committee of the House of Lords (1830), 509.

[6] So at the present day villagers commonly describe their fellow villagers as brothers, although apparently not related in any way.

[7] Revue des Deux Mondes, tome 101, pp. 54, 55.

formed in the same way by offshoots from the original stock, and thus the work of colonisation would be continued.

The lands at first held in common but divided at an early period.

The village lands appear to have been at first held in common by the families composing the community as in the Russian *mir*;[1] and there are traces of the periodical re-distribution of the land which is a characteristic of European communities of the same kind. At some period of their existence however a further development took place, when a division appears to have been made of the cultivated lands into equal shares, probably amongst the then existing families;[2] and this division must have taken place at an early stage, as the number of shares is generally small. The original shares continued thenceforth to be preserved as the primary divisions of the village,[3] and the subsequent sub-divisions were into fractions of such shares. Thus the Punjab villages are divided into a certain number of ploughlands, which are distributed amongst the cultivators.[4]

Immigrants.

These communities appear also to have attracted to themselves certain extraneous elements which they assimilated more or less completely. These were immigrants who either came and settled in the village, cultivating land abandoned by the original settlers and their descendants, or land allotted to them by the village; or another class who either merely sojourned in the village or cultivated while residing in other villages.[5]

[1] Revue des Deux Mondes, tome 100, p. 141.

[2] Evidence of Colonel Briggs before the Select Committee of the House of Lords (1830), 4155. The Law and Custom of Hindoo castes in the Deccan Provinces of Bombay by Arthur Steele (London: W. H. Allen & Co., 1868), 207.

[3] Fifth Report, Vol. II, 299, 352.

[4] Campbell's Cobden Club Essay, 161, 162; see Menu Chap. VII, sl. 118, 119. Revue des Deux Mondes, tome 100, p. 511.

[5] Campbell's Cobden Club Essay, 165. Maine's Village Communities, 177.

LECTURE I.

Servile dependants.

There were also certain remnants of the non-Aryan or servile tribes who had no land allotted to them, and no interest in the land they cultivated, but cultivated as mere labourers.[1] In Mahomedan times they were called kumherahs, and seem to have corresponded to the landless low castes attached to the Kandh hamlets in Orissa.

Three classes of cultivators with interests in the land.

There were thus three classes of cultivators having an interest in the soil: first, the original settlers and their descendants; second, the immigrants who had permanently settled in the village; third, the mere sojourners in the village, or those who, without living in the village, cultivated land of the village.[2] I shall proceed to consider the position of these classes more fully.

Khoodkashts.

The original settlers in the village with their descendants, and those cultivators who had been admitted to share the same privileges, formed the class of *Khoodkasht* (own cultivating) ryots, and they had an hereditary right to cultivate the lands of the village in which they resided.[3]

[1] Campbell's Cobden Club Essay, 161, 162; Land Tenure by a Civilian, 69, 83, 84. Orissa, Vol. II, 206, 211, 246. Fifth Report, Vol. II, 302.

[2] Orissa, Vol. I, 37. Directions for Revenue Officers, 63. Evidence of Colonel Briggs before the Select Committee of the House of Lords (1830), 4078, and of Lieut.-Col. Barnewall before the Select Committee of the House of Commons (1832), 1744.

[3] Campbell's Cobden Club Essay, 165. Land Tenure by a Civilian, 66, 68, 80. The Land Tax of India by Neil B. E. Baillie (London: Smith, Elder & Co., 2nd Ed., 1873), p. xliii. Fifth Report, Vol. II, 299, 301. Harington's Analysis, Vol. III, 353. Whinfield's Law of Landlord and Tenant (Calcutta: Wyman & Co., 1869), p. 15. Orissa, Vol. II, 206. Directions for Revenue Officers, 5, 61, 62. Thakooranee Dossee v. Bisheshur Mookerjee (which I shall hereafter cite as the Great Rent Case), B. L. R., Supp. Vol., 209 (per Trevor, J.), 319 (per Peacock, C.J.), 3 W. R. Act X, 29.

They were also called *Chupperbund* (house-tied), *Mooroosee* (hereditary), and *Thani* (stationary).[1]

Their rights were regulated by custom, probably the custom of many centuries, and having at least as much force as any written law. These customs were no doubt in some cases violated by the hand of power; but that is only what happened with all rights, whether depending upon express and written law or upon the unwritten law of custom; and these violations were doubtless more frequent in Mahomedan times. But it is to these customs we must look to ascertain the rights of almost all the parties having interests in the land.

Their rights regulated by custom.

The Khoodkasht class of ryots appears to have been the same as the class of *Meerassadars* in Southern India,[2] (called also *ulcudies* in Tanjore,[3]) who existed in very early times, and were anciently called *Caniatchy* ryots in Malabar.[4]

In Southern India.

They could not be ousted while they continued to cultivate their holdings, and pay the customary revenue; but on the other hand they could not originally transfer their holdings without the consent of the community.[5] There

Their right to occupy so long as they cultivated and paid the customary revenue.

[1] Campbell's Cobden Club Essay, 165; Orissa, Vol. II, 242. Directions for Revenue Officers, 64.

[2] Fifth Report, Vol. II, 41, 42, 120, 299, 489 to 492. Steele's Deccan Castes, 207. Evidence of Lieut.-Col. Sykes before the Select Committee of the House of Commons (1832), 2173.

[3] Fifth Report, Vol. II, 492.

[4] Fifth Report, Vol. II, 43, 85. Compare the Puttookut ryots of Dindigul, Fifth Report, Vol. II, 494, and the *nair mulguenies* of Malabar and Canara, Fifth Report, Vol. II, 77, 78. Mr. Baber's evidence before the House of Lords' Select Committee (1830), 3002.

[5] Campbell's Cobden Club Essay, 165,170. Fifth Report, Vol. I, 488, Vol. II, 85. An account of the Land Revenue of British India, by Francis Horsley Robinson (Thacker and Co., 1856), pp. 15, 41. Evidence of Mr. Stark before the House of Commons' Select Committee (1832), 427, 428; and Evidence of Colonel J. Munro, 1488.

LECTURE I.

is some little vagueness in the way in which the rights of this class of cultivators have sometimes been described. Sir George Campbell says they had a "moral claim" to hold while they cultivated and paid rent;[1] and again, that a distinction was made "in the general language of the country" between ryots who had settled as permanent inhabitants of the village, and had given pledges by building and clearing and establishing themselves and accepting a share of common obligations, and the temporary sojourners or cultivators from another village.[2] This seems rather to refer to the distinction between the two other classes of cultivators. These expressions however appear to indicate a right considerably weaker than I have described, unless indeed we look to the state of society in which these rights were recognised; when a right by custom, although in one sense only a moral claim until clearly recognised by express law, would nevertheless be equivalent to a legal right. Again, Mr. Shore (afterwards Lord Teignmouth) says that tenants cultivating the lands of the village to which they belong acquire by long tenancy a kind of hereditary right of occupancy; while those cultivating the lands belonging to a village where they do not reside are considered mere tenants-at-will.[3] And in Harington's Analysis[4] it is said generally of the ryots in Behar that they have a sort of prescriptive right to continue tenants so long as they pay the usual rate of rent: this however appears to refer only to the class of khoodkashts.[5] The language

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

[2] *Ib.*

[3] Fifth Report, Vol. I, 140, 162, 164.

[4] Harington's Analysis, Vol. III, 426 (n).

[5] Harington's Analysis, Vol. III, 460; again in Harington's Analysis, Vol. II, 64, it is said that their "right of possession is considered stronger than that of ordinary ryots."

used is as I have said vague, but I think it refers to a right by custom as distinguished from express law: to rights which were sometimes overridden by the strong; but which were still considered customary rights, and not merely claims which any one had the right if he had the power to disregard. I have already suggested that in the stage of society and of ideas in which these rights grew up custom was the main law; no doubt it was a law without the definite sanctions of law in a more advanced state, but it was binding and effective notwithstanding.[1] These customary rights were always recognised as existing and valid rights; for instance, in the zemindary of the 24-Pergunnahs granted to the East India Company.[2]

The transferability of their rights.

There is also some difference as to the transferability of these rights; but possibly the difference may, to a great extent, prove capable of explanation. For instance, Sir George Campbell says these holdings were "practically" not transferable by sale, and that there was not enough profit derived from them to lead to systematic underletting.[3] Mr. Shore seems to say they were not transferable at all;[4] and Mr. Harington agrees with this:[5] while as we have just seen the consent of the community was probably originally necessary. On the other hand, it is said that the meerassadars of the Northern Circars, and probably of Southern India generally, could alienate.[6] The power of sale is also

[1] See Sir Henry Maine's Ancient Law and Village Communities on Customary Law.

[2] Land Tenure by a Civilian, 66: Fifth Report, Vol. II, 86.

[3] Campbell's Cobden Club Essay, 170, 171.

[4] Fifth Report, Vol. I, 162.

[5] Harington's Analysis, Vol. III, 460; see Thomason's Selections, 478. Compare the Brahmin *Agraghrah vadiky* villages of the Carnatic and Mysore: Fifth Report, Vol. II, 485.

[6] Fifth Report, Vol. II, 43.

LECTURE I.

alleged to belong to this class in the North West Provinces.[1] Probably the holdings were originally inalienable without the consent of the village community. This consent would, according to ordinary experience in such cases, tend to become a tacit consent or absence of objection if the instances of alienation were frequent. But if such instances were rare, the necessity for any consent, except a tacit consent or absence of objection, would grow to be ignored from mere lapse of time. And we find that there was little left to the cultivators beyond a bare subsistence after paying the Government revenue, and that there was very little to sell in consequence:[2] and that there was no competition for land at that period.[3] Hence it probably happened that there were few occasions for sale or voluntary transfer; but that by lapse of time the original condition of transfer, which required the consent of the village community, had ceased to be considered binding. We know that the principle of these communities had become very much weakened, and that in some places the existence of such communities was almost unknown at the British accession:[4] and in the gradual decay of these institutions, the veto on alienation would be set at

[1] Evidence of Colonel Briggs before the Select Committee of the House of Lords (1830), 4078. Evidence before Select Committee of House of Commons (1832) of Lieut.-Col. Barnewall, 1744. Compare Directions for Revenue Officers, 63.

[2] Whinfield's Landlord and Tenant, 17. Campbell's Cobden Club Essay, 170.

[3] Great Rent Case, B. L. R., Supp. Vol., 253, 279, 295, 296. Campbell's Cobden Club Essay, 164. Compare Directions for Revenue Officers, 41.

[4] See India by R. Rickards, Esq., 2 vols. (London: Smith, Elder & Co., 1828), Vol. I, 587; Vol. II, 285, 289, 290, 291.

nought as occasions and opportunities of transfer became more frequent. We may therefore conclude that these cultivators held a permanent, hereditary, and although originally an inalienable, yet probably subsequently a transferable, interest in the land.

Rates paid by them.

They paid the customary rate, which could not be raised: and in some parts when the assessment was once fixed, custom prohibited a measurement of the land with a view to surcharging the Khoodkashts.[1] But while they had a right to cultivate on these terms, they were also bound to cultivate and pay the assessment: failure in either of these conditions involved forfeiture, a penalty which, as may be supposed in the scarcity of cultivators, was generally waived for an increased payment.[2] And besides being bound to keep up the cultivation to the full extent, they were bound to cultivate in the customary way.[3] They paid a higher rate of revenue than other cultivators in former times;[4] but from the changed state of things under British rule this is reversed. There is now some competition by the cultivators for land, and not as formerly merely a competition for cultivators.[5] I shall have occasion to refer to this very significant fact again when I come to discuss the nature of the proprietary rights of the holders of the various interests in the land. The khoodkashts then, in consequence of the change referred to, came in later times to pay lower rates than the other cultivators,[6] but in the Hindoo period they paid higher rates.

Paid a higher rate than other cultivators formerly.

[1] Fifth Report, Vol. I, 165.

[2] Fifth Report, Vol. II, 303, 456.

[3] Fifth Report, Vol. I, 164. Directions for Revenue Officers, 274.

[4] Campbell's Cobden Club Essay, 157. Orissa, Vol. II, 242. Fifth Report, Vol. I, 140.

[5] Campbell's Cobden Club Essay, 164. Directions for Revenue Officers, 41. The Great Rent Case, B. L. R., Supp. Vol., 253, 279, 295, 296.

[6] The Great Rent Case, B. L. R., Supp. Vol., 220.

LECTURE I.

Their privileges.

On the other hand the khoodkashts enjoyed various privileges arising out of their position as the original settlers of the village. They had a preference in the choice of land when any came to be allotted, and no doubt they always occupied the most central and most easily cultivated land. They were at liberty to dig wells upon their land and let out the water;[1] a privilege considered in India to indicate a high kind of proprietary right, and guarded with jealousy. They also received *russooms* or fees (called also *marahs* in the northern Circars) from the other cultivators.[2] Some had a right to the services of the servile labourers, who were attached to the community as before-mentioned, or to an allowance of one-eighth of the crop deducted from their assessment in lieu of such services.[3] In some places they had allotments of land for which no revenue was paid.[4] Thus in the Jageer they held allotments of this kind called *maniums*, which were held in common, free of revenue, by all the meerassadars of the village.[5] Again in Cuttack the *thani* ryots had the ground on which their houses were built free of revenue, together with a small portion of land surrounding them called *khana bari* and *khush bash*.[6] In some parts of the country there was a periodical redistribution of the lands among this class,[7] a relic of the times when the lands were considered common: for we find the same feature in the Euro-

[1] Land Tenure by a Civilian, 80. Directions for Revenue Officers, 5.

[2] Fifth Report, Vol. II, 41, 42, 299, 301. Land Tenure by a Civilian, 80. Directions for Revenue Officers, 5.

[3] Land Tenure by a Civilian, 78, 80.

[4] Fifth Report, Vol. II, 41.

[5] Fifth Report, Vol. II, 305.

[6] Whinfield's Landlord and Tenant, 17.

[7] Fifth Report, Vol. II, 85, 485.

pean village communities. The right of this class of cultivators was so strong that even if they abandoned their holdings or lost them by not keeping up the cultivation or by failing to pay the revenue, they or their descendants could at any distance of time reclaim them on paying a sufficient compensation to the holder.[1] They enjoyed also, probably in common with the other permanent cultivators, the use of the productions of the waste for the construction and repair of their houses and implements of husbandry, and had the right of pasturing their cattle upon the unoccupied lands of the village.[2] These rights were similar to the rights of common in England. From the description I have given of the position of this class of ryots I think it clearly appears that they had proprietary rights of a very complete kind; but they do not seem to have been of that unlimited kind which we understand by a fee-simple.

The second class of cultivators.

The next class of ryots very nearly approach the position of the khoodkashts and are sometimes ranked with them. There are however some differences which mark the distinction between the original settlers and those afterwards admitted to form part of the permanent village community.

The cultivators of this class are generally included in the class called *pykasht* (cultivating in another village than their own), but sometimes the term *pykasht* is restricted to those strictly so, the mere sojourners in the village, or those who living in another village cultivate land in the village with respect to which they are reckoned *pykashts*. This second class of cultivators was also called *chupper-*

[1] Land Tenure by a Civilian, 82. Fifth Report, Vol. II, 87, 496; compare the *nair mul guenies* of Malabar and Canara, Fifth Report, Vol. II, 77, 78, 456, 467, 468, 472, 473, 481.

[2] Whinfield's Landlord and Tenant, 17.

LECTURE I.

Their rights in the land.

bund or *judeed*, names specially applied to immigrants who have permanently settled in the village to which they have emigrated.[1] The passage from Sir George Campbell's essay referred to above seems to apply more especially to these cultivators; their right to a permanent interest in the soil, which nearly approaches that of the khoodkashts, depends upon their having settled as permanent inhabitants in the village, building and clearing and establishing themselves as members of the village community ready to undertake a share in the responsibilities attaching to that position.[2] It does not depend on the length of time they have occupied, except that the disposition to become permanent settlers could hardly be satisfactorily proved without some length of possession. Accordingly those who had settled in the village for more than one generation were generally considered to have sufficiently shown their intention, and such settlers became recognised as chupperbund cultivators.[3] They appear to have come in originally to cultivate land abandoned by the khoodkashts, to whom they paid *russooms* or fees,[4] and to whom they were bound to surrender their holdings when required; but they were entitled to a proper compensation for the loss of them.[5] They were called *pyacarries* and *ool paracoodies* in the Northern Circars and the South of India generally.[6]

What occupation sufficient.

---

[1] Whinfield's Landlord and Tenant, 17.

[2] Campbell's Cobden Club Essay, 165. Directions for Revenue Officers, 65.

[3] Robinson's Land Revenue, 15, 41. Great Rent Case, B. L. R., Supp. Vol., 300.

[4] Fifth Report, Vol. II, 41, 42, 87, 301, 308, 490 to 493. Campbell's Cobden Club Essay, 161, 162. Land Tenure by a Civilian, 81, 82.

[5] Land Tenure by a Civilian, 82. Fifth Report, Vol. II, 87, 456, 496.

[6] Fifth Report, Vol. II, 41, 42, 87, 308, 491 to 493.

Uninterrupted occupation and succession gave them a prescriptive right to occupy, but there is no instance of sale of their holdings; they were in fact conditional occupants and had not so complete a right as the khoodkashts.[1] They could be dispossessed for default in payment of the assessment or for not keeping up the full extent of cultivation; but they could not reclaim their holdings as the khoodkashts could.[2] They had no share in the management of the village or in the privileges of the khoodkashts.[3] The right of the *pyacarries* of the Northern Circars is said to be a sort of life estate;[4] but the right of this class appears to have grown to be an hereditary although inalienable right to occupy, paying the fixed assessment.[5] That assessment was slightly lower in former times than that of the khoodkashts, but higher than that of the mere pyekashts. They received 45 per cent. of the crop as their share, instead of 50 per cent. which was the proportion the ordinary pyekashts received. Out of their share they had to pay fees to the khoodkashts.[6]

Less complete rights than khoodkashts.

Assessment upon them.

It is clear that this class of cultivators had a less complete proprietary right than the first class, but still

---

[1] Directions for Revenue Officers, 63. Evidence of Col. Briggs before the Select Committee of the House of Lords (1830), 4078, and of Lieut. Col. Barnewall before the Select Committee of the House of Commons (1832), 1744.

[2] Campbell's Cobden Club Essay, 162. Fifth Report, Vol. II, 301. Directions for Revenue Officers, 62, 63, 65.

[3] Campbell's Cobden Club Essay, 161, 162. Land Tenure by a Civilian, 81, 82.

[4] Fifth Report, Vol. II, 41, 42, 87, 308, 491 to 493.

[5] Fifth Report, Vol. II, 301. Directions for Revenue Officers, 63. Evidence of Col. Briggs and Lieut. Col. Barnewall before cited.

[6] Fifth Report, Vol. II, 301.

LECTURE I.

they had a permanent hereditary proprietary right. This however was inalienable, and was otherwise subject to limitations and burdens from which the khoodkashts were exempt, and did not so completely incorporate them with the khoodkashts as to entitle them to the same position in the village.

The mere pyekashts.

The third class is that of the strict pyekashts who came from another village, usually a neighbouring one, to cultivate the lands of the village which the khoodkashts were unable to cultivate.[1] They were called *pyacarries*, common *paracoodies*, and *oopurees* in different parts of India.[2] They were mere tenants-at-will or more usually from year to year, but sometimes for fixed periods. They had to be attracted by favourable terms, since the competition formerly was for cultivators, and hence they got half the produce. They paid fees to the khoodkashts.[3] They were mere sojourners in the village or cultivated while living in neighbouring villages.[4] This class of cultivators, although they had no proprietary right, could not be ousted

Rates paid by them.

Precarious nature of their rights.

[1] Evidence of Col. Briggs and Lieut.-Col. Barnewall before cited. Directions for Revenue Officers, 63. Fifth Report, Vol. II, 308. Whinfield's Landlord and Tenant, 16. Robinson's Land Tenures, 15.

[2] Fifth Report, Vol. II, 87. Steele's Deccan Castes, 207.

[3] Land Tenure by a Civilian, 81. Colebrooke's Husbandry and Commerce in Bengal (Calcutta, 1804), 64. Campbell's Cobden Club Essay, 157. Orissa, Vol. II, 206, 245. Fifth Report, Vol. I, 164; Vol. II, 8, 41, 308, 490, 494. Harington's Analysis, Vol. II, 64. Harington's Analysis, Vol. III, 353. Whinfield's Landlord and Tenant, 16. Robinson's Land Tenures, 15. Thomason's Selections, 478. Directions for Revenue Officers, 61, 62, 64, 65. Evidence of Mr. H. Mackenzie before the Select Committee of the House of Commons (1832), 2572.

[4] Fifth Report, Vol. II, 41, 42, 87, 308, 491 to 493. Campbell's Cobden Club Essay, 165. Directions for Revenue Officers, 65.

between sowing and harvest.[1] They had of course no voice in the government of the village community, and altogether their interest was of an uncertain and precarious description.[2] Such rights were left to be settled by contract, and were hardly allowed to come under the higher protection of custom, which regulated all the more important and permanent interests.

The village constitution.

I pass now to the official constitution of the village corporation, so far as it is necessary to dwell upon it. I have already mentioned that the village was a corporation managing its own internal affairs. It was ruled by a Council of Elders, originally called a punchayet from the number of its members, and was presided over and represented in its fiscal and many of its other relations by its headman. With the village Council we have little concern; but the headman will require some fuller notice. Before however describing the position of the headman, I will give such further details as to the village officers and constitution as seem requisite.

The village officers.

The village was supplied with certain hereditary officers, whose number varied, but in the typical villages there appear to have been twelve (called *ayagandras*, in some parts of the Madras Presidency and *barah bullooteh* in the Deccan).[3] The headman was one of the twelve. The

[1] Land Tenure by a Civilian, 82.

[2] Evidence of Col. Briggs and Lieut.-Col. Barnewall above cited. Compare the labourers of the Pullee caste in the Brahmin villages in the south of India (Fifth Report, Vol. II, 302), and the ryots of Dindigul (Fifth Report, Vol. II, 494).

[3] In some villages more and in some fewer than those mentioned. Fifth Report Vol. II, 577. Evidence of Col. Sykes before the House of Commons' Select Committee (1832), 2173.

LECTURE I.

others were (1), the *Curnum, Shamboug* or *Putwaree,* the village registrar: (2), the *Paliary, Schulwar* or *Tulliar,* who inquired into crimes and escorted travellers from village to village: (3), the *Potee* or *Totie* who watched the crops. He was also known as the *Pausban, Gorayet, Hawuldar* or *Shaeenar*:[1] (4), the *Neerguntee* or *Nurguaty,* the distributer of water: (5), the *Jotishee* or *Joshee,* the astrologer who announces the season for seed time and harvest and notifies lucky and unlucky days: (6), the blacksmith: (7), the carpenter: (8), the potter: (9), the washerman: (10), the barber: (11), the silversmith. All these officials were paid by a share of the produce,[2] which was called their *russoom* or *marah.*[3] Their share of the grain crop was taken from the threshing floor before that of either king or cultivator was removed. They also received money fees.[4] In some parts they are said to have had an allotment of land free of revenue or at low rates instead of other remuneration, or at least instead of the money payments. This is said to have been the case in Bengal chiefly, and was probably restricted to the cases in which there was a service to the

Mode of payment.

[1] Fifth Report, Vol. I, 18; Vol. II, 13. Land Tenure by a Civilian, 77. Directions for Revenue Officers, 184.

[2] Wilks's South of India, p. 117, cited in Rickards's India, Vol. II, Appendix I, 60. Fifth Report, Vol. II, 13, 14, 75, 76, 91, 353, 471, 575, 698. Steele's Deccan Castes, 207. Orissa, Vol. II, 221. Land Tenure by a Civilian, 69, 84, 85. Evidence of Mr. Fortescue before the Select Committee of the House of Lords (1830), 405, 406, 528, 529. The Great Rent Case, B. L. R., Supp. Vol., 265. Ayeen Akbery (Gladwin's Translation, Calcutta, 1783) Vol. I, 358. Maine's Village Communities, 125, 126. Evidence of Col. Sykes before House of Commons' Select Committee (1832), 2173.

[3] Fifth Report, Vol. II, 14.

[4] Land Tenure by a Civilian, 84, 85. Fifth Report, Vol. II, 59, 571.

State as well as to the village.[1] In such cases the State might, instead of making money payment, or surrendering a share of its portion of the produce, remit the whole or a portion of the revenue on land held by its officer in the village, or assign the whole or a portion of the revenue on other lands. The pykes or police employed in collecting the Government share under the directions of the headman were paid in this way in Bengal. Lands so allotted were called chakeran or service lands in later times.[2] The same modes of paying the village officers were found to be in use in Java, the village communities of which are very similar to those of India, and are supposed to have been derived from Indian colonists.[3] These allotments of land were also rendered serviceable to the community; since they were usually situated on the village borders beyond the ordinary cultivation, and thus served to keep up a knowledge of the village boundaries.[4]

The servile labourers of the village.

The village was bound, besides rendering a share of the produce to the king, to supply a certain number of the servile labourers attached to the village for the king's service, or to pay the king an equivalent for such services. These labourers also received a share of grain from the threshing floor.[5] The village offices were most of them

[1] Fifth Report, Vol. I, 341; Vol. II, 12, 13, 89, 90, 95, 155, 307, 698, Whinfield's Landlord and Tenant, 34. Harington's Analysis, Vol. II 65, 235(n). Orissa, Vol. II, 216.

[2] Joykissen Mookerjee *v.* Collector of East Burdwan, 10 Moore's I. A., 16, at pp. 18, 43. Whinfield's Landlord and Tenant, 34. Evidence of Mr. Trant before the Select Committee of the House of Commons (1832), 2022.

[3] M. de Laveleye in the Revue des deux mondes, tome 100, p. 160.

[4] See the evidence of Col. Briggs before the Select Committee of the House of Lords (1830), 4155.

[5] Campbell's Cobden Club Essay, 158.

LECTURE I.

hereditary, but the holder could be dismissed by the community.[1]

The headman.

I come now to consider the position of the village headman; and in considering his functions we shall arrive at some understanding of the revenue system of the Hindoo governments, and of the relations between the king and the community. The headman bore various titles in different parts of the country. In Bengal he was known by the name of *Mokuddim* or *Mundul*, at least in Mahomedan times, and seems to have corresponded with the *gram adhiput* or superintendent of a village referred to in Menu:[2] other names were *Gond* or *Ganda*, *Potáil* and *Purdhan*. He was a partly elective, partly hereditary, officer; and combined the functions of head of the municipality with those of an officer and representative of the Government.[3] He was supposed to derive his right to the office through his descent from the founder of the village.[4] Whether the office was at first wholly elective is uncertain; but considering the strong tendency of all Hindoo offices to become hereditary, the office of headman probably had an hereditary element in

Partly elective and partly hereditary office.

[1] Mr. Fortescue's evidence before the House of Commons, Select Committee (1832), 2241 and 2245.

[2] Land Tenure by a Civilian, 19, 77.

[3] Campbell's Cobden Club Essay, 163. Fifth Report, Vol. II, 13, 157. Land Tenure by a Civilian, 76. Harington's Analysis, Vol. II, 67. Robinson's Land Tenure, 69. Orissa, Vol. II, 206, 221, 242, 249 to 251. Steele's Deccan Castes, 204. Evidence of Col. Briggs before the Select Committee of the House of Lords (1830), 4047, 4152. Evidence before the Select Committee of the House of Commons (1832), of Lieut.-Col. Barnewall, 1734, of Lieut.-Col. Sykes, 2173, of Mr. Fortescue, 2232, 2237, 2238, and of Mr. Holt Mackenzie, 2656.

[4] Fifth Report, Vol. I, 18. Orissa, Vol. II, 249 to 251.

very early times.[1] The village might elect; but if it did not the office generally went to the fittest member of the late headman's family, usually with some preference to seniority.[2] Sometimes however, at least in modern times, the members of the family discharged its functions in rotation; the head of the family receiving nevertheless a larger share of the emoluments:[3] thus there were sometimes found to be several munduls in a village.[4] There are instances of the sale of the office by the occupant; and also by the Government, on the dismissal or failure of heirs of the headman;[5] but in general the office could not be sold. The headman's tenure of office originally depended upon the approval of the village community, but later the zemindar sometimes nominated the headman.[6] The State had probably always had a veto upon his appointment; since he was an officer of the State, as well as the representative of the village, and the State could dismiss him at pleasure.[7] In this way the zemindar would come in some cases to assume the right of nominating as a superior representative of the Government; and in the decline of these communities the villagers would have no choice but to acquiesce. The hereditary element nevertheless continued

The State could dismiss.

[1] Campbell's Cobden Club Essay, 169, 226. Patton's Asiatic Monarchies, 81. Land Tenure, by a Civilian, 33, 76.

[2] See authorities in note (3) p. 26 ante.

[3] Land Tenure by a Civilian, 79. Steele's Deccan Castes, 205.

[4] Harington's Analysis, Vol. III, 350. Evidence of Mr. Fortescue before the Select Committee of the House of Lords (1830), 503.

[5] Land Tenure by a Civilian, 78. Mr. Fortescue's evidence ubi suprà, 397 to 400. Orissa, Vol. II, 249 to 251.

[6] Land Tenure by a Civilian, 75.

[7] *Ib.*, 33.

LECTURE I.

persistently to assert itself, even down to modern times, and in declining or decayed communities; and in most of the large talooks descendants of the headman continued to claim the right to exercise the office on a vacancy.[1]

In considering the headman's duties it is almost impossible to say positively whether they were his original functions, or whether they were the growth of Mahomedan times; but we may I think safely assume that they were mainly his original functions under the Hindoo system; since the office was then in its full vigour, and its functions and privileges would be likely to be diminished rather than increased. I shall not attempt to separate in my description his original functions from those subsequently assumed, since I am obliged to base my account of them upon comparatively modern descriptions; but I shall indicate as far as I can any change which may have taken place in his position.

His functions.

His most important functions, as far as we are concerned, were those of adjuster of the revenue on the village and of collector of the revenue. He arranged all the details of the assessment; ascertained the extent of each holding in the village; estimated the growing crop, and saw the threshed corn heaps weighed; and apportioned the revenue accordingly, either by estimate or by the actual out-turn. He also received the share which represented the revenue, and delivered it in kind to the superior revenue collector; or at a later period to the *malgoozar* or contractor for the revenue; or else handed it over for sale to the village weighman or to the *mahajun* (or village merchant), who bought the grain of the village

[1] Land Tenure by a Civilian, 79.

and advanced the amount of the revenue for payment in money.[1] The headman also settled the allowance to be made for injury to the crops near the pathways. He set the village watchmen to look after the crops, and to see that the cultivation was so conducted that the revenue might not suffer. He settled the share to be paid by each ryot towards the *deh khurcha* (or village expenses), and each ryot's share of the cost of watching the crops; and, in Mahomedan times, the amount of *abwab* or extra assessment that fell to each cultivator's share. He was bound to see that the *putwaree* or village accountant made the proper entries in his books. He was besides the village magistrate, and superintended the village police or *chowkeedars*.[2]

His emoluments.

The headman's duties were numerous and responsible; and his emoluments were in consequence considerable. He had a few beegahs of land, free of revenue, for a garden; and paid a lower rate for the rest of his lands than ordinary ryots.[3] He was allowed the services of one or more of the servile labourers of the village, and of their families; and $\frac{1}{7}$th or $\frac{1}{8}$th of his grain crop was set apart for their maintenance before his crop was assessed. Or if he did not require their labour, he was sometimes allowed the deduction instead. He got fees and dues (called *huks* in the Deccan) from the non-agricultural villagers; such as money for a dress and turban; oil and tobacco daily from the shops; a present on the marriage of

[1] Mr. Newnham's evidence before the Select Committee of the House of Commons (1832), 2765.

[2] Land Tenure by a Civilian, 32, 77. Harington's Analysis Vol. II, 67, 68. Fifth Report, Vol. II, 13, 352, 353. Robinson's Land Revenue, 55, 69. Orissa, Vol. II, 242. Directions for Revenue Officers, 4.

[3] Orissa, Vol. I, 60, 61; Vol. II, 253, 254.

LECTURE I.

any of the tenants-at-will (*oopurees* or *pyekashts*); fees from travellers, &c.[1] These were called *mohturfa*. His money dues amounted to about a penny in the acre in Orissa.[2] He had a right, prior to that the rest of the village, to water from the common wells or dams. He was entitled to any surplus of the *deh khurcha* (village fund) or watching fund. He was paid his expenses for food and travelling when employed on the village affairs. He was entitled to have his water and wood brought to him by the village servants, and even to the services of a shampooer.[3] These emoluments were in the Deccan included under the generic term *wuttun*.[4] I have mentioned that he paid less than the other cultivators for his own holding; this appears to have been his remuneration as a servant of the State; while his other emoluments were derived from the village, and were the payment of his services to the village. He paid from $\frac{3}{8}$th to $\frac{1}{4}$th of his grain crop (*nujkaree*) as revenue, while the other villagers paid higher rates; and he was charged from $\frac{1}{8}$th to $\frac{1}{3}$rd less than ordinary ryots for his other crops of a superior kind (*zubtee*).[5]

In Orissa villages.

The Kandh villages in Orissa were in like manner presided over by headmen, but owing to the loose organisation of those villages, their headmen had none of the power or privileges of the Hindoo village headman.[6] In the ancient German villages, which had an organisation something like

[1] Steele's Deccan Castes, 204, 205.

[2] Orissa, Vol. I, 60, 61; Vol. II, 253, 254.

[3] Land Tenure by a Civilian, 78, 80. Orissa, Vol. I, 60, 61. Fifth Report, Vol. II, 13, 76. Steele's Deccan Castes, 204, 205. See Menu, ch. VII, sl. 119.

[4] Robinson's Land Revenue, 69. Steele's Deccan Castes, 204.

[5] Land Tenure by a Civilian 80.

[6] Orissa, Vol. II, 209, 210.

that of the Hindoo villages, the chief had a larger or better allotment of land as his remuneration.[1]

Dismissal.

Although the headman had the strength of hereditary claims to support him, his office was not a freehold. He could be dismissed by the State; and then his services to the village being rendered useless, his emoluments ceased: but of course he retained his own lands, paying the ordinary revenue for them. He could not however be dismissed by the State except for failure to make good the revenue assessed upon the village,[2] and for the due payment of which he was responsible. In fact, he was in something like the same position as the zemindars subsequently, except that he was in some sort elected by the village subject to the sanction of the State, and not appointed by the State. He might however have advanced claims to be considered the absolute proprietor upon almost as good grounds as have been advanced by or rather for the zemindars; but in truth he was a mere official originally; having nevertheless land which he cultivated himself within the limits of his jurisdiction, just as the zemindars afterwards had. The position and emoluments of the zemindars seem to have been an extension of those of the headman: many of the headmen became zemindars, and their rights as headmen were combined with and merged in their claims as zemindars.[3]

Mode of assessment of revenue.

We have seen that the assessment of revenue was upon the individual cultivator; but the headman and the entire village were responsible for its payment. The cultivator was dealt with individually, but as a member of the village

[1] M. de Laveleye in the Revue des Deux Mondes, tome 100, p. 511.

[2] Land Tenure by a Civilian, 33, 79.

[3] Land Tenure by a Civilian, 33, 76. Thomason's Selections, 18.

LECTURE I.

and through the headman:[1] and so strong was the custom of having the assessment settled with reference to the village usages, and to the position of the individual as a member of the village, that in the Madras presidency some villages were found where the individual cultivators had been assessed direct by the Government for half a century, but had always redistributed the assessment amongst themselves according to their own usages.[2] The same thing also happened in Java, where, as I have mentioned, the village system is derived from India.[3] The headman made over the revenue either direct to the superior representative of the Government, or indirectly through a talookdar or zemindar; the latter chiefly in Mahomedan times. When he paid the revenue direct he was called in Mahomedan times an *kuzooree* or *kharij* malgoozar; but if he paid through a talookdar or zemindar, he was called a *muzkooree* (dependent), *shikmi, mofussil* or *shamili* malgoozar.[4] The word *muzkooree* is now however sometimes applied in the opposite sense to direct paying malgoozars in the *Surbarakari* and *Mocuddumy* holdings in Cuttack, while *zati* is used for the dependent tenures.[5]

Mode of payment.

When headman refused to agree to assessment.

If the headman refused, on the part of the village, to agree to the amount of assessment required by the

[1] Orissa, Vol. II, 166. Evidence before the House of Commons, Select Committee (1832) of Mr. Sullivan, 12 and 13; and of Mr. Fortescue, 2237, 2238. Directions for Revenue Officers, 4.

[2] Campbell's Cobden Club Essay, 197. Mr. Fortescue's evidence before the Select Committee of the House of Lords (1830), 402, 404. Fifth Report, Vol. II, 41.

[3] M. de Laveleye in the Revue des Deux Mondes, tome 100, p. 160.

[4] Land Tenure by a Civilian, 45, 61. Whinfield's Landlord and Tenant, 5. Harington's Analysis, Vol. II, 62.

[5] Whinfield's Landlord and Tenant, 5. Harington's Analysis, Vol. II, 62.

officers of Government, the settlement was sometimes made with the cultivators direct;[1] or the revenue was farmed in *theka* (farm) or *ijarah* (lease) for a year or sometimes for a term of three or even five years;[2] and the headman was assessed for the lands cultivated by him like the rest of the villagers.[3]

Headman not a farmer of the revenue.

The headman was not generally a farmer of the revenue, or a contractor for it like the Mahomedan zemindars. In settling the amount to be charged to the village he acted chiefly in the interests of the village; and when the amount was settled, he collected that amount in money or kind from the villagers chiefly in his capacity of revenue officer. He was responsible for its collection; but does not appear to have been so otherwise than as a representative at once of the Government and the village. The assessment, as I have said, was upon the cultivators individually; but the whole village, and the headman as its representative, was responsible for its collection. Probably in still earlier times when the village may have been the political and fiscal unit,[4] the assessment may have been simply upon the village in a single sum, as was the practice since the British rule in the South of India. The various rates paid by the various classes of ryots would seem to point to a time when the village was assessed in a single sum, and the distribution of that sum amongst the ryots was made by the village and was a matter of indifference to the State. Afterwards, when the State came into more direct relations

But he and the village responsible.

[1] Directions for Revenue Officers, 4, 173. Fifth Report, Vol. II, 353, 575.

[2] Land Tenure by a Civilian, 60.

[3] Ib.

[4] See Freeman's Growth of the English Constitution (London: Macmillan & Co., 1872), pp. 9, 10.

LECTURE I.

Assessment upon the individual cultivator.

with the cultivators, the assessment would still follow the established usages, and would become an assessment of the individual through the headman of the village, and with reference to the position of the individual in the village. As early as the time of Menu, the individual appears to have been recognised in connexion with the revenue. On this subject the following extract from the Fifth Report is deserving of attention:—"It is represented by the Board of Revenue, in their report in favour of the village system of rent, that it was at least as old as the age of Menu; but if by this be meant that such a mode of settlement was in conformity to the general and settled practice of the Hindoo Governments, the fact appears to be at variance with such information as the Committee have been able to collect in their enquiries upon that subject. The usual course pursued by them for the realization of their territorial revenue appears to have been to collect it from those having an interest in the cultivation of the soil, either in proprietary right or as tenants, through the medium of their own officers. They may have farmed out the revenues of a whole village or more to the head inhabitants on terms of specific contract; but when this occurred this Committee believe it to have been a deviation from the general rule. In the latter periods of the Mahomedan dominion the system of farming the revenues by degrees came into very general use; and to this, it is believed, may be traced the origin of most of the zemindars in the Bengal provinces and in the Northern Circars. They were, as it is now pretty clearly ascertained, in general no other than the revenue servants of districts or sub-divisions of a province; who, as the Committee have formerly explained, were obliged by the conditions on

which they held their office to account for the collections they made, or the share of the crop they received from the ryots, to the governing power in whose service they were employed; and for which service they were in the enjoyment of certain remuneratory advantages, regulated on the principle of a percentage or commission on the revenues within the limits of their local charge; but having, in the process of time and during periods of revolution or of weakness in the sovereign authority, acquired an influence and ascendancy which it was difficult to keep within the confines of official duty, it was found convenient to treat with them as contractors for the revenues of their respective districts; that is, they were allowed, on stipulating to pay the State a certain sum for such advantage for a given period, to appropriate the revenues to their own use and profit: the amount of the sum for which they engaged depended on the relative strength or weakness of the parties; the ability of the government to enforce or of the zemindar to resist. In this situation of things, the practice of sub-renting naturally ensued; and the detail of the farming system would extend itself to several villages. In the Carnatic territory, where large tracts were leased by the Nabob Mahomed Ally to individuals for a greater or lesser number of years under engagements entered into at the seat of his residency, it was found, on that territory being annexed to the British possessions, that the revenues of each village were generally sub-rented to the potails. But in the districts ceded by the Nizam, and in the Mysore country, which also passed from the rule of Mahomedan Princes to that of the East India Company, sub-renting by villages was by no means universal; though it existed to a considerable extent. Whole districts were still under ryot-

LECTURE I.

war rents; rents not farmed to the potails of villages, but which were collected by the potails in the name and for the use of Government, in their natural and constitutional character, as the agents or superintendents of the villages to which they belonged, agreeably to the ancient practice of the Hindoos; and as your Committee may add, according to the institutions of their native rulers; for, according to those institutions as they have been explained in a foregoing part of this Report, the potail, in the character abovementioned, and also the curnum or village accountant, has, from the earliest times, been in the possession of a rent-free portion of land, and in the enjoyment of regular and established perquisites attached to their offices."[1] I shall dwell upon the growth of the zemindars, which is referred to in the above passage when I come to deal with the Mahomedan period.

Headman long recognised.

The headmen retained their position under Hindoo rule; but the Mahomedans ejected many of them, giving them however an allowance.[2] Even under British rule the settlements were made and revenue collected through the headman as we have seen; this was also done in the Havellies, and substantially the same course was followed in the jageer.[3]

The putwarry and canoongoe.

There are two other officers whose functions are important, both in connexion with the village and the general administration of the revenue,—the putwarry, or village registrar and accountant, and the canoongoe or pergunnah registrar; but, as these offices were not superseded during the Mahomedan rule to the same extent as the headman's,

[1] Fifth Report, Vol. II, 113, 114.

[2] Land Tenure by a Civilian, 60, 61.

[3] Fifth Report, Vol. II, 32, 43.

I shall give some account of them in describing the Mahomedan land system. Again there were the rudiments of the zemindar in the Hindoo system;[1] but this too will be more conveniently dealt with in the Mahomedan system. It remains to notice the machinery for revenue collection above the headman. The officer to whom the headmen paid the revenue, when they paid it direct, was the fiscal head of the pergunnah or *bisi*, a division consisting of a number of villages (*gaong* or *gram* = *mouzah*). He was called a *Chowdhry, Bissoi, Khand-adipati* or *Desmookh*; and, with the assistance of a military force of *khandaits* or pykes under a military commander, preserved the peace and collected the revenue of the pergunnah and transmitted it to the treasury.[2] He retained ten per cent. of the collections as his remuneration; but was frequently paid by an assignment of the revenue of a certain portion of land.[3] Such assignments are known as *jageers*. The zemindars of Mahomedan times grew in many cases out of the Hindoo chowdhries.[4]

The zemindar.

The chowdhry.

The king's share, with the collection of which the Chowdhry was ultimately charged, was generally paid in kind, but sometimes in money, especially in the case of garden ground.[5] As we have seen this share theoretically varied from one-eighth to one-twelfth, and might be as much as one-fourth.[6] With regard to the proportion taken in practice, there is consider-

The amount of the king's share.

[1] Patton's Asiatic Monarchies, 166. Fifth Report, Vol. II, 7.

[2] Patton's Asiatic Monarchies, 79. Orissa, Vol. II, 216.

[3] Patton's Asiatic Monarchies, 81.

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

[5] Land Tenure by a Civilian, 21. Fifth Report, Vol. II, 8, 9, 41, 59.

[6] Great Rent Case, B. L. R., Sup. Vol., 209. Land Tenure by a Civilian, 128.

LECTURE I.

able difference of opinion. Sir George Campbell says the king took from one-tenth to one-eighth of the gross produce.[1] Mr. Shore and other authorities say one-sixth:[2] others again say something less than one-fourth of the gross produce:[3] and Sir Thomas Munro puts it as high as from two-fifths to three-fifths.[4] Again it is said the cultivator got half the paddy produce, or grain in the husk, and two-thirds of the dry grain crop watered by artificial means; this was after all deductions for village officers were made,—the net crop.[5] The assessment remained almost fixed; in Canara it is said to have remained fixed for two centuries and a half, and not to have increased more than ten per cent. during another half century.[6] And in Bijanuggur, the Rajah Hurryhur Roy, between 1334 and 1347, made a new assessment of Canara professedly on the principles of the shasters. This scheme assumed the produce to be twelve times the seed, and therefore that $2\frac{1}{2}$ katties of seed produced 30 katties of paddy, which was thus divided: to the State, $7\frac{1}{2}$ katties or one-fourth; to the cultivator, 15 katties or half; and to the zemindar, $7\frac{1}{2}$ katties or one-fourth. The State share was again sub-divided so as to leave the State 5 katties or one-sixth, the dewustan or religious endowments 1 kattie, and the Brahmins or Bremhaday $1\frac{1}{2}$ katties. The cultivator, according to this scheme, got half and the State only one-sixth; and another account says that up to the middle of the fourteenth century,

[1] Campbell's Cobden Club Essay, 155. See Orissa, Vol. I, 32 to 35.

[2] Harington's Analysis, Vol. III, 230. Ayeen Akbery, Vol. I, 347, 348. Whinfield's Landlord and Tenant, 74, note *(a)*. Hiouen Thsang in Elphinstone's History of India, 5th Edition, p. 298.

[3] Fifth Report, Vol. II, 79, 83, 456.

[4] Robinson's Land Revenue, 17. Orissa, Vol. II, 166.

[5] Fifth Report, Vol. II, 8.

[6] Fifth Report, Vol. II, 79, 83, 456.

that is apparently up to the period of these changes, land in Canara was assessed at as much paddy as was equal to the quantity of seed sown, which would, according to the above theory as to the yield, make the State share only one-twelfth of the gross produce. This was paid in money or kind at the option of the State. The king also, as we have seen, had the services of a certain number of servile labourers or received an equivalent allowance. Out of the king's share the revenue establishments had to be paid.

Proprietary rights.

We have now seen what were the main features of the Hindoo land system. We find substantially two parties primarily interested in the land as far as its produce is concerned. These are the king and the cultivator, and there are no independent intermediate interests, although we find also a number of officers interested in the crop, whether on the part of the village or of the king. On the part of the king were the officers of revenue, and the civil and military establishments, which were frequently provided for by assignments of revenue. But we see nothing approaching a proprietor in the English sense, and very little of the relation of landlord and tenant. This however is a point I shall discuss again hereafter.

LECTURE II.

THE MAHOMEDAN PERIOD.

The transition from the Hindoo to the Mahomedan period not a sudden one—The Mahomedan invaders of India—Their system non-hereditary—The Hindoo system hereditary—Struggle between the two systems—The Mahomedan system a centralised one—The Mahomedan land theory—The Khiraj—The Ooshr—The Sowad of Irak—Proprietary rights according to Mahomedan law—The two kinds of khiraj—Implied ownership in different persons—Resemblance of wuzeefa khiraj to the tax paid by the khoodkashts—Extent of proprietary right—Power of alienation—Amount of khiraj—Remission of khiraj—Mode of enforcing payment—Procedure when cultivator made default—Waste land—Similarity between Mahomedan and Hindoo systems—The Mahomedans continued the Hindoo system—The khiraj not formerly imposed—Attempted changes—Proprietary rights not disturbed—Proprietary rights gradually affected by the Mahomedan system—The revenue machinery—The headman—The origin of the zemindar—The village community—Summary—The Crory—Influence of Mahomedan and English ideas—The zemindar—Descent of a zemindary and talook—Jageerdars—Ala-ood-deen's attempt to curb the zemindars.

The transition from the Hindoo to the Mahomedan period not a sudden one.

WE come now to consider the Mahomedan period, and the changes introduced during that period. And here we must remember that there is no clear line of division between the Hindoo and Mahomedan times:—the two periods overlap each other. The first incursions of the Arabs, indeed, seem to have left no trace; but the great tide of invasion, which ultimately swept over the greater part of India, began as early as the eleventh century of our era. However the conquest of the whole country was never completed, although for short periods there may have been practically no other ruling power in India. There is therefore no precise period at which we can say that the Mahomedans had conquered the country, and had to consider what laws they would impose, and what

system of government they would introduce. Probably each conquest, as it was made, was felt to be precarious, as indeed it was proved in many cases to be; and the conquerors would be glad to govern through the established agencies, and to be content with a tribute, or with collecting the revenue as it had theretofore been collected. The Mahomedan law indeed speaks of the conquering Imam's option to leave the conquered inhabitants in possession of their lands, or to eject them: but this was an option which could only be exercised upon a much more sweeping success than that of the Mussulman invaders of India; a success such as those invaders had perhaps been accustomed to attain in their conflicts with the uncivilised races of the desert, but which they could not hope for in India.

The Mahomedan invaders of India.

The invaders of India were Mahomedans of the Hanifite sect, and the law peculiar to them is chiefly to be found in the Futwa Alumgiri, which purport to be decisions of Alumgir or Arungzebe. And in this work, together with the Hedayah and other treatises, we find some light thrown, not indeed upon the Indian land system, but upon the principles which the Mahomedans applied in their land system for conquered countries, when the conquest was sufficiently complete to enable them to do so. In other cases they were content with a tribute. It would be beyond our present scope to dwell upon the general characteristics of the Mahomedan invaders, and their general system of government; but one important point must be noticed. It appears to be pretty certain that the Mahomedan system of government was throughout a non-hereditary system; while the Hindoo system was essentially hereditary. Sir George Campbell says:—"The Mahomedan system is quite

Their system non-hereditary.

LECTURE II.

non-hereditary,—I may say anti-hereditary."[1] On the other hand, the Hindoo system was a distinct contrast in this respect in all its grades, from the hereditary rajah to the hereditary village dancing girl.[2] And so we find that while the Hindoo officers succeeded to their office simply by descent, or by the mixture of descent and election which, as we have seen, sometimes prevailed, yet this established hereditary right was not sufficient in Mahomedan times without some recognition by the State. One result of this difference between the two systems appears to have been that a long struggle between the opposing principles took place; the Hindoos clinging to the hereditary principle, and the Mahomedans seeking to cut it down as much as possible; and where it proved too strong for them, insisting at least upon the formal recognition of the principle of choice; for instance by requiring the acceptance of a sunnud and the payment of fees on succession in many cases. A system of government which was opposed to hereditary offices would naturally tend to become, if it was not originally, a highly centralised government; in this again presenting a marked contrast to the Hindoo system with its village communities. In this respect also there seems to have been a struggle between the two opposite principles; and the village communities ceased to develop and tended to decay under Mahomedan rule. We shall, as we proceed, see traces of the struggles above referred to; especially in the proceedings of Jaffier Khan. But before noticing the course actually pursued by the Mahomedans with regard to the land, it will be useful to see what their theory was.

The Hindoo system hereditary.

Struggle between the two systems.

The Mahomedan system a centralised one.

The Mahomedan land theory.

[1] Cobden Club Essay, 152.

[2] Patton's Asiatic Monarchies, 81. Campbell's Cobden Club Essay, 169, 226.

That theory is somewhat complicated; but I shall dwell, as far as possible, only upon that part of it which is more directly applicable to India.

The Khiraj.

When the inhabitants of a country conquered by the Mahomedans were left in the enjoyment of their own land, a tax called the *khiraj* was to be imposed upon them.

The Ooshr.

There was another form of the land-tax for Mussulmans: this was called the *ooshr*, and could only be imposed upon believers. The *ooshr* was of course a lighter tax, being only imposed on land actually productive and in respect of the actual produce; while the *khiraj* was imposed on all land capable of production, whether actually made productive or not.[1]

The Sowad of Irak.

The Sowad of Irak appears to have been the typical khiraj land.[2] The khiraj was there imposed by Omar. But a tax of the same kind as the khiraj had been before levied there under the Persian rulers of the country: this was based upon a division of the produce between the sovereign and the cultivator. Cobad, one of the Persian sovereigns of the Sowad, considering this method an oppressive one, contemplated a measurement of all the arable land of his empire, but died before he could carry out his intention. The scheme, upon which he appears to have begun to act, was however carried to completion by his son Noorshevan,[3] who imposed a fixed rate in grain or grain and money as the khiraj:[4] this was apparently equivalent to one-third of the produce, and was assessed on the jureeb or beegah.[5]

---

[1] Baillie's Land Tax. Ayeen Akbery, Vol. I, 349, 350.
[2] Baillie's Land Tax, xiv.
[3] Baillie's Land Tax, xvii. Ayeen Akbery, Vol. I, 347.
[4] Baillie's Land Tax, xvii. Ayeen Akbery, Vol. I, 347, 348.
[5] Baillie's Land Tax, xxix. Ayeen Akbery, Vol. I, 350.

LECTURE II.

In fact the Persian sovereigns of the Sowad seem originally to have considered that something like a partnership existed in the produce between the sovereign and the cultivator, like the metayer system in some European countries.[1] A contract for such a division of the produce as was thus assumed to be implied in the relation of sovereign and cultivator was not unknown to Mahomedan law, and was called *mozaraut*. The analogy in the khiraj to such a contract depended upon the sovereign's taking a proportion of the actual produce; and according to that analogy the sovereign was the original proprietor of the land: that analogy however failed when a fixed rate was imposed, since in Mahomedan law the reservation of a fixed quantity, instead of a share, vitiated the contract of mozaraut. The sovereign would therefore, according to the Mahomedan theory, cease to be the proprietor of the land as soon as he commuted his right to a share of the produce for a fixed rate in money.[2] In the Sowad, as we shall see was the case in India, Omar in imposing the khiraj, in general adopted the rates which he found prevailing; but he increased the rate for some kinds of produce. Omar's proceedings appear to have been thenceforth considered a binding precedent for all cases to which they were applicable; but in cases for which they were not a proper precedent, the khiraj was imposed according to the circumstances of the case, being always a proportion of the produce or a fixed equivalent.[3] Where, however, Omar's assessment was binding, the rates fixed by him could not be increased: but it was generally considered that they might be reduced according to the

Proprietary rights according to Mahomedan law.

[1] Baillie's Land Tax, xvii.

[2] Ib.

[3] Baillie's Land Tax, xviii.

capacity of the lands.[1] The Sowad assessment does not seem to have been acted upon as a precedent in India, and probably for the reason that the conquest of India was gradually completed, and therefore the system to be introduced was determined much more by practical than by theoretical considerations.

The two kinds of khiraj.

We have seen that the khiraj was sometimes a proportion of the produce and sometimes a fixed money rate. These two methods of assessment came in time to be considered different in kind, and bore different names. The kind of khiraj which was a proportion of the produce was called *mookasumah*. The proportion taken was one-fifth or one-sixth of the actual crop. This class of tax was assimilated to the ooshr when it came to depend upon the actual crop and not on the capacity of the land. It failed, in consequence, when the land was uncultivated.[2] The other class of khiraj was called *wuzeefa* (something in obligation). The obligation to pay this class of khiraj was considered "a personal liability on account of a definite portion of land," depending on its capability and not on its actual produce; and it was therefore due so long as the land retained that capability, whether actually productive or not.[3] It retained therefore in this respect the characteristics of the original khiraj, and it was this feature of the original khiraj which was held to render it a peculiarly suitable tax for unbelievers. It was consequently the wuzeefa khiraj which was imposed on conquered unbelievers.[4]

[1] Baillie's Land Tax, xxi.
[2] Baillie's Land Tax, xviii. Ayeen Akbery, Vol. I, 350.
[3] Baillie's Land Tax, xix. Ayeen Akbery, Vol. I, 350.
[4] Baillie's Land Tax, xix.

LECTURE II.

Implied ownership in different persons.

As I have before mentioned, the sovereign was, in Mahomedan theory, considered the original proprietor of the land, so long as he received a share of the produce; but when this share was commuted into a fixed money rate, he ceased to be proprietor. I shall hereafter discuss the extent of proprietary right which was included in any of the recognised categories before British rule, but I use the term proprietor at present for the owner of such rights as were then in contemplation, whether rights to the soil or to the cultivation or produce of it. The point which at present I wish to make clear is, that, in Mahomedan theory, the two modes of assessment implied theoretically a different ownership; the one in the sovereign, or in the sovereign and cultivator jointly, the other in the cultivator. And in that theory a change in the mode of assessment, which was in some cases allowed by law, would involve a change of the theoretical ownership. Land which had been assessed with the one kind of khiraj was sometimes assessed with the other kind instead; and then it appears to have been considered by Mahomedan lawyers that the proprietary rights had been transferred by the change.[1]

Resemblance of wuzeefa khiraj to the tax paid by the khoodkashts.

The wuzeefa khiraj, depending upon the capability of the soil, and being independent of its actual cultivation, closely resembled in those respects the tax paid by the khoodkashts under the Hindoo system.[2] In fact the whole of the assessment in Hindoo times was of the same character; the pyekashts being less bound to the land and more disposed to abandon it under pressure; but being equally obliged while they held it to cultivate and pay the assess-

[1] Baillie's Land Tax, xxxiv.
[2] Baillie's Land Tax, xliii.

ment, which was not remitted when they held the land but did not choose to cultivate it.

Extent of proprietary right.

According to the Mahomedan theory, as I have before mentioned, the imposition of the wuzeefa khiraj recognized a proprietary right in the cultivator or taxpayer.[1] This right was however only "to the productive powers of the soil, without which the cultivator would not be able to meet his liability for the khiraj," but not necessarily to the soil itself and the minerals in it, or to the large right known as a fee-simple in England.[2] The right was nevertheless an alienable one: it is expressly declared in the Hedayah that the lands of the Sowad of Irak, on which the khiraj was imposed, were "the property of the inhabitants who might lawfully sell or otherwise dispose of them."[3] This is said of the khiraj lands generally, but is perhaps to be restricted to those subject to the wuzeefa khiraj, since that mode of assessment alone excludes the sovereign from a share in the produce, and renders the cultivator personally liable for the khiraj, whether he cultivates the land or not.[4] It is the liability to the wuzeefa khiraj which involves the personal burden, and which appears to carry with it the individual right to the exclusive occupation of the soil; the sovereign ceasing according to Mahomedan theory to be a partner with the cultivator thus assessed. Under such circumstances alienation would be more easily allowed than if the sovereign continued to be a sharer. It is obvious that when the rendering of the wuzeefa khiraj thus implied ownership, the rendering of it, even in a representative or

[1] Baillie's Land Tax, xx.
[2] Baillie's Land Tax, xliii.
[3] Baillie's Land Tax, xx.
[4] Land Tenure by a Civilian, 34, Appendix viii to x.

LECTURE II.

intermediate capacity and not as the actual cultivator, would tend to give a colour of ownership: and we may perhaps in this way partly explain the assumption of proprietary rights by the zemindars in later times.

Power of alienation.

Wuzeefa land, as I have said, was alienable: no permission was required from the sovereign:[1] it was thus the subject of a more absolute proprietary right than any which has at present came under our notice. The right to alienate was more limited in the case of mookasumah land: land of this class went to the heirs of the cultivator, but could not be sold or mortgaged without the permission of the sovereign:[2] and the sovereign himself was considered to have the right to make a grant of such land in some cases.[3]

Amount of khiraj.

The khiraj, being a conqueror's tax, was naturally a heavy one. The limit of it, whether wuzeefa or mookasumah, was half the gross produce.[4] With respect to its amount the imposition of the khiraj at its highest rate would have been a great change from the ordinary assessment of the Hindoo system: and probably for the reasons already referred to, the conquerors felt unable suddenly to insist upon the change; and in any case they do not appear at first to have increased the assessment much, if at all. But we shall see throughout Mahomedan times a constant struggle to increase the assessment, which was probably due in part to the high standard to which in theory the khiraj might be raised. This standard, in fact, appears at last to have been reached, if not exceeded. Whatever might

[1] Baillie's Land Tax, xxxv.
[2] Baillie's Land Tax, xxxiv, xxxv.
[3] Baillie's Land Tax, xxv.
Baillie's Land Tax, xxi. Harington's Analysis, Vol. III, 234.

be the amount of khiraj originally imposed, it could not, according to the strict model of Omar, be increased. If however it was not adjusted upon that model, it might be increased as was done in India; and in all cases it seems to have been lawful to reduce the rate, when from failure of crops the land was unable to bear the original rate.[1] The khiraj was also remitted when the land was overflowed by water, or when it was cut off from water, so that it could not be cultivated. Likewise, when the crop was destroyed by calamities, such as fire, excessive cold and the like.[2]

Remission of khiraj.

With regard to the mode of enforcing payment of the khiraj, there was also a distinction answering to the difference between the two classes of khiraj. The mookasumah khiraj was, at all events originally, paid in kind, like the Hindoo land-revenue. This mode was known in Hindoo times under the name *buttai* (or division)—a term which is still in use, and has outlived the term mookasumah, if that term was ever generally applied. In levying the khiraj by this method the State share was naturally taken before the crop was allowed to be removed.[3] The main precaution required under this system was careful watching; and hence in Hindoo times the watchman of the crops was a necessary officer of the village. The wuzeefa khiraj being, on the other hand, a personal liability, the defaulter could be sued for it and imprisoned; while for the mookasumah the only remedy was the hold upon the crop.[4] The cultivator could not

Mode of enforcing payment.

[1] Baillie's Land Tax, xxii.
[2] Baillie's Land Tax, xviii, xxix.
[3] Baillie's Land Tax, xxii, xlii.
[4] Baillie's Land Tax, xxii.

LECTURE II.

Procedure when cultivator made default.

be deprived of his land for not paying the khiraj.[1] This is laid down generally, and it appears to be put upon the ground that such a course would be a violation of proprietary right: the law must therefore have recognised some proprietary right in the cultivator even in the mookasumah lands. This would be in accordance with the general principle that when the conquered inhabitants were allowed to retain their lands subject to khiraj, such lands remained their property. The course prescribed in case the cultivator made default in payment of the khiraj, or if he abandoned the land, or left it uncultivated, was that the Imam should endeavour to let the land to another cultivator, allowing him half, one-third, or one-fourth of the produce; and handing over the residue after payment of khiraj to the owner. If this could not be done, he should give it in mozaraut (or partnership), the cultivator and the State sharing the produce; and after deducting the khiraj from the State share, the surplus was to be paid to the owner. If this course was also impracticable, the Imam should let the land to any one who would cultivate it and simply pay the khiraj. In default of all these methods the land might be sold, and the khiraj paid out of the proceeds: but the surplus must still be paid to the owner; and even if he had absconded must be kept for him, in case he should return.[2] In the persistent force both of the cultivator's right to the land and of his obligation to cultivate it and pay the tax, we find a strong resemblance to the position of the khoodkashts as they have come down to us from Hindoo times. How far this element in the observed phenomena is due to the influence of Mahomedan theory it is impossible to say:

[1] Baillie's Land Tax, xxiii, 14, 15. Land Tenure by a Civilian, 35, 36, 38.

[2] Baillie's Land Tax, xxiii. Land Tenure by a Civilian, 38.

as far as we can judge, these rights of the Hindoo khoodkashts appear to have been analogous to, but not derived from, Mahomedan practice; and it is very probable that such analogies led the Mahomedans to disturb what they found existing so little as they seem to have done.

Waste land.

There is only one more point in the Mahomedan theory to be mentioned; and that is with respect to waste land. Waste land was considered the property of the State, that is of the community at large.[1] It does not appear to have been considered the private property of the sovereign; or the property of the State in the same sense as the State share of the produce, which was at the absolute disposal of the State; but waste land seems to have been considered subject to the disposition of the sovereign for the benefit of the general body of the community.

There is, however, nothing to show that anything but the privilege of bringing the waste land into cultivation was contemplated when the waste was disposed of.[2] Whoever brought the waste into cultivation was considered as bringing it into life, as it is expressed in the Futwa Alumgiri. This could only be done, as I have said, with the Imam's permission; but when so authorised, the land brought into cultivation became the property of the cultivator.[3] In later times the power to sanction the cultivation of waste land was assumed by the zemindars,—at first as representatives of the State in their capacity as officers of State, but in course of time as a proprietary right. This, as we shall see, was one of the many rights gradually acquired by the zemindars as personal rights by a kind of usurpation.

[1] Land Tenure by a Civilian, 89.

[2] Baillie's Land Tax, xl.

[3] Baillie's Land Tax, lvi.

LECTURE II.

Similarity between Mahomedan and Hindoo systems.

It will be seen, from the description I have given of the Mahomedan theory, that there are many points of resemblance between the Mahomedan theory and the Hindoo practice; most of these points of resemblance I have noticed already. The doctrine as to waste, a further point as to which the Hindoo and Mahomedan laws are almost identical, is to a certain extent the basis of both; but it is also the basis of most theories as to the land, and can hardly be claimed as a distinctive feature of these systems in particular. The result of the similarity we have observed might be expected to be a disposition on the part of the conquerors to allow the collection of the revenue to continue on the same principles as before, and this tendency would be very much strengthened by the gradual nature of the Mahomedan conquest: the new rulers would probably be glad to employ, as far as they could, the Hindoo agencies in the collection of revenue, as well as to continue the Hindoo principles; and their ignorance of the practical working details of the system would further confirm the tendency to such a course as I have suggested. And we find that this is very much what actually happened. In the same way that the English continued for a considerable time to employ the native agencies, and for like reasons, the Mahomedans also long kept to the old system.

The Mahomedans continued the Hindoo system.

At first the conquerers put some of the Hindoo princes under tribute, without interfering in the internal government of their states:[1] but probably the more completely subdued states were from the first ruled direct by the Mahomedans. Ultimately the greater part of the country came under their immediate rule, and the tributary princes

[1] Fifth Report, Vol. II, 6. Baillie's Land Tax, xxvii.

were either expelled or sank into the position of tax-collectors or zemindars.[1] But no material change appears to have been made in the revenue system. As I have suggested, this may have been partly from the similarity of the system they found existing to that which they would have been inclined to introduce. The revenue paid by the cultivators was similar to the khiraj they would have imposed: and the rights and obligations of the cultivators were similar to those indicated by their own law. But whatever may have been the cause, whether entirely from a feeling of weakness and inability to take the complex details of revenue collection into their own hands; or partly for this reason and partly from the similarity of the Hindoo system to their own; or for neither of these reasons; we do not find that any great change was immediately introduced by them. They did not divide the lands amongst themselves as conquerors: perhaps they were not strong enough to do so if they had desired; but they do not seem to have desired it. They did not impose the khiraj as a new impost, but merely collected the tax already imposed, making however early attempts to increase its amount.[2] They did not displace the native revenue officers, although the action of their general system of government produced, in course of time, considerable changes in the status of those officers.

The khiraj not formally imposed.

The khiraj does not seem to have been imposed formally, if at all, before the time of Ala-ood-deen, or perhaps of Akbar. And although the principle of Akbar's system was to abolish the division of the produce, and to substitute a fixed rate for the beegah, it is not clear that this was done

[1] Baillie's Land Tax, xxvii.

[2] Baillie's Land Tax, xxvii, xxviii.

LECTURE II.

with any reference to the wuzeefa khiraj as a model to be preferred to the mookasumah khiraj; or that it was with a view to imposing the khiraj at all: the sufficient reason given for the change being that the new mode was less burdensome to the cultivator.[1] A step in the same direction had been taken by the predecessors of Akbar, Shere Shah and Selim Shah, who abolished, or rather sought to abolish, the practice of dividing the crops.[2]

Attempted changes.

The tax which the Mahomedans found existing in India was analogous to the mookasumah form of the khiraj; since it was levied by a division of the actual produce; the system called buttai in Hindoo times. Both the name and the mode of division have come down to the present day; none of the various attempts that have been made to substitute a fixed rate for a division of the produce have completely succeeded. The first change which was attempted on a considerable scale appears to have been that of Ala-ood-deen, who began to reign in A.D. 1296 and died in 1316. He attempted, what his predecessors had probably been struggling towards, the exaction of the full half of the gross produce from the cultivators:—the highest proportion which could lawfully be demanded, even from a conquered country.[3] He endeavoured to make various changes in the revenue system, and particularly to abolish the buttai system. He directed that the revenue should be a fixed rate assessed upon measurement, instead of a proportion of the produce; which, if carried out, would have been an anticipation of Akbar's reform. But it is said that these

[1] Ayeen Akbery, Vol. I, 347. Baillie's Land Tax, xvii.
[2] Ayeen Akbery, Vol. I, 354. Baillie's Land Tax, xxviii.
[3] Patton's Asiatic Monarchies, 88, 89. Baillie's Land Tax, xxviii.

regulations came to an end after Ala-ood-deen's death ;[1] and the cultivators continued to render the revenue according to the old buttai system. Ala-ood-deen may have had an eye to the khiraj in the rate he endeavoured to impose, and the mode in which he sought to levy it: but it can hardly be said that he imposed, or perhaps that he intended formally to impose, the wuzeefa khiraj; still less that he intended to give effect to the Mahomedan theory that the payment of wuzeefa khiraj gave the cultivator an exclusive proprietary right in the land.[2] We cannot ascertain how far the Mahomedans who settled in India were disposed to carry this theory into practice, or whether it had ever been carried into practice. The theory itself is, to a great extent, an inference only, if it is extended further than the obvious result that when the State ceases to take a share of the produce, and takes instead a fixed rate from the cultivator personally, and accepts his personal liability instead of retaining its hold upon the crop, the cultivator becomes the exclusive proprietor of the crop; and as he cannot be ousted from his holding, at any rate so long as he pays the khiraj, he is to that extent exclusive proprietor of the land. But I cannot find that either Ala-ood-deen or Akbar intended to introduce any change in the proprietary rights of the cultivators; the bulk of whom had indeed rights similar to those which would belong to wuzeefa khiraj holders. Nor can I find that, before the time of Ala-ood-deen, or while the tax resembled the mookasumah khiraj, the State claimed to interfere with the proprietary rights of the cultivators, or claimed itself the right of property. The course of things seems to have

Proprietary rights not disturbed.

[1] Baillie's Land Tax, xxviii.

[2] Baillie's Land Tax, xxii, xxx, xxxiii.

LECTURE II.

been, on the contrary, that in the early times of the conquest the position of the cultivator was very little modified; and that the new Government was content to go on upon the same footing as the native Governments with regard to the revenue; but that when the invaders had become firmly settled, they endeavoured to diminish rather than increase the cultivator's rights by raising the amount of assessment; although they endeavoured also to introduce a system which would, as they considered, make the collection of the revenue less burdensome. They succeeded completely in raising the amount, but never succeeded completely in introducing the intended improvements. And we cannot find sufficient ground for saying that they ever intended to transfer the proprietary right from the State to the cultivator, even if the State had ever claimed any larger right against the cultivator than had descended to it from Hindoo times. However, even if it could be affirmed with certainty that, after the attempted changes by Ala-ood-deen, and the more effectual reforms of Akbar, the cultivator was considered to have received a complete transfer of the proprietary rights of the State, we should still be left in uncertainty as to the extent of the proprietary right thus transferred: since, probably from lack of occasion, questions had apparently not arisen, or at any rate we have no record of such, as to any greater right than the right to cultivate and occupy on the one hand, and the right to receive a portion of the produce or its equivalent on the other. The nature of the tax imposed by the Mahomedans, and the mode of levying it do not appear therefore to affect very materially the nature of the rights in the land. These rights came in process of time to be more affected by the machinery employed in the collection than by Maho-

Proprietary rights gradually affected by the Mahomedan system.

medan theories as to the land. Hindoo custom appears to have held its own against Mahomedan theory; but to have succumbed in a great measure before the rude shocks of Mahomedan practice and the rapacity of conquerors.

The revenue machinery.

The machinery for collecting the revenue indeed long continued the same. From motives of policy and convenience, such as afterwards influenced the English, the conquerors, as I have said, were content to realise the revenue in the ancient way, and through the established agencies.[1]

The headman.

We have very little information as to this period, which was one of change and confusion; but we may conjecture that, when the revenue was allowed to flow through the ancient channels, the headman would, where village communities were in their vigour, continue to collect the State share of the produce. The rajah, to whom he was in the habit of paying the revenue, would either have become tributary, retaining his possessions and receiving the revenue as before; or would have become a superior collector of the revenue, receiving it from the headman, and making himself responsible for it to the State; or he might be displaced altogether, and take no part in the new system. When however the former rajah was placed in the position of a superior collector of revenue from a conquered district which he had once ruled, it is obvious that there would be a great tendency to depress the headman, and to change the ancient rajah into the zemindar of Mahomedan times. It would be natural that the Mahomedans should not only collect the revenue upon the old footing, and through the old channels, but should also

[1] Patton's Asiatic Monarchies, 162. Land Tenure by a Civilian, 32. Fifth Report, Vol. I, 17; Vol. II, 169. Harington's Analysis, Vol. II, 239.

LECTURE II.

willingly accept the responsibility of any of the prominent persons of the Hindoo system, and especially of the rajahs. And when they were able to obtain the security of the rajah's responsibility, it would be natural that an alien race, who had been obliged to adopt a system, of the details of which they were to a great extent ignorant, should at first grow to ignore more and more the agencies below the influential persons with whom they had contracted, and to look to them alone. The relation of the parties would, at the beginning, tend to take the form of an undertaking by the collecting party that the revenue should be duly rendered.

The origin of the zemindar.

The chief collector would thus stand in a position from which the new Government could not easily remove him without being prepared to take the collection into their own hands, through officers of their own choosing, and detached from the old system. We shall see that they attempted at a later period to do this. On the other hand, the collector of revenue, whether an ancient rajah, a farmer of revenue, or a village headman, was, in his relation to the Government, only an officer. The headman had always occupied this position in relation to the State, and so had the farmer: but the rajah, who had been accustomed by hereditary right to receive the revenue for his own benefit, would tend to assert a proprietary right to which the others could not lay claim; although the headman had always had an hereditary, and the farmer sometimes an official, interest in the revenue. The rajah would therefore tend to absorb the proprietary rights, and to depress the headman, and weaken the influence of the village community. On the other hand, a struggle would begin between the principles of the two systems, both represented by the rajah or other powerful person. Such a person, as the chief collector of

revenue which he had formerly received for his own benefit, and who still clung to the idea of a right so to receive it, would, even if entirely loyal to the new Government, put more prominently forward in his own mind, and consciously or unconsciously in his conduct, his hereditary beneficial right, than his merely official right: and thus he would be in a state of open or secret antagonism to Mahomedan ideas, which could only recognise him as an official, and which were repugnant to hereditary right. This observation applies in different degrees to all the revenue collectors who had been employed under the old system. If, moreover, through ignorance of the community below such superior collector, and from the fact that it was from his hands that the revenue was ultimately received, they were induced to look upon him as the real revenue-payer, he would grow to be considered a sort of proprietor of his district, as he had always secretly claimed to be. But the time would come when his true position would be discovered; and then, if he proved refractory, the struggle against his claims would recommence. It is quite obvious that there could be no room for any such person as I have indicated without taking away something from the village community or from the State: and when the aid of the ancient rulers became no longer necessary, or could no longer be depended upon, the interests of the village community, that is of the cultivators generally, would probably recommend themselves as better deserving protection than the interests of a powerful subject, who had dangerous claims and a constant tendency to encroach not only upon the rights of the cultivators but also upon the rights of the State. Accordingly we shall find that at more than one period the zemindars, as these superior

LECTURE II.

collectors of revenue were then called, had grown sufficiently powerful to lead the Government to attempt to crush them: but we shall also find that the zemindars had made for themselves a position which was after a time resumed by their successors; and that in the struggle between the hereditary and proprietary ideas derived from the old system, and the purely personal and official theory of the Mahomedans, the Hindoo ideas still held their ground, although they did not obtain a complete mastery.

The village community.

The tendency of the Mahomedan rule would therefore be, as it seems to me, to depress, at any rate at first, the village community, and to make it shrink within itself; and to recognise very slightly any one below the chief collector of the revenue, whether headman or rajah: and the tendency would further be to enhance at first the rights and powers of the revenue collectors as against all below them; and thus give them the means of carrying on with success a struggle with the Mahomedan ideas, and of encroaching on the rights claimed by the State.

Summary.

If this be the correct view of the case, the Mahomedans did not consciously alter the rights of any of the parties: they strove to expel the hereditary principle with respect to the officers of the revenue, and they strove equally to raise the rate of revenue: but they do not appear to have intended to alter the relations of the parties having interests in the land amongst themselves, or even to alter their relation to the State.

They might no doubt, if they had thought fit, have displaced all above the village headman, and kept the machinery strictly official: but even if they were in a position to do so, they do not seem to have actually done so; but to have recognised the rights then claimed in the

land, and thus to have made no deliberate change at all in the nature of the rights in the land, or even in the fiscal machinery. I have endeavoured to point out some of the indirect effects of the new ideas; and we shall see that at a later stage, when in fact it was too late, the Mahomedan principles did assert themselves, but with only partial success. And whether the causes be as I have suggested or not, we find that zemindars did arise and become powerful in Mahomedan times, displacing to a great extent the village headman; and that the village fiscal organization fell into decay, and its growth and development were arrested.

The Mahomedan rulers then collected the revenue for some time in much the same way as the Hindoo rulers had done, with the intervention in some cases of the rajah or powerful personage of the district.[1] They continued the same revenue machinery and collected the revenue through the Hindoo chowdhries, and, where these had existed, zemindars; as the established representatives of the cultivators, and as collectors of the revenue of a fiscal division or pergunnah.[2] The chowdhry afterwards became the Mahomedan *Crory*, administering a *chuchlah*, or a district yielding a crore of dams or two lacs and a half of rupees a year, and he was one of the officers from whom zemindars sprung.[3] He got an allowance of five per cent. on the collections for his remuneration, together with small allotments of the revenue for his subsistence, called *nancar* or *nancar saverum*,[4] to probably about the same amount.

The Crory.

[1] Baillie's Land Tax, xxxvii. Land Tenure by a Civilian, 33, 73. Fifth Report, Vol. I, 17.

[2] Fifth Report, Vol. I, 257, 258. Mr. Campbell's Evidence before the Select Committee of the House of Commons (1832), 2355.

[3] Fifth Report, Vol. II, 7, 14, 15. See Harington's Analysis, Vol. III, 327

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

LECTURE II.

The headman generally continued to distribute the assessment amongst the villagers, as he did even down to British times;[1] and he realized the revenue from the cultivators, which he paid into the treasury, or to the superior revenue authority. In later times the headman generally sank into the position of a subordinate revenue-payer, or of a muzkooree, instead of an huzooree malgoozar; paying revenue, not direct to the treasury or the superior revenue officer as such, but paying through a zemindar or talookdar.[2] The village community appears to have gradually sunk, and to have lost its importance as a fiscal unit, although it may have retained and perhaps intensified its social influence. Its principle, as the outcome of the joint family, was alien to the Mahomedan ideas of personal and individual right, joint families being unknown amongst the Mahomedans. The influence of Mahomedan ideas, and the effect of a period of disorder and disruption, seems to have resulted in a diminution of the importance of these village communities somewhat in the same way as a disintegration was caused by Roman progress in the family communities of Poland, Bohemia, Carinthia and Carniola, which disappeared before the new ideas.[3] A like effect seems to have been produced by English notions of individual rights. It is remarkable that it is in Bengal, which was ultimately brought more completely under Mahomedan, and earlier under English control, than any other part of the country where the Hindoo element still preponderates, that the notion of individual proprietary right is most complete; that the joint family is most loosely

Influence of Mahomedan and English ideas.

[1] Land Tenure by a Civilian, 77.

[2] Land Tenure by a Civilian, 62.

[3] Revue des deux Mondes, tome 101, p. 42.

connected, and most easily dissolved; that the rights of its members are alienable and freely alienated; and that it is most practicable for a Hindoo to acquire separate property, and least difficult for a stranger to acquire land untrammelled by the restrictions of Hindoo law. It is also in Bengal that the village communities have decayed most: and that the zemindars have acquired the greatest influence. The power of the zemindars has, to a great extent, been built upon the ruins of the Hindoo system. They were at first recognised as officers, or partly as officers and partly as persons with a certain interest in the revenue derived from Hindoo times; but the indirect effect of their recognition by the State, at a time when the old Hindoo forces of joint property and hereditary right were weakened, tended to give them a larger right than they had ever ventured to claim; just as the recognition of the zemindars as proprietors at the Permanent Settlement has tended to make them in practice absolute proprietors. Thus, although little was formally changed at the Mahomedan conquest, the seeds of much practical change were sown.

The zemindar.

In those parts of the country where the village communities were in vigour, the headmen seem to have retained their position to some extent, and to have dealt with the State direct as huzooree malgoozars under the old Hindoo titles of mokuddums, munduls and bhuinias (or zemindars).[1] But in other places the ancient rajahs and revenue collectors became talookdars and zemindars, and collected the revenue as such; *aumils* being appointed to check or control them, with large bodies of troops under their command, cantoned in the district.[2] These zemindars

[1] Land Tenure by a Civilian, 43. Orissa, Vol. I, 244, 247, 248, 264.
[2] Land Tenure by a Civilian, 33, 40, 73. Orissa, Vol. II, 222.

LECTURE II.

and talookdars, as we have seen, generally contrived to absorb the functions, or at least the chief emoluments, of the headman, and to displace him to a great extent. Thus the Rajah of Benares is said to have attained his position by this means.[1] And in Orissa the Hindoo fiscal divisions were broken up into a number of subdivisions, at the head of each of which arose a powerful proprietor, who claimed the permanent right of distributing the revenue amongst the villages of the district, and of collecting it from them. These grew to be the talookdars, who sometimes, when they were powerful, paid revenue for their districts direct to Government,—that is, were "independent talookdars," as such talookdars were afterwards called in Bengal; or paid through the zemindar, who had become the superior fiscal officer of the pergunnah or division,—that is, were "dependent talookdars."[2] Again, in Monghyr the rise of zemindars and talookdars can be traced. The zemindary is divided into eleven turfs, and the original zemindar was a chowdhry, whose descendants held, until a late period, nine of the turfs. One of the other turfs was waste, and another chowdhry became zemindar of it. The original zemindary was further subdivided by the grant of talooks out of it by the zemindar to his relatives.[3]

Descent of a zemindary and talook.

Thus arose zemindars and talookdars of whom I shall have more to say hereafter. Many of the superior zemindaries descend by primogeniture, a fact which perhaps points to their having been derived from the ancient rajahs; as a raj undoubtedly descended mainly in this mode.[4] The inferior zemindars grew out of collectors, farmers, and

[1] Thomason's Revenue Selections, 111, 114.
[2] Orissa, Vol. II, 225.
[3] Fifth Report, Vol. I, 212, 213.
[4] Harington's Analysis, Vol. III, 368.

other officers of revenue, headmen, and even robber chiefs.[1] The zemindars mentioned in the Ayeen Akbery,[2] as furnishing large military contingents, were probably chiefs who had become zemindars,[3] and had acquired the right of contracting for the revenue from having been powerful in their districts. The zemindars above described either entirely or partially displaced the headmen. Again in some parts of the country there were ryots who did not form part of any village organisation; and in dealing with these an example would be given of the mode of collection, which grew to be almost the only mode, that of collection through a zemindar alone; and the zemindar's power would in such cases be almost absolute.[4]

LECTURE II.

Again, many of the conquered rajahs were allowed still to receive the revenue not in the limited capacity of revenue collectors or zemindars, but for their own benefit, on condition of military service, and by grant from the conquerors.[5] Such a grant of revenue was called a jageer; and in such cases the old system would probably continue in its integrity. But in later times many of these also became zemindars.

Jageerdars.

At the Mahomedan conquest those who claimed to collect the revenue did not claim the ownership of the land: they claimed a right to collect and sometimes a kind of property

[1] Baillie's Land Tax, xxxvii. Campbell's Cobden Club Essay, 168, 169. Land Tenure by a Civilian, 73. Fifth Report, Vol. II, 156. Orissa, Vol. II, 240. Compare the Poligars of Southern India. Fifth Report, Vol. II, 88, 91, 93.

[2] Ayeen Akbery, Vol. I, 237; Vol. II, 20.

[3] Baillie's Land Tax, xxxvi.

[4] Orissa, Vol. I, 54, 55; Vol. II, 232, 245.

[5] Fifth Report, Vol. I, 168. Compare the Poligars of Southern India. Fifth Report, Vol. II, 88, 89.

LECTURE II.

in the collections, but nothing more.[1] But in course of time the zemindars who had grown out of these claimants, began to encroach upon the rights of both the State and the cultivator; and by the time of Ala-ood-deen, who died in A.D. 1316, they were thought to require curbing. The superintendents of the revenue department were accordingly required "to take care that the zemindars should demand no more from the cultivators than the estimates the zemindars themselves had made;"[2] thus bringing them back to their original position to some extent, and forbidding what were known as abwabs and cesses. But in spite of this check the power of the zemindars was not crushed, but they regained their position, and ultimately became almost independent.[3]

Ala-ood-deen's attempt to curb the Zemindars.

Ala-ood-deen intended to abolish the authority of the mocuddums and chowdhries, as well as of the zemindars proper, as oppressive to the ryots; and to appropriate their fees and perquisites as part of the revenue.[4] He also, as we have seen, endeavoured to raise the assessment to half the gross produce to be levied upon measurement. His proceedings were a sort of foretaste of those of Jaffier Khan in the eighteenth century. After the time of Ala-ood-deen, we do not hear of any check to the progress of the zemindar's power, except perhaps Akbar's settlement in the sixteenth century, until Jaffier Khan's time.

---

[1] Mr. Fortescue's Evidence before the Select Committee of the House of Commons (1832), 2283 to 2285. Orissa, Vol. II, 227.

[2] Patton's Asiatic Monarchies, 88, 89. Baillie's Land Tax, xxxix.

[3] Fifth Report, Vol. II, 12.

[4] Patton's Asiatic Monarchies, 88, 89.

LECTURE III.

AKBAR'S SETTLEMENT.

Akbar's or Todar Mull's settlement for ten years—Four classes of land—Mode of ascertaining average produce for one season—Average of ten years then taken—New assessment lower than former rate—Proportion taken by the State—The rebba—A fixed money-rate the main object of the settlement—The position of the ryot not affected—The Assul Toomar Jumma—The old methods of rendering the revenue might still be adopted—Remissions and deductions—The settlement made with the ryots direct—The headman—The zemindar—Attempted return to the Hindoo system—The settlement only partially carried out—Commencement of the modern revenue system—Todar Mull's assessment the basis of all subsequent assessments—The fiscal divisions—Khalsa and jageer lands—Khalsa lands—Jageer lands—Havilly lands—The Soubah—The circar—The chucklah—Three stages of fiscal division—Zemindaries—A cutcherry attached to each division of the zemindary—Fiscal organization above the zemindar—The crory—The Foujdar Aumildar—Claims of fiscal officers to hereditary rights—Military force employed in revenue collection—The crory's emoluments—The canoongoe—The putwarry—The chucklah superseded the circar—Attempts at centralization—Hindoos filled the lower revenue offices, and Mahomedans the higher—The aumil—His subordinates.

Akbar's or Todar Mull's settlement for ten years.

IN the year 1582 Akbar began those changes in the revenue system of which the ten years' settlement, known as Todar Mull's or Toory Mull's settlement, was the most important result. That was the first general settlement for any longer period than a year of which we have any record. Up to that time, as far as we can learn, the amount of the year's revenue was settled upon a measurement of the lands and an estimate of the crop, or upon actual weighment and division of the crop. The standard of measurement however does not seem to have been fixed, and it was the first of Akbar's reforms to fix it. He established as the standard measure of length the *ilaha guz*, a measure not unknown before, but not before accepted as

LECTURE III.

a standard. This measure was equivalent to the Arabian *zira*. Having established a standard measure of length he next established as the standard measure of area the *jureeb*, or *beegah* of sixty square guz.[1]

Four classes of land.

He abolished all arbitrary taxes, and prepared to assess the revenue upon the true capacity of the land.[2] For this purpose the land was distributed into four classes: first—*Poolej* land, or land which was cultivated for every harvest, and which did not require to lie fallow; second—*Perowty* land, or land which was allowed to lie fallow for a short time to recover its strength; third—*Cheeher* land, or land which had lain fallow for three or four years from excessive rain or inundation; and fourth—*Bunjer* land, or land which for the same causes had lain fallow for five years or upwards. It is obvious that land of the first or second class might interchange classes or fall into one of the two other classes; and land of the first class in particular could hardly remain always in cultivation without requiring rest.

Mode of ascertaining average produce for one season.

Moreover as the land of each class would generally not be of uniform quality, a just estimate of its capability was sought by taking an average of the produce during one season of one beegah of each quality, the best, the middling and the worst, and taking one-third of the produce of these three beegahs as the produce of an average beegah. This method was only applied to the first or the first and second classes, the other classes being scarcely worth the trouble of such an enquiry.[3]

[1] Ayeen Akbery, Vol. I, 351 to 355. Baillie's Land Tax, xxix. Fifth Report, Vol. I, 239, 240.

[2] Ayeen Akbery, Vol. I, 355 to 361. A concise account of Akbar's settlement will be found in Elphinstone's History of India, pp. 541 to 544. Fifth Report, Vol. II, 165.

[3] Ayeen Akbery, Vol. I, 355. Baillie's Land Tax, xxix.

Average of ten years then taken.

The average produce during one season, allowing for the different qualities of land of the same class, having thus been ascertained, it was still necessary, in order to fix the revenue for a longer period than a year, to ascertain the average produce of different seasons. This was done by ascertaining the actual produce of various kinds of land during the preceding ten years, from the fourteenth to the twenty-fourth of the reign. The produce of the last five years of that period was ascertained from the records of the provincial or pergunnah canoongoes. But for some reason the registers of the crop of the first five years were not forthcoming; perhaps because, as afterwards happened, the canoongoe's office had shown a tendency to fall into disuse until the prospect of preparations for a settlement of this kind stirred it into life again. However this may be, the produce of the first five years of the period could only be ascertained by local enquiry, and "the representations of persons of integrity." When the produce of the ten years was thus ascertained an average of one-tenth was taken as a fair standard. The first five years of the period had however been years of plenty, which would tend to raise the average. The new rate of assessment was nevertheless somewhat lower than the former rate, but the receipts had always fallen far short of the old assessment.[1]

New assessment lower than former rate.

Proportion taken by the State.

There is some conflict amongst the authorities as to the proportion of the produce then taken by the State. It is said by some to have been one-third for poolej and perowty lands.[2] Other authorities agree in this.[3] But one

[1] Ayeen Akbery, Vol. I, 365, 366. Fifth Report, Vol. I, 139; Vol. II, 164 to 166.

[2] Fifth Report, Vol. I, 354, 355.

[3] Baillie's Land Tax, xxix. Fifth Report, Vol. I, 139.

LECTURE III.

authority says that one-fourth of the gross produce, or one-third of the net produce, was taken: the net produce being what remained after all deductions on account of losses, village dues, &c.[1] In the Appendix to the Fifth Report it is stated that there were several rates of assessment. If the revenue was paid in kind, the Government share of the ordinary crop was one-half, the crop being appraised on the ground: one-third was taken of crops grown out of season or artificially irrigated: and one-fourth to one-eighth of crops difficult to cultivate. But it is said that all these might be commuted for a fixed money-payment of one-fourth of the gross produce, called the *rebba*, which was estimated by taking an average of the different kinds of land, and was irrespective of the actual crop cultivated.[2] This is probably the correct account: for we know that all subsequent assessments were based upon Akbar's, or Todar Mull's as it was called; and although the amount was increased in various ways, there does not appear to have been much if any alteration in the primary assessment handed down from Akbar's time. And when Akbar's reforms had their full effect the various payments were commuted for the rebba, or fixed money-payment, of one-fourth of the gross produce, a term which was sometimes used as interchangeable with "revenue."[3]

The rebba.

The rate of assessment, whether one-third or one-fourth, was paid by poolej land always, whether cultivated or not: but perowty land, although yielding the same rate of revenue when cultivated, rendered no revenue when unculti-

[1] Land Tenure by a Civilian, 128, 129, 130, 150, 151.

[2] Fifth Report, Vol. II, 165. Great Rent Case, B. L. R., Supp. Vol., 211.

[3] Fifth Report, Vol. I, 367; Vol. II, 165, 166, 235.

vated.[1] Checher and bunjer lands were taxed at lower rates than poolej land for a period, not exceeding five years, sufficient to bring them into full cultivation.[2]

A fixed money-rate the main object of the settlement.

The great object of Todar Mull's settlement appears to have been to substitute a fixed money-rate for the beegah instead of the various rates which had prevailed under the complicated system of Hindoo times. And accordingly, either at the original settlement or very shortly afterwards, the revenue was fixed at a certain sum for the beegah, whatever might be the crop actually grown. This was called the *jumma-bundy neckdy*, or money settlement. The assessment was arrived at, as before described, by an average then made of the several kinds of crop which the land was capable of producing during ten years, and one-fourth of the gross produce was the rebba, or state share.[3]

The position of the ryot not affected.

I have already noticed the suggestion that this commutation of the Government claim to a share of the produce for a fixed money rate was intended to be not only a formal imposition of the khiraj, but of the wuzeefa instead of the mookasumah form of that tax.[4] It is contended that by Mahomedan law the deliberate imposition of a money-tax is a distinct recognition of the absolute proprietary rights in the soil of the cultivator; and that a substitution of the wuzeefa for the mookasumah khiraj likewise operates as a transfer of the sovereign's rights in the soil to the cultivator, and has the same effect as the formal imposition of wuzeefa khiraj. It is thence argued that, from the time of Akbar's settlement at latest, the cultivator became absolute proprietor of the

[1] Ayeen Akbery, Vol. I, 358. Baillie's Land Tax, xxix.
[2] Ayeen Akbery, Vol. I, 360 to 364.
[3] Baillie's Land Tax, xxx. Fifth Report, Vol. II, 165.
[4] Baillie's Land Tax, xxx to xxxiii.

LECTURE III.

land, at any rate where the revenue was paid in money. As I have said there is no trace of any intention to make so important a change: and it seems to me hardly safe to draw so important a legal inference from acts which the parties do not seem to have been conscious would have such effects. And it can hardly be argued that the State must be taken by implication of law to have given away its rights when its only object in making the change was to collect the revenue on an improved system, and one considered less burdensome to the ryots.

The Assul Toomar Jumma.

Todar Mull's aim in this part of the settlement was, as before remarked, to substitute a money-revenue at a fixed rate for a revenue in kind varying with the crop. He succeeded in this to a considerable extent; and the details of assessment for each beegah of land were preserved, and thenceforward acted upon as the basis of all assessments. This assessment of Todar Mull's was always known as the *Assul Toomar Jumma*, or original complete assessment or rent-roll: and subsequent modifications were incorporated with it, and called by the same name.[1]

The old methods of rendering the revenue might still be adopted.

But although one of the main features of the settlement was the change in the mode of rendering the revenue, this mode was not obligatory, and the old methods might still be continued at the option of the cultivator. The cultivator might choose to pay either in kind or in money,[2] but he was bound to make his choice of the two methods, and to adhere to one of them.[3] There were two modes of ascertaining the Government share when paid in kind: one was called *kunkoot* (grain estimate), and the other, *bhawely* or *bhaolee*

[1] Baillie's Land Tax, xxx. Fifth Report, Vol. I, 236.
[2] Baillie's Land Tax, xxxi. Ayeen Akbery, Vol. I, 364.
[3] Ayeen Akbery, Vol. I, 377 to 379.

called also *buttiej* or *buttai* (division). The method known as *kunkoot* was to assess the crop upon the ground by estimate, and not by actual division. The other method was by actual division of the crop when gathered, or by apportioning a certain portion of the land at the sowing for the production of the revenue share.[1] These methods have continued in use with various modifications up to the present day. But the actual division of the crops had even at this period begun in some parts to fall into disuse,[2] the cultivators having probably come to agree with the State in regarding this mode of assessment as burdensome to the revenue-payer. And where the buttai system still prevailed, and the cultivators did not feel disposed to accept the new system, Todar Mull endeavoured to supersede the necessity for an actual division and sale by prescribing that the value of the Government share of grain might be taken in money, at the market price of the day, whenever it would not be oppressive to the ryots to do so.[3] The buttai system continued in use in many parts of the country in spite of the advantages supposed to be offered by the other system; and a settlement upon this system was known in the south of India in later times as an *aumanee* settlement;[4] but it was chiefly in Bengal that it retained its hold;[5] and it seems that the new settlement was less completely applied there, at least for a time, than in some other parts.[6]

[1] Ayeen Akbery, Vol. I, 377 to 379. Baillie's Land Tax, xxxi.
[2] Baillie's Land Tax, xxviii.
[3] Ayeen Akbery, Vol. I, 377 to 379.
[4] Fifth Report, Vol. II, 25.
[5] Ib., Vol. II, 165, 166, 170.
[6] Baillie's Land Tax, xxxii. The details of the Assul Toomar Jumma for Bengal are given in the Fifth Report, Vol. I, 241 to 244.

LECTURE III.

Remissions and deductions.

At the same time that a high rate of revenue was exacted the ryots were encouraged to cultivate the more valuable crops by a remission in the case of poolej land of one-fourth of the revenue for the first year they cultivated such crops.[1] And when the village was cultivated to the highest degree by the skilful management of the chief or headman he was allowed as a reward half a biswah out of every beegah or some equivalent.[2] Remissions of revenue were also permitted on account of calamities as formerly: such remissions however required the approval of the Emperor.[3] Deductions from the assessment were also made when the land was found to be inferior to average land of the class in which it was assessed.[4] And when khirajee land was not cultivated, but kept as pasture, the holder had to pay six dams yearly for every buffalo, and three dams for every ox, instead of other revenue.[5]

The settlement made with the ryots direct.

This settlement was for ten years. It did not fix anything beyond that period, except perhaps the principle of a money assessment.[6] It was a settlement made with the ryots:[7] whatever claims the zemindars had at that time to collect the revenue, their claim to distribute its burden amongst the cultivators had either not grown into a right or was deliberately ignored. Even the headman seems to have been put aside except as an instrument for improving

[1] Ayeen Akbery, Vol. I, 379.

[2] Ib., Vol. I, 377 to 379. Fifth Report, Vol. I, 18.

[3] Ib., Vol. I, 381. Baillie's Land Tax, xxxi. Fifth Report, Vol. I, 244.

[4] Ayeen Akbery, Vol. I, 380.

[5] Ib., Vol. I, 382.

[6] Fifth Report, Vol. I, 244.

[7] Ib., Vol. I, 103. Harington's Analysis, Vol. III, 231. Galloway's Law and Constitution of India, 46, 47. Great Rent Case, B. L. R., Supp. Vol., 245 to 247.

the cultivation. I may here quote Sir George Campbell. When speaking as one of the Judges of the Calcutta High Court, he says: "There can be no doubt that the settlement attributed to Toran Mull, like all the settlements of Akbar and his successors, and indeed all the detailed settlements of the British Government founded upon the same system, dealt primarily with the individual ryot, and fixed the sum payable by him for the land which he cultivated. It appears that the average produce of the beegah of land of each description was ascertained and the Government share was then calculated, one-third being the full demand, and deduction being made for fallows, occasional inundations and droughts, inferior soils, &c. The average dues of the State (in grain) being thus ascertained, the grain rates were commuted into money on an average of the price currents of the nineteen previous years, and the rates so obtained were calculated on the land of each ryot. The option of paying in kind according to the established proportion seems however to have been maintained. Thus the payments of the ryots were fixed by an act of State quite independent of the will of any other subject or of any question of competition or relation of landlord and tenant in the English sense. Whether the revenue was paid direct to the officers of Government, or by the village communities jointly through their headmen or through hereditary zemindars of a superior grade, the quota due from each ryot was fixed and recorded; that was the unit of the whole system from which all calculations started. The headmen and zemindars were remunerated for their services, or received the hereditary dues to which prescription entitled them, in the shape either of percentages on the collections from the ryots, or of 'Nankar' land held exempt

LECTURE III.

from revenue. That is clearly the old law of the country in general and of Bengal in particular. Even when in the decline of Governments the State control became relaxed, and the ryots became subject to much oppression on the part of those placed over them, they still had some protection in the only ever-surviving law of the East 'Custom.' The old established rates they have always continued to cling to as sanctioned by custom. That custom the worst oppressors could not openly defy, and hence all extortions and imposts took the shape of extra cesses levied on various pretexts. Even when thus by oppressions the sum levied may have been raised up to or even beyond a rack-rent, the remark of Mr. Mill seems irresistible, that the shape in which they were taken, and the survival beneath all imposts of the old customary rates, is the strongest evidence that the right of the ryot survives, to become again beneficial in better times."[1]

The headman.

The headman did not get rid of his obligations; for we find that although it is expressly directed that the estimate of the amount of assessment should be made by the amilguzzar or chief revenue officer with the husbandmen separately, and was not to be entrusted to the headmen of the villages, yet a written obligation was to be taken from the headmen binding them to disclose any difference in the crop of which they might become aware.[2] This direction appears to me significant as indicating tendencies I have already pointed out; it shows that the effect of the Hindoo system under Mahomedan control had been, either on account of the intervention of zemindars or from other causes, to depress the headmen, and consequently

[1] The Great Rent Case, B. L. R., Supp. Vol., 245, 246.

[2] Ayeen Akbery, Vol. I, 380.

to lessen the importance of the village communities as fiscal units; while it also shows that the headman sufficiently retained his power with reference to the community to render him a useful security for the ryots. As I have suggested, although the headman's fiscal importance declined, the villagers long clung to their ancient organisation, perhaps more fondly when their rulers were hostile to it.

The zemindar.

In the description of Akbar's settlement we find the husbandman constantly spoken of as the revenue payer. When the duties of the amilguzzar are described much stress is laid upon his dealing personally with the ryots. He was to consider himself the immediate friend of the husbandman; to promote cultivation; to assist the cultivator with loans of money on easy terms; to see that those who could cultivate more bunjer land than had been allotted to them in their own villages were provided with a sufficient quantity, in another village if necessary.[1] No intermediate mercenaries were to be employed: but the husbandman was, as it is pointedly expressed, to be encouraged to pay his revenue personally.[2] It might almost be suspected from these emphatic directions alone, even if we had not the confirmation supplied by the course of previous events, that the evils of the zemindary system under the Mahomedans had already begun to be felt; that the zemindar had already shown a tendency to exactions, such as Akbar had found it necessary expressly to prohibit; and a tendency to farm and sublet and to squeeze the ryot out of his limited proprietary rights. For these reasons probably, as well as on account of their growing power, the Mahomedans, who had now had sufficient time to render themselves independent of the

[1] Ayeen Akbery, Vol. I, 377 to 379. Baillie's Land Tax, xxxi.

[2] Ayeen Akbery, Vol. I, 381, 386. Baillie's Land Tax, xxxi.

LECTURE III.

zemindar's support, seem to have made various attempts to get rid of the zemindars. The first attempt, that of Ala-ood-deen was, as we have seen, by openly attacking them; the method of Akbar's advisers seems to have been that of quietly ignoring them, and assuming that the natural state of things was for the ryot to be dealt with direct. Thus even the individual agreements with the husbandmen were directed to be transmitted to the Emperor.[1] The zemindar is scarcely mentioned in the Ayeen Akbery, and no detail is given with respect to him; and not only is the name hardly mentioned but the thing itself is practically ignored. Zemindars are spoken of in one or two passages: in one as furnishing large bodies of troops;[2] these may have been military chiefs who originally held their lands as a jageer and who had afterwards become zemindars. In another passage zemindars are spoken of in connexion with the collection of revenue, and they are there mentioned as under the control of the foujdar, or officer having military charge of several pergunnahs; and it is said that if the zemindar should be disobedient he is to be punished by the foujdar or amilguzzar.[3]

Attempted return to the Hindoo system.

On the whole then, it can hardly be doubted that, for whatever reason, the settlement of Todar Mull was an attempt to return to the old Hindoo system, as far as getting rid of the zemindars was concerned. The headman's functions do not however seem to have been revived, except for the benefit of Government. As some of the headmen had grown into

[1] Ayeen Akbery, Vol. I, 377 to 379.

[2] Ib., Vol. I, 239; Vol. II, 19, 20.

[3] Ayeen Akbery, Vol. I, 372. But it seems doubtful whether the word used is really "zemindar;" Harington's Analysis, Vol. III, 240 (note).

zemindars, and as the headmen always tended either to become zemindars or altogether to lose their power, which was absorbed by the zemindar, it is possible that the distrust and jealousy with which the zemindars seem to have been regarded may have extended to the headman also. If in this return to the ancient system Akbar had in view the depression of the zemindars, the appointment of Rajah Todar Mull, a Hindoo, to make the settlement may be looked upon rather as an effect than a cause of the prevalence of the old principles. That a return to the old principles was made cannot be doubted, although a Mahomedan, Mozuffur Khan, was associated with Todar Mull: but the settlement was so plainly stamped with the Hindoo's mark, that it has always been called Todar Mull's settlement.[1]

The settlement only partially carried out.

The main principles of the settlement had been to some extent anticipated by Shere Shah and Selim Shah,[2] as well as more partially by Ala-ood-deen, but they had never been carried permanently into practical effect. And even Todar Mull's settlement never extended to the whole of the empire; and seems to have been imperfectly applied in Bengal, then only partially subdued. There were large tracts left unmeasured and in these portions the revenue continued to be collected by the division of crops on the buttai system instead of on the new system of money payment.[3] The new system was not introduced in the Deccan until about A.D. 1654.[4]

[1] Ayeen Akbery, Vol. I, 365. Fifth Report, Vol. I, 239; Vol. II, 164.

[2] Elphinstone's History of India, 541. Baillie's Land Tax, xxviii.

[3] Baillie's Land Tax, xxxii.

[4] Fifth Report, Vol. II, 170.

LECTURE III.

Commencement of the modern revenue system.

Akbar's settlement introduces us to the revenue system of later Mahomedan times. The zemindars afterwards revived and continued to acquire power in spite of all checks: the Hindoo root of hereditary claim, combined with the Mahomedan greed for more and more revenue, continuing to develop the influence of the zemindars, until they absorbed the rights of all below them, and greatly encroached upon the rights of the State. We shall see one more vigorous effort made, in the time of Jaffier Khan, to throw off their yoke; but again, as before, we shall find the traditions of their rights and the necessities of their rulers restoring them to more than their former ascendancy.

Todar Mull's assessment the basis of all subsequent assessments.

Todar Mull's settlement was the model of all modern settlements of the revenue. And, although it was made with the ryots and the zemindars were ignored, it is from the date of that settlement that the modern history of the revenue commences. Henceforth the assul or original rate imposed by Akbar is the standard of assessment; and although, as indicated by Sir George Campbell, the standard of assessment was raised on various pretexts, the assul of Todar Mull remains throughout the ultimate basis of the revenue. From this point, therefore, it will be convenient to adhere somewhat less strictly to historical order, and to consider as a whole the collection of revenue from the time of Akbar to the commencement of British rule. I shall still endeavour to point out the historical sequence of change and growth in the various branches with which I may deal, but I shall endeavour to present as a whole the Mahomedan system as we succeeded to it.

The fiscal divisions.

It will be necessary to introduce this description by some account of the fiscal divisions of the country. We have

seen that in Hindoo times the pergunnah or bisi was the smallest official fiscal division, consisting of a number of grams or villages, afterwards called mouzahs. This division was administered by a chowdhry assisted by a military force under a separate command. It is not easy to discover whether there were any or what divisions above these; or whether in Hindoo times, when the country was divided into smaller states than in the days of the Mahomedan Emperors, these officers were directly responsible to the rajah. But in Mahomedan times there came to be a much more elaborate division. In the first place all the revenue-paying land, or land assessed for revenue, was divided into two classes, the *khalsa* lands paying revenue into the khalsa shereefa or royal treasury itself;[1] and the *jageer* lands, the revenue of which was assigned, and was either remitted to the holder of the land, or paid under the orders of the authorities to military commanders and others for their support.[2] The khalsa lands were the most central and the richest;[3] the jageer lands being the less cultivated and less manageable portions of the country, border territory and other tracts in which probably the revenue could be less easily collected through the ordinary civil officers. The jageer lands, called also *paibakee*,[4] as assessed by Todar Mull, comprised as much as two-fifths of the whole.[5] The necessity for this mode of collecting revenue tended to diminish as the Mahomedan rule became more firmly settled, while its disadvantages must have been great in the

Khalsa and jageer lands.

Khalsa lands.

Jageer lands.

[1] Fifth Report, Vol. II, 166, 167.
[2] Ib., Vol. I, 103.
[3] Harington's Analysis, Vol. III, 415. Fifth Report, Vol. II, 166.
[4] Harington's Analysis, Vol. III, 415.
[5] Fifth Report, Vol. II, 236.

LECTURE III.

eyes of a government jealous of independent authority. We consequently find Jaffier Khan reducing this proportion to one-fourth.[1] The division into khalsa and jageer lands is said to have been derived from the Hindoos;[2] but in truth it arose from the necessities of the case, and was therefore, in one form or another, adopted in many countries. For instance the same division is said to have prevailed in Persia;[3] and if the Mahomedans found it existing in India, it is probably another instance of the similarity of the land system they brought with them to that which they found existing. The khalsa lands furnished the revenue from which such of the expenses of government as were paid direct were defrayed. As I have said troops were supported and other establishments provided for by jageers or assignments of revenue of a particular district.

Havilly lands.

The khalsa lands included the *havilly* or household lands, the revenue of which was especially appropriated to the expenses of the Court and the chief officers of State.[4] These havilly lands were generally near the principal place of the district or in the neighbourhood of the capital; and were usually, at least in the Northern Circars, not included in zemindaries, but held khas as it is called;[5] that is, the revenue was collected from the cultivators by the direct agency of officers of the Government without the intervention of the zemindars. In fact with respect to those lands, over which the State would naturally have a greater control, the collectors of revenue still remained mere officials.

[1] Fifth Report, Vol. I, 237.
[2] Orissa, Vol. II, 222.
[3] Patton's Asiatic Monarchies, 64.
[4] Fifth Report, Vol. II, 10, 158, 166.
[5] Ib., Vol. II, 10, 11.

Again, the whole country was divided into fifteen Soubahs in Akbar's time,[1] and the Soubah of Bengal was divided into circars or sircars; the circars into pergunnahs; and the pergunnahs into turfs, kismuts, and villages or mouzahs.[2] A division similar to that of the circar existed in Orissa in Hindoo times under the name of dandput: it included a large number of pergunnahs; but this division became obsolete there under Mahomedan rule.[3] In later times, under Jaffier Khan, the Soubah was divided into thirteen chucklahs, each containing more than one circar, of which latter there were then 32.[4] The larger division superseded the smaller, and the chucklah became the next division below the Soubah.[5]

The Soubah.

The circar.

The chucklah.

Three periods are spoken of with respect to the divisions adopted for fiscal purposes. In Todar Mull's time (1582 A.D.) there were 19 circars and 682 pergunnahs. In 1658 at the end of Shah Jehan's reign there were 34 circars and 1350 pergunnahs, including some portions of the country not included in Todar Mull's scheme; and in the time of Mahomed Shah and Jaffier Khan (1722) there were 13 chucklahs and 1660 pergunnahs.[6] It was upon the footing of this last arrangement that the assul toomar jumma, as it came down to British times, was based; which, although derived from the assessment of Todar Mull, was considerably modified before it reached the ultimate form in which it survived so long as the standard of revenue.[7]

Three stages of fiscal division.

[1] Ayeen Akbery, Vol. II, 3, 4.
[2] Fifth Report, Vol. I, 173.
[3] Orissa, Vol. II, 216.
[4] Fifth Report, Vol. I, 19, 389.
[5] Ib., Vol. I, 236.
[6] Ib., Vol. I, 236, 389.
[7] Ib., Vol. I, 236.

LECTURE III.

Zemindaries.

The khalsa lands were subdivided into zemindaries, which were settled for with the zemindars.[1] Jageer lands are spoken of also as being parts of zemindaries, and as thus paying malikana to the zemindar; but this was probably true only of those jageers which consisted of assignments of the revenue of lands which had once been khalsa lands, or of lands as to which the zemindars had already acquired the right to collect the revenue. Those jageers which consisted of assignments of the whole revenue, or of the land with the revenue, of districts imperfectly subdued or previously under tribute, and which had therefore probably never paid revenue into the treasury either with or without the intervention of a zemindar, would most likely not come within the jurisdiction of any zemindar; except when the jageerdar might choose to collect his revenue through the agency of zemindars, or in cases in which zemindars had grown up in the jageer in course of time. But the khalsa lands were necessarily divided into zemindaries, when the mode of collection through those officers became general. And a zemindary was sometimes found to include portions of several chucklahs, just as the ryot's lands came to be split up amongst several zemindaries. Thus the zemindary of Rajshahy was scattered over eight chucklahs. It was customary, however, to settle for the whole zemindary in the chucklah in which its head or sudder station was situated.[2] The village (gaong, deh, gram or mouzah) was in theory the ultimate unit for fiscal purposes; except at those periods when the State, desiring to supplant all intermediate interests, endeavoured to deal with the ryots direct. Several of these villages formed

[1] Fifth Report, Vol. I, 237.

[2] Ib., Vol. I, 389.

a turf (or turriff) or dhee; and several of these were included in a pergunnah. Each of these divisions, as well as the zemindary, had a separate zemindar's cutcherry which was both office and court; the head office of the zemindary being called the sudder cutcherry. In these cutcherries all the zemindary records were kept and the zemindary affairs managed.[1] The jumma, or total revenue payable, was also, in the zemindary accounts, distributed according to these divisions of the zemindary under the heads of dheehatee jumma and pergunnatee jumma; being the revenue derived by the zemindar from the dhee and pergunnah respectively.[2] The zemindar's jumma which he paid to the superior revenue authorities for transmission to the treasury was called the sudder (or head) jumma, to distinguish it from the mofussil (or branch) jumma paid by the subdivisions of the zemindary.[3] Attached to each of these subdivisions was a regular establishment, and the whole formed a complete organisation which was theoretically of the most centralised kind; at least until the growing power of the zemindars induced them to strive after and obtain an almost independent position.

A cutcherry attached to each division of the zemindary.

Above the zemindar was the fiscal organisation maintained by the State. The circar of the Mahomedan times in another form, but perhaps on a smaller scale, corresponded, as before mentioned, to the dandputs of some parts of the country.[3] The pergunnah was in Hindoo times administered

Fiscal organisation above the zemindar.

[1] Fifth Report, Vol. I, 132; Vol. II, 12, 158. Harington's Analysis, Vol. II, 68, 69, 70. Evidence of Lieut.-Col. Sykes before the Select Committee of the House of Commons (1832), 2173.

[2] Harington's Analysis, Vol. II, 69, 70.

[3] Orissa, Vol. II, 216.

LECTURE III.

by a chowdhry;[1] but as the zemindary system gained ground the pergunnah became in many cases merely a subordinate part of a zemindary, and the chowdhry merely a servant of the zemindar. And in some cases it would seem that the title of chowdhry was transferred to the fiscal head of the circar, the division above the pergunnah, and under the direct administration of the State. The chowdhry, as a Hindoo officer, undoubtedly claimed an hereditary right, and had allowances which were similar to those of the headman and afterwards of the zemindar. And it is said that the title of chowdhry (chief or director) was frequently given to those zemindars who distinguished themselves by good management,[2] which seems to indicate that it was a coveted distinction. Moreover, if the title was associated with hereditary and proprietary claims, we can understand the officers who administered the newly invented circar adopting it; and hence that the title of chowdhry was sometimes assumed by the fiscal head of the circar. The Mahomedan title of that officer was crory, since the circar was supposed to yield a revenue of a crore of dams or two lacs and a half of rupees.[3] The office of crory was originally instituted by Akbar,[4] but it seems not to have retained its original title. The crories, whether under that title or under the titles of chowdhry and desmookh, constantly tended to become zemindars. In

The crory.

---

[1] Ante, Lecture I, p. 37.

[2] Harington's Analysis, Vol. III, 327.

[3] Fifth Report, Vol. II, 7, 155, 167, 170. Harington's Analysis, Vol. III, 350. Orissa, Vol. II, 216. Compare the evidence of Lieut.-Col. Sykes before the Select Committee of the House of Commons (1832), 2173. Patton's Asiatic Monarchies, 81.

[4] Harington's Analysis, Vol. III, 332, 347. Fifth Report, Vol. II, 155.

this way and from the introduction of a new division, that of the chucklah, the division into circars fell in many parts into disuse, and the crories were merged in the zemindars.

The Foujdar Aumildar.

The chucklah was administered by an officer partly military and partly fiscal, called a Foujdar Aumildar,[1] but sometimes known under the former titles given to the head officer of the circar. We however still find chowdhries exercising functions in connexion with the revenue, generally as subordinate to the zemindar; they are spoken of as collecting from talookdars and as receiving as their remuneration a fee or russoom in money; and sometimes a small allowance of land besides, which is said to be allotted to them for office expenses (*dufter serinjamy*).[2]

Claims of fiscal officers to hereditary rights.

The desmookh, chowdhry or crory held his office by the same tenure as most of those officers who ultimately became zemindars, or were merged in the zemindars. There was probably, on the one hand, a claim to hereditary right derived from the traditions of the Hindoo officers whom they had superseded; and on the other hand there was the strict theory of the Mahomedan system, that these offices were held at the pleasure of the sovereign. And the usual result followed, that the hereditary claim overpowered the strict theory, and the office, although theoretically held only during pleasure, became practically hereditary, the holder being seldom ejected except in cases of delinquency.[3]

Military force employed in revenue collection.

These officers exercised the general functions of Government, and were responsible for the peace of their districts, as well as for the collection of the revenue;[4] and for this

[1] Fifth Report, Vol. I, 389.
[2] Harington's Analysis, Vol. III, 347, 350.
[3] Fifth Report, Vol. II, 155.
[4] Orissa, Vol. II, 216.

LECTURE III.

purpose the crory or desmookh had at his disposal a body of troops called khandaits and pykes with a commander at their head, and these were supported by a jageer.[1] There were besides inferior officers in regular gradation, chiefly Hindoos, who also held jageers.[2] The crory himself received an allowance or russoom on his collections amounting to about five per cent.; and he got also an allotment of land free of revenue to about the same amount. This land was generally dispersed throughout his district, with the view as is suggested of inducing him to look after every part of his charge.[3] In these respects we are strongly reminded of the headman, and the Hindoo village and revenue officers, with their revenue-free holdings; and can hardly help concluding that the crory's allotments of land were nothing more than the old allotments to the Hindoo revenue officers; and that the dispersion in question was due to the crory's having absorbed the emoluments of the corresponding officer, the chowdhry or desmookh, in several pergunnahs. These holdings of the crory are indeed spoken of as being at one period the only ones of the kind, as if the crory had absorbed the similar emoluments of all the inferior officers. It is said that "till the death of Alumgir in 1707 the crory was, properly speaking, the only subject of the Crown of Delhi who held anything like a free tenure in lands to the extent of a family subsistence."[4] The crories were, it is said, chosen from amongst the agents of the former proprietors who had been ejected, or from amongst experienced farmers of revenue:[5] in short they

The crory's emoluments.

[1] Orissa, Vol. II, 216.
[2] Ib., Vol. II, 218.
[3] Fifth Report, Vol. II, 155.
[4] Ib.
[5] Ib.

were probably chosen on account of their having under the old system performed similar functions; as all the officers who ultimately became zemindars were originally chosen. And it was because they were thus chosen that they brought with them those vague claims to the office which could never be uprooted.

The canoongoe.

Below the circar was the pergunnah, and below the pergunnah was the mouzah or village. The pergunnah, as we have seen, was originally the chief fiscal division administered by a chowdhry, who had under his control a canoongoe or despandeah. This officer, of whose functions I shall have to speak more at length presently, kept the revenue records of the pergunnah; and when the circar displaced the pergunnah as the main fiscal division, the pergunnah revenue was practically administered by the canoongoe,[1] of course subject to the crory and afterwards to the aumil at the head of the chucklah. The village revenue again was still administered by the headman; only the headman had sunk or was sinking to the position of a mere servant of the zemindar or subordinate of the revenue officers.[2] And the headman was to some extent associated in his functions of administering the revenue with the putwarry (or koolkurny, called also curnum). This officer, of whom also I shall say more hereafter, was the village registrar and accountant, and occupied in Mahomedan times a position in the village similar to that of the canoongoe in the pergunnah.[3] This office has everywhere survived up to the present day. The canoongoe's office has undergone various vicissitudes, but has ultimately become extinct in Bengal.

The putwarry.

[1] Fifth Report, Vol. I, 18, 19; Vol. II, 157.
[2] Fifth Report, Vol. II, 12, 157. Harington's Analysis, Vol. II, 67.
[3] Fifth Report, Vol. II, 12, 157.

LECTURE III.

The chucklah superseded the circar.

When the chucklah became the main division for fiscal purposes the circars seem not to have been abolished, but to have gradually become obsolete.[1] We also find that the crories in some instances became zemindars,[2] and this suggests a mode in which the circars may have been gradually effaced as divisions and merged in zemindaries in some cases.

Attempts at centralisation.

The Mahomedans seem in the successive substitutions of the circar for the pergunnah, and the chucklah for the circar, to have been aiming at greater centralisation. But as they had succeeded to and adopted the Hindoo system, with its hereditary ideas and a spirit opposed to centralisation, they found influences still at work which made it impossible to administer the revenue without practically retaining the officers of the inferior grades in a subordinate capacity. These officers were less within the reach of the central Government than they had formerly been, before the fiscal divisions to which they were attached had become subordinate, and while therefore they were the officers of the main fiscal divisions, and as such in immediate contact with the central Government. And in this way, it seems not improbable, the vague claims of the officers of the village, pergunnah, and circar may have grown in obscurity into rights which the State found itself unable to deal with. These claims however might probably have been dealt with if the Mahomedan Government could have got rid of the old system and the Hindoo element, and could have taken the whole revenue collection into its own hands, through a new set of officers and with

[1] Fifth Report, Vol. I, 236.
[2] Ib., Vol. II, 155, 167, 170.

new methods. But it is pretty obvious that this was impracticable; and when Jaffier Khan attempted to do this, and with for the time considerable apparent success, it was found that the old system had been by no means uprooted; and the zemindars were soon more powerful than ever. In fact no such radical change as was required for this purpose was ever possible without convulsing the whole system of government. And the State had little apparent interest in resorting to such violent measures; which were not required for the mere purpose of checking the encroachments of the zemindars on the rights of the State, but only for uprooting them altogether. Jaffier Khan's proceedings indeed were execrated for their violence. But these proceedings had a wider scope than that of merely checking the zemindars in the interests of the State. He seems to have sought to uproot them altogether. And the discontent thus caused would probably have induced subsequent rulers to restrict themselves to less ambitious aims, even if the utter failure of Jaffier Khan's attempts had not demonstrated their futility. The result was that the old system continued, with changes and modifications which seem, in spite of checks, to have been steadily turned to account by the zemindars; and these attempts at centralisation instead of checking this process favoured it, by creating a greater distance between the sovereign and the cultivator; while the State could not dispense with the zemindar, and was obliged to ignore all below him. In this way the creation of the chucklah may have tended to turn the crory into a zemindar, and to efface the circar as a division.

Hindoos filled the lower and Mahomedans the higher.

The Hindoo element was never got rid of; and at the time of the British accession it was found that while the chief revenue offices, such as those of dewan, aumil, &c., were

LECTURE III.

filled by Mahomedans, all the officers in immediate contact with the cultivators were Hindoos.[1] And all the revenue officers tended to merge into zemindars. Even the aumil who had charge of the chucklah was sometimes required to engage for the revenue, in default of an agreement being come to with the zemindar or others; so that he too occasionally occupied the position of a zemindar, and thus tended to become one under some circumstances. So with the farmer of revenue, who also stepped in when the zemindar refused to accept the assessment.[2] And so also with all the new officers whom the Mahomedans created as a check upon the zemindars.

There were some other officers besides those charged with the responsibilty of the administration of a division, but dependent upon them, of whom it may be as well to give some account. They are mentioned as dependent upon the head of the chucklah, the aumil or shaikdar, although many of them must always have been equally required, and several of them are referred to in the Ayeen Akbery.[3]

The aumil.

In the first place the aumil,—as the head of the chucklah was generally called, although the term was a general one, including all those employed in the collection of revenue,[4] —was provided with a police or military force called *sebundy fussula* to enable him to enforce the payment of the revenue; in the same way as the desmookh or crory had a force of pykes under the command of a khandait.[5] This military force was, it is said, at first paid

[1] Patton's Asiatic Monarchies, 120.
[2] Fifth Report, Vol. I, 19.
[3] Ayeen Akbery, Vol. I, 358.
[4] Patton's Asiatic Monarchies, 151.
[5] Fifth Report, Vol. II, 154, 155; Orissa, Vol. II, 222; Land Tenure by a Civilian, 312.

by wages, but afterwards obtained allotments of land, or rather assignments of revenue, although the assignees may sometimes have been in occupation of the land itself.[1] The system of payment by an assignment of revenue may have come down from Hindoo times, as it would seem that the Hindoo chowdhry was assisted by a similar force similarly maintained.[2] Under the immediate control of the aumil an ameen did the practical revenue work; and had large inquisitorial and controlling powers, with the corresponding burden of responsibility to the aumil for the revenue of the district.[3] A sheristadar or mujumudar kept the official records and accounts of the annual adjustments of revenue, and watched over the proceedings of the pergunnah officers, particularly the canoongoes. Tehsildars collected the revenue from the zemindars or other revenue payers. Mohurrirs wrote the accounts and documents. There were also, at least in the Northern Circars and probably in other parts at a distance from the seat of Government, reporters or news-writers employed:—one was called the Savannah negar, who was practically a spy on all the Government officers; and the other the Wakeh negar, or Dewanny remembrancer. These two officers sent weekly reports to head-quarters.

His subordinates.

It is clear that the revenue system of the Mahomedans gave employment to a large body of officials. Of these, as I have mentioned, the superior officers were Mahomedans, and the inferior and those in direct relations with the ryots were generally Hindoos.[4] It is said that Jaffier Khan

[1] Fifth Report, Vol. II, 155.
[2] Ante, Lecture I, p. 37.
[3] Fifth Report, Vol. II, 158.
[4] Ib., 12; Patton's Asiatic Monarchies, 120.

LECTURE III.

employed none but Hindoos in the collection of revenue, because he found them more pliable than the Mahomedans.[1] We find however that he ejected a great number of Hindoo zemindars, and he certainly was not the first to employ Hindoos very largely in the collection of the revenue. As we have seen Akbar's reforms were entrusted to Hindoo hands.

---

[1] Fifth Report, Vol. I, 104. Stewart's History of Bengal, p. 236.

LECTURE IV.

THE ZEMINDAR.

Hindoo times—Growth of the zemindar—The office hereditary—Conflict of authorities—Struggle between opposing principles—The zemindar an hereditary revenue contractor—The sunnud—Contents of the sunnud—The arzee—The furd-sewal—The furd-huckeekut—The muchulka—The perwanneh—Duties of the zemindar—Amount of revenue paid by him—The zemindars ultimately looked upon as landlords—The Nautwars—Zemindars in Behar—The sunnuds of Jaffier Khan—A zemindary alienable—The zemindar's emoluments—Surplus revenue—Settlement with Government—The hustabood—Settlement with the ryots—Mode of enhancing the ryot's rent—Customary rates—The khamar land—Remissions of revenue—Neej-jote and nankar—Extent of nankar—The purjote—Julkur, bunkur, ghasskur and phulkur—Cesses—Allowances to the zemindar—The zemindar's emoluments official in their origin—Dismissal of the zemindar—Allowances to displaced zemindars—Under-renting—The proceedings of Jaffier Khan—His attempt to reduce the zemindar's power—Severe measures adopted—The zemindars regained their power—Discussion of the zemindar's position.

I now proceed to give some account of the zemindar, the most important figure in the Bengal revenue system of modern times.

Hindoo times.

It is not very clear to what extent the office of zemindar prevailed in the Hindoo revenue system. According to the account I have given of that system there was ordinarily little room for the zemindar. Yet, when the headman happened to be set aside, it might be convenient to employ an intermediate officer who would undertake to collect the revenue. And we gather that this was sometimes done, the revenue being in such cases farmed either to the official collectors of revenue, or to outsiders. Again it is said that there were ryots not forming part of any village community from whom revenue had to be collected;[1] and here again the

[1] Orissa, Vol. I, 54, 55; Vol. II, 232, 245.

LECTURE IV.

zemindar might be a convenient instrument. But whether these conjectures are of any value or not, it is positively alleged that there were in Hindoo times hereditary officers corresponding to the zemindar, but that they were only officials, although hereditary.[1] The name itself seems to have been little used, if at all; and the precise period at which it was introduced cannot be ascertained. There were certain cultivating brahmins in early times called *bhuinhars*, or *boomees*, and sometimes zemindars: the two names being synonymous in meaning and indicating some connexion with the land.[2] In Orissa the name was applied to the *killadars*, or feudal fort-holders, and to the holders of one or more pergunnahs of the royal domain.[3] The name, like everything else connected with the zemindar and his functions, has been the subject of considerable controversy. It has been considered on the one hand to imply an absolute proprietary right, and to be almost equivalent to the English word 'landlord.' On the other hand its meaning has been limited to a mere connexion of some sort with the soil without implying any particular rights.[4] The controversy is, however, probably of less importance at present, since few will be satisfied to attribute to the zemindars the large rights claimed by them upon any arguments based upon the name alone.

Growth of the zemindar.

I have already pointed out the way in which the zemindar may have grown up and become powerful. Having grown out of the ancient rajahs, native leaders, and robber

[1] Patton's Asiatic Monarchies, 166. Fifth Report, Vol. II, 7.

[2] Orissa, Vol. I, 244, 247, 248, 264. Harington's Analysis, Vol. III, 240 (note).

[3] Orissa, Vol. II, 225.

Galloway's Law and Constitution of India, 27. Harington's Analysis, Vol. III, 314.

chiefs, and out of the various revenue officers, both ancient and modern, including the headmen and farmers of the revenue,[1] they acquired in course of time a right to collect the revenue of districts varying in size, sometimes consisting of a village or two, and sometimes of a large tract of country. They generally tended to displace the ancient revenue collectors, whether headmen or rajahs, and to absorb their privileges.

The office was an hereditary one, in later times at any rate. This hereditary character is said to have been derived from the Hindoo system, together with the office itself.[2] I have already endeavoured to describe the struggle between opposing ideas which appears to have taken place: the object of the Government being to keep the zemindars in the position of mere officers. We shall see still more of this struggle in Jaffier Khan's time: and it was not, according to Mr. Grant, until after that period that the zemindars were recognized as hereditary: this took place after Nadir Shah's invasion of A. D. 1739.[3] It is however said that a jungleboory zemindary or one which had gone to waste and had been restored to cultivation was always considered hereditary in the family of the new holder; possibly on the ground that, by cultivating the waste, the new occupant acquired a proprietary right independent of his official right.[4]

The office hereditary.

The view which I have endeavoured to explain, that the office was held as an office by persons cherishing hereditary claims, appears to me to go far towards reconciling the some-

Conflict of authorities.

[1] Ante, Lecture II.

[2] Campbell's Cobden Club Essay, 169, 226. Rouse's Dissertations, 71. Patton's Asiatic Monarchies, 81. Harington's Analysis, Vol. III, 340, 342, 355, 356, 360. Orissa, Vol. II, 228.

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

[4] Rouse's Dissertations, 51, 56. Harington's Analysis, Vol. III, 353.

LECTURE IV.

what conflicting authorities upon the question as to the hereditary character of the office. Mr. Grant says "that a possessive tenure of certain subordinate territorial jurisdictions called zemindaries, in virtue of a sunnud or written grant, determinable necessarily with the life of the grantee, or at the pleasure of the sovereign representative, is universally vested in certain natives, called zemindars, that is, technically holders of land, merely as farmers-general or contractors for the annual rents of Government."[1] This passage appears to have reference to the original nature of the zemindar's office; as Mr. Grant himself states that, in the confusion of later times, the zemindars assumed, and the Government recognized, an hereditary right in the office.[2] Another author says that the office of zemindar "could not be claimed as hereditary, though by long custom, and perhaps out of policy, the children of deceased contractors were very generally admitted as successors to their parents; they were not however in all cases appointed, and sometimes were ousted;" the ground of forfeiture being usually specified in the new sunnud. The ground specified was generally robbery, or protection of robbers.[3] And Sir W. Boughton Rouse says that the Government used formerly to sequester the zemindary on the death of a zemindar; but that afterwards it became a custom for his children to succeed.[4] On the other hand the authorities already cited maintain that the zemindar had hereditary rights. Amongst others Mr. Francis, in a plan of settlement dated the 22nd. of January 1776, asserts that "the land is the hereditary

[1] Harington's Analysis, Vol. III, 361.
[2] Fifth Report, Vol. II, 156.
[3] Land Tenure by a Civilian, 72.
[4] Dissertations, 53 to 55, 70, 71.

property of the zemindar. He holds it by the law of the country on the tenure of paying a certain contribution to Government." And again, "the inheritable quality of the lands is alone sufficient to prove that they are the property of the zemindars, talookdars, and others, to whom they have descended by a long course of inheritance."[1] The larger zemindaries are moreover said to have descended by primogeniture, while the smaller ones were divided;[2] a fact which has already been noticed, and which seems to point to the true origin of a zemindar of this class; that he either grew out of the rajah, or was originally an official whose office could only be conveniently exercised by a single individual. The Royroyan says:—"The zemindars of a middle and inferior rank, such as those of Mohummud-ameenpore, Surfrazpore, &c., and the talookdars and muzkoories at large hold their lands to this day solely by virtue of inheritance; whereas the superior zemindars, such as those of Burdwan, Nuddea, Dinagepore, &c., after succeeding to their zemindaries on the ground of inheritance, are accustomed to receive, on the payment of a nuzzeranah, peshcush, &c., a dewanny sunnud from Government. In former times the zemindars of Bishenpore, Pachete, Beerbhoom, and Roshunabad used to succeed, in the first instance, by the right of inheritance, and by the established practice of their respective families; and to solicit afterwards, as a matter of course, a confirmation from the ruling power."[3] It is also stated that the express consent of Government was required for the succession of an adopted son.[4]

[1] Haringtou's Analysis, Vol. III, 368.
[2] Ib.
[3] Ib., 341.
[4] Ib., 352, 363.

LECTURE IV.

Struggle between opposing principles.

If there was the struggle which I have suggested between the hereditary principle of the Hindoo system and the anti-hereditary[1] principle of the Mahomedan, we can understand the Mahomedan Government insisting upon the recognition of its theory, that the zemindary was an office, by the acceptance of a sunnud, at least in the case of the principal zemindars: and it shows which was the stronger of the opposing principles from the first, that the smaller zemindars seem never to have in practice recognized the official theory, even to the extent of applying for a sunnud. No doubt, until the hereditary element was on the way to triumph, these hereditary claims could not be asserted; but whether originally incidents of the office, or derived from the general Hindoo system, these claims were so persistent that the opposing theories of the Mahomedans fell into decay, and the zemindar ultimately succeeded as by right of inheritance; only going through the form in some cases of receiving a sunnud and paying peshcush.[2] The same result, of hereditary succession with formal recognition, might, it is true, equally follow in the case of an office becoming hereditary which was originally not so; but in this case there is some reason to think that the hereditary tendency of the office was derived from the Hindoo system; and it is difficult to explain otherwise the triumph of the hereditary principle in a system opposed to it.

The zemindar an hereditary revenue contractor.

The zemindar thus became, in the way I have described, and by a kind of usurpation, an hereditary officer, with a right to engage with the Government for the payment of revenue on the one hand; and on the other hand, with a right to collect the Government share of the produce, and to

[1] Campbell's Cobden Club Essay, 152.

[2] Harington's Analysis, Vol. III, 340.

pay over to Government what had been engaged for after deducting his own emoluments.[1] He was an hereditary officer, but still only an officer, and in theory was bound to account to the State for all he received; which was either to be paid over to the State, or to be appropriated in the authorized way for his allowances. But the zemindar afterwards still further encroached upon the rights of the State and the cultivators; and ultimately came to pay the State a fixed sum, which was very loosely estimated, and to appropriate the surplus, whether equivalent to the allowances or more. The change in fact was, that as the zemindar grew powerful, and the State fell into confusion, the assessment which he bound himself to pay to the State was not, as strictly as formerly, the whole revenue after deducting his authorized allowances. Besides, he was always attempting to exact more from the ryots for his own benefit. This appears to have been the general course of growth of the zemindar's influence and power.

Most of the officers of revenue had, as I have already pointed out, a strong tendency to become zemindars. Thus Mr. Grant says that after the invasion of Nadir Shah in 1739, many jageerdars and farmers-general, and even enamdars, crories, desmookhs, and chowdhries got their hereditary right admitted, and were all considered zemindars in their districts; although they had strictly only a right to certain privileges and allowances of land by virtue of their offices.[2]

The sunnud by which the office of zemindar was conferred was, if the view I have suggested be well founded, The sunnud.

[1] Land Tenure by a Civilian, 73. Fifth Report, Vol. II, 12. Harington's Analysis, Vol. III, 340, 363. Patton's Asiatic Monarchies, 144, 145.

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

LECTURE IV.

intended to be the source of the zemindar's rights. It grew however to be a mere form; a recognition by the State of rights already existing and almost independent of it.[1] The zemindar succeeded to his zemindary in later times as a matter of course, and simply by inheritance, sometimes taking a sunnud afterwards, and sometimes never taking one at all. The grant of a sunnud grew to be rare,[2] and came to be applied for only when it became necessary to secure the advantage of recognition by the State as against other claimants: for instance, when a new line of zemindars had to be created on the expulsion or failure of the old line.[3] For the zemindars were sometimes expelled as we shall see; and the State did not succumb before them all at once. It was by persistent encroachments in times of weakness and confusion that the zemindars gradually consolidated their power: until at last there grew to be such a gulf between their actual position and their theoretical rights that, according as one or the other was looked at, they could be made out to be absolute proprietors or mere officers,—two views of their position which were strenuously contended for by opposite parties at the time of the Permanent Settlement. The State however never theoretically abandoned its rights. It could insist upon the zemindar's taking a sunnud, and could refuse to recognize him otherwise: and probably, before the grant of sunnuds came to be a mere form, there was an intermediate stage in which the State still found its power to grant sunnuds of use as a check, although it was no longer able to make its grant effective in all cases.

[1] Fifth Report, Vol. I, 160.
[2] Harington's Analysis, Vol. III, 337.
[3] Ib., 337, 338.

LECTURE IV.

I shall now give some account of the nature of a sunnud and of the mode of obtaining it. On the death of a zemindar his heir wrote to the soubahdar at the head of the soubah or province, or to the dewan, royroyan or peshkar, informing him of the fact and praying for the protection of those officers.[1] Having received encouragement from the authorities by the receipt of the usual marks of condolence, the applicant next presented an *arzee* or petition, offering to pay the usual peshcush or present, and to pay the annual jumma or assessed revenue, together with the balances, and praying for a royal firman, and soubahdary and dewanny perwanneh for the zemindary.[2] This petition also set out the details of the peshcush and assessment which it was proposed to pay. Upon receipt of this petition the subordinate revenue officers prepared an application to their superiors for directions, called *furd-sewal*, which was endorsed on the sunnud; which up to this stage therefore consisted of the arzee or petition and the furd-sewal. The furd-sewal recited the presentation of the petition and asked for orders.[3] If the application for a grant of the zemindary was acceded to the subordinates had orders to prepare a further document with full details called the *furd-huckeekut*, asking also for further directions with regard to taking a *muchulka* (obligatory deed) and *cabooleut* (counterpart) from the applicant, and preparing a perwanneh (requisition to the subordinates) thereupon.[4] The muchulka recited that the zemindary had been conferred upon the applicant on his agreeing to pay the

Contents of the sunnud.

The arzee.

The furd-sewal.

The furd-huckeekut.

The muchulka.

[1] Harington's Analysis, Vol. III, 275.

[2] Ib., 281, 282.

[3] Ib.

[4] Ib., 277, 286. Baillie's Land Tax, 80 (note).

LECTURE IV.

peshcush, jumma, and balances specified in the before-mentioned documents; and an abstract of the amounts of which was set out in the muchulka. The zemindar-elect then went on to agree and bind himself in this document not to neglect his duties in the most minute particular: to observe a commendable character towards the body of the ryots and the inhabitants at large; to endeavour to punish and expel the refractory, and to extirpate robbers; to conciliate and encourage the ryots, and to promote the increase of cultivation and the improvement of agriculture; to take care that travellers might pass in safety, and that no robbery or murder should be committed, and if any one should be robbed, he agreed to be responsible for producing the culprits with the property, or to make good the value; to repress drunkenness and all kinds of irregularity; to pay punctually the assessment after deducting the usual muzkoorat; and to transmit to the Government dufter-khana the official papers required, according to custom, under his own signature and the signatures of the canoongoes of the soubah. This document with the details included the cabooleut, and was called either the muchulka or the muchulka-cabooleut.[1] The sunnud or perwanneh was then granted:[2] the whole of the before-mentioned documents, with the necessary signatures and authorisations, being written on the same roll on which the sunnud was written; so that the whole transaction was evidenced by one document.[3]

The perwanneh.

The sunnud or perwanneh was addressed to the mutseddies of affairs and the officers entrusted with public

[1] Harington's Analysis, Vol. III, 287.
[2] Ib., 277, 279.
[3] Ib., 277, 278.

transactions, to the canoongoes, mokuddims, and husbandmen of the pergunnah, and recited that the furd-sewal, furd-huckeekut, and muchulka had been executed, and that the service of the zemindary had been conferred upon the person therein named in consideration of the specified peshcush, jumma, and balances, to the end that he might not fail in his duty in the most minute particular, describing those duties exactly as in the muchulka, with the addition of a specific prohibition against exacting illegal abwabs or extra revenue. The sunnud concluded after this recital of the zemindar's duties, with a command to the persons to whom it was addressed to regard the person designated as the authorized zemindar; and that, considering him as invested with the duties and functions appertaining thereto, they should receive all papers regarding the pergunnah, signed by him, as genuine and authentic.[1] The sunnud of which I have thus given an abstract is of the date A. D. 1735 or 1736, after Jaffier Khan's death, and when the zemindary had become almost recognized as hereditary. Accordingly the arzee in this particular case shows that the zemindar had already succeeded to his father's zemindary, and had been in enjoyment thereof for three years before applying for a sunnud. It also recites that the necessity for a sunnud is the difficulty arising from the insecurity of the applicant's position until he obtains a sunnud; and that he desires to obtain such a grant in order that he may appear with dignity and credit among his equals.[2] The arzee was probably more variable in its form and contents than any of the other documents; and in this particular instance

[1] Harington's Analysis, Vol. III, 279, 280.
[2] Ib., 281, 282.

LECTURE IV.

we see the hereditary claim almost paramount, and the recognition by the State sought very much as a matter of convenience.

Duties of the zemindar.

The sunnud shows what were the duties of the zemindar:[1] and that they were duties devolving upon him as a representative of the Government in respect of the revenue, as well as in respect of the preservation of order. His relation with Government was that of a responsible representative. He was responsible for the revenue as specified in the sunnud after making the proper deductions.[2] And he was bound to render detailed accounts of his collections under his own signature and attested by the canoongoes.[3] He was also bound it seems to assist the sovereign in case of invasion.[4] He was further responsible for the peace and order of his zemindary.[5] The Government endeavoured to maintain various checks upon his conduct; and, when he was suspected of any tendency to insubordination, compelled him to renew his obligations by a cabooleut.[6] His relation with the ryots was also that of a representative of the State, entitled to collect from them the share due to the Government, and charged with the duty of protecting and assisting them; the ryots in turn being bound to assist the zemindar in preserving peace and order.[7] The zemindar was bound to advance such temporary loans (or *tuccavee*) as the ryot needed in order to enable him to cultivate; to

[1] Baillie's Land Tax, xxxviii. Rouse's Dissertations, 53 to 55. Fifth Report, Vol. I, 160; Vol. II, 7.

[2] Orissa, Vol. II, 228.

[3] Rouse's Dissertations, 85.

[4] Harington's Analysis, Vol. III, 242.

[5] Ib., 346, 353.

[6] Ib., 346.

[7] Ib., 353. Patton's Asiatic Monarchies, 160, 161.

grant him remissions and indulgences in the payment of his revenue in case of calamity; and generally to exercise the functions of the State in encouraging and controlling, especially with regard to the revenue.[1] With him rested the duty of allotting and assessing the lands of his zemindary; of seeing that the accounts of the revenue were properly kept; and of collecting the rents or revenue from the cultivators.[2] These duties devolved upon him in the same way as they had formerly devolved upon the huzooree malgoozar or direct revenue-payer, whether headman, chowdhry or farmer, from whom the zemindar had derived his functions.[3]

Amount of revenue paid by him.

In earlier times he was bound to account for the whole revenue collected; and although he was never theoretically released from this liability, yet practically the revenue paid by the zemindar came to have less and less connexion with the revenue received by him from the cultivator. The same causes which had driven the State to employ such officials, and had made it unable to resist their encroachments,—namely, the difficulty of constant minute investigations by the immediate officers of the State,—tended to make the arrangement between the State and the zemindar as to the amount of revenue a mere continuation of the existing arrangements, with little reference to the actual assessment of the ryots by the zemindar. The zemindar had, as we have seen, to render accounts; and probably the profit derived was originally not so much due to the difference between the formal assessments upon the zemindar and upon the ryots respectively as to the

[1] Harington's Analysis, Vol. III, 353.
[2] Ib., 353, 363. Rouse's Dissertations, 28.
[3] Fifth Report, Vol. II, 156.

LECTURE IV.

exactions which the zemindars contrived to enforce, and at which the officers of Government connived. This practice, of exacting unauthorised contributions, ultimately established itself so completely that at length it came to be considered that the zemindar was entitled to all he could squeeze out of the ryots in indirect ways, and he gradually grew to be looked upon as a sort of landlord in his relation to the ryots, and a sort of tenant in his relation to the State. But he did not at once altogether lose his position as a public officer bound to keep the peace and protect the ryots.

The zemindars ultimately looked upon as landlords.

As we have seen throughout the proprietary character of the zemindar tended to strengthen itself while the official character tended to be ignored, except as a useful auxiliary to the proprietary right. And thus we find that before the period of British rule, the proprietary character had, to a great extent, absorbed the official character; and, when English ideas were applied to the relations between the parties, it was natural enough to look upon the zemindar as the rent-receiving landlord entitled to the soil and paying only a tax to the State. Still even at that period, in the early times of British rule, the official aspect of the zemindar's position was not entirely lost sight of; and we find the Board of Revenue, some time before 1786, declaring that a zemindary was "a conditional office, annually renewable and revocable on defalcation."[1]

The Nautwars.

Zemindars prevailed chiefly in Bengal. In the South of India the village communities retained more of their vigour. In the Northern Circars the Nautwars exercised similar

[1] Harington's Analysis, Vol. III, 229.

functions to those of the zemindars; being headmen of a district including a circle of villages, the cultivation of which they superintended on behalf of Government;[1] but nowhere do zemindary rights appear to have acquired the same strength as in Bengal Proper. In Behar also the zemindars became powerful after the soubahdary of Mahabat Jung. They obtained the management of the collections and entered into annual engagements with Government for the revenue.[2]

Zemindars in Behar.

We have seen that a zemindary was hereditary: but that it was not so by virtue of the sunnud, which contemplated only a personal grant.[3] It is said that the sunnud granted by Jaffier Khan to the new zemindars appointed by him clearly restricted the interest of the zemindar to an appointment for life.[4] It was probably one of the chief aims of that prince to break the power of the zemindars: and to bring them back to their theoretical position as mere officials. But the traditions of the office were too strong for him; and we find that the old system was reverted to: and although the sunnud may have contemplated an appointment for life only, yet the son was generally appointed to succeed the father, and the efforts of Jaffier Khan proved in the end ineffectual to arrest the progress of zemindary claims.[5]

The sunnud of Jaffier Khan.

The zemindary right also came to be alienable: it was claimed as a kind of property, although the State strove to treat the zemindar as an officer. And when

A zemindary alienable.

---

[1] Fifth Report, Vol. II, 40.
[2] Harington's Analysis, Vol. III, 324.
[3] Ib., 337, 355.
[4] Baillie's Land Tax, xli.
[5] Ib.

LECTURE IV.

Government practically abandoned the contest, and treated the zemindar as having a fixed hereditary right to contract for the revenue, the notions of the Mahomedans as to individual right would easily lead to the holder being considered at liberty to alienate to any person furnishing the requisite securities for the payment of the revenue. The sanction of Government was therefore required, but not the concurrence of the next in succession.[1] Indeed, the office was sometimes sold by the State; and it is said sometimes also sold by a defaulting zemindar at the command of the Government for arrears of revenue; and it has been suggested that the power of alienation may have arisen in this way;[2] a not improbable supposition. Ultimately the zemindar came to transfer his rights quite freely; and this was looked upon later as a distinctive feature, and a decisive mark of proprietorship of the soil.

The zemindar's emoluments.

We now come to consider the zemindar's emoluments. These were of a defined and limited character indicating a right in the soil considerably below that of an absolute proprietor in England. The zemindar having ultimately superseded most of the ancient malgoozars, or revenue contractors and collectors, apparently absorbed their emoluments; especially after the time of Jaffier Khan, who expelled the old malgoozars and formed large official zemindaries, in which he put new men, who seem to have absorbed the whole of the emoluments of the old malgoozars, including those of the headmen.[3] But the zemindar of later times received other profits beyond the ancient perquisites

[1] Harington's Analysis, Vol. III, 342. Steele's Deccan Castes, 231.
[2] Orissa, Vol. II, 228, 238.
[3] Land Tenure by a Civilian, 41 to 43, 50, 63, 64, 76.

of the malgoozar; since he retained his official allowances and gains, after he had absorbed those of the old malgoozar. In the first place he retained the surplus revenue after paying to Government the amount contracted for.[1] I have pointed out already that this source of profit, originally yielding little, grew afterwards when the zemindar was unchecked, to be a substantial item. The zemindar's settlement with Government was generally an annual one, but might be made for a term of years.[2] The zemindar's settlement with the ryots was always annual.[3] His settlement with Government was based upon the *hustabood*, a comparative statement of the value of the land, prepared by the canoongoes, and originally founded upon Todar Mull's investigations. For reasons already touched upon this was probably revised much less frequently than the zemindar's estimate for assessing his ryots. The original assessment upon the footing of the hustabood, as derived from Todar Mull's settlement, was called the assul toomar jumma; but in later times abwabs, or extra assessments, were incorporated with it, although it still bore the same name, and was treated as the original assessment.[4] These abwabs were however kept separate in the canoongoes' accounts; and there were other abwabs imposed from time to time, after the assul jumma had ceased to be considered sufficiently elastic to include them. The zemindar having thus settled with Government the amount of revenue upon the footing now described, he proceeded just before the

Surplus revenue.

Settlement with Government.

The hustabood.

Settlement with the ryots.

[1] Rouse's Dissertations, 295. Fifth Report, Vol. I, 360. Orissa, Vol. II, 28. Land Tenure by a Civilian, 42, 59, 70.

[2] Land Tenure by a Civilian, 47. Fifth Report, Vol. I, 19.

[3] Land Tenure by a Civilian, 65, 66.

[4] Ib., 47, 59.

LECTURE IV.

rains to distribute this assessment amongst the cultivators. He was bound to demand from them only sufficient to meet the Government revenue and such allowances as were payable by the ryots. Even thus the assessment upon the ryots would be at higher rates than the assessment upon the zemindar; provided he was held bound, as in modern times he was, to bear himself the loss arising from any ordinary failure of crops and from outstanding loans, and to yield the stipulated amount of revenue notwithstanding. And in this way a door was opened for the zemindar's exactions by necessitating a difference between the ryot's and the zemindar's assessments. But he added also his own exactions, included under the head of *sewaee*,[1] before distributing the burden of assessment amongst the cultivators.

Modes of enhancing the ryot's rent.

There were two modes in which the enhanced assessment was fixed according to Mr. Shore (afterwards Lord Teignmouth and Governor-General of India). One of these was to add the subsequent abwabs and the exactions by the zemindar (calculated at so much a month, or so much in the rupee,) to the assul or original rate, and then to distribute this according to the quantity and quality of land held by the ryots, or the estimated or actual crop. The other mode was to assess at a fixed rate for the beegah, whatever might be the crop, which rate included the chief items of exaction or extra assessment.[2] The zemindar was however to some extent controlled in his assessment by custom; which required that the rates usually paid by the village should be adhered to, at least in form. Those rates were well known, and registers of them were kept by the putwarries and canoongoes in records called village and pergunnah *rey-*

Customary rates.

[1] Land Tenure by a Civilian, 59.

[2] Fifth Report, Vol. I, 140.

bundees.[1] Nevertheless, the zemindar ultimately contrived to extract the main portion of his profit from the surplus of his receipts beyond the jumma he paid. And in this he was still further assisted when he settled with Government for a term of years; and when consequently his yearly settlements with the ryots could not at all be expected to be at the same rates as he paid to Government.[2] The rates were settled with the cultivators through the headman of the village in many cases; but there appear to have been cultivators who did not form part of any village organization, and with these probably the zemindar could deal untrammelled, at least by the village reybundees.[3]

The khamar land.

The zemindar's stipulated payment being in full discharge of the revenue of his district, and he being empowered in his capacity of Government representative to authorize the cultivation of waste land (*khamar*) or fallow (*bunjer*) within his district, the revenue derived from such land came to belong to him as part of the revenue of his zemindary. If he cultivated such land by himself or his servants, he took the whole of the benefit: if he permitted the villagers to cultivate, he took such revenue as was payable for it.[4] The revenue for the khamar land when cultivated by others was generally received by the zemindar in kind and amounted to half the produce.[5] We thus see the primitive

[1] Harington's Analysis, Vol. III, 324. Land Tenure by a Civilian, 59.

[2] Orissa, Vol. I, 54, 55; Vol. II, 232.

[3] Ib., Vol. II, 232, 245.

[4] Harington's Analysis, Vol. III, 340, 343, 363. Land Tenure by a Civilian, 42, 60, 69. Patton's Asiatic Monarchies, 158. Orissa, Vol. I, 54, 55; Vol. II, 232. Rouse's Dissertations, 293, 294. Wilson's Glossary "khamar." Directions for Revenue Officers, 4.

[5] Fifth Report, Vol. I, 140. Harington's Analysis, Vol. III, 346, 422. Whinfield's Landlord and Tenant, 72.

LECTURE IV.

method of paying revenue reverted to when the primitive conditions were restored: the cultivator would naturally under such conditions—when tilling land whose productive qualities had not been experienced,—hesitate to contract for a money payment, but would prefer to divide the risk by paying in kind.

Remissions of revenue.

We have seen that the headman of the village held a small portion of his land discharged of revenue, and the rest at a lower rate than the body of the villagers. And the village officers similarly in some cases held small portions of their land free of revenue. Such remissions of revenue are of the same nature as jageers, and this was a mode of remuneration extensively practised in Bengal and Behar.[1] Consequently, we find the zemindar enjoying the same privilege of exemption from revenue of part of the land cultivated by himself; and of paying a reduced rate upon the rest of his land.[2] The land cultivated by him was called his khoodkasht, *seer* or *neej-jote* land: and the revenue remitted was called his *seer nankar* or *nankar*[3] (subsistence); names which were also applied to the lands themselves in respect of which the remission was made: such lands are frequently spoken of as nankar lands, and sometimes language is used which would seem to imply that such lands are held by some peculiar tenure. I have, in thus describing the nankar or seer nankar as in reality a remission of revenue only, given what seems to me the result of the conflicting authorities; but as there is considerable variation amongst them, and as the point is one of some importance as showing the true position of

Neej-jote and nankar.

[1] Fifth Report, Vol. I, 341. Baillie's Land Tax, xliv.
[2] Land Tenure by a Civilian, 60, 69.
[3] Ib. Harington's Analysis, Vol. II, 65.

the zemindar, I shall shortly state the various opinions which I have met with. It is a point of importance because, from the zemindar's possession of a portion of land within his zemindary free of revenue, the inference has sometimes been drawn that the whole soil of the zemindary is his; and that he has, when letting out the rest, reserved this portion for himself, in the same way as the lord of the manor reserved his demesne lands. He is considered, from this point of view, as paying revenue for the whole zemindary, and not as exempt in respect of this particular portion; as having been free to keep in his own hands, or to let to others the whole; and as having chosen to let the remainder, reserving a small portion for his own cultivation. The possession of nankar land has therefore been relied upon as a strong mark of proprietorship with respect to the whole zemindary. Of course, this view is quite inconsistent with the account I have given, and indeed is only an inference from the fact of direct possession; none of the authorities give the smallest support to this particular inference, and this will be more clearly brought out by a comparison of them. Mr. Shore speaks of nankar as "a portion of the land or its produce assigned to the zemindar for his immediate use and subsistence:"[1] and again as "an established provision under the name of nankar, included under the head of muzkoorat, after completing his annual engagements for the revenue. It was not sufficient for his subsistence; and it was still less a fund for the accumulation of property, nor can the permanent appropriation of the fund itself be reconciled to the idea of a fluctuating office."[2] In these passages the two different modes of pro-

[1] Harington's Analysis, Vol. III, 234.

[2] Ib., 239.

LECTURE IV.

viding for the nankar are referred to; in the one case a remission of revenue of the zemindar's own land being adopted; and in the other a deduction from the entire revenue payable. In an appendix to Mr. Shore's minute, the answers of some native authorities to questions put to them are inserted. In one of these it is said that "the principal zemindars received tithes and jageers according to their rank; whilst those of an inferior degree, in the event of their being obedient to the orders of Government, attentive to the improvement of their lands, and punctual in the payment of their revenues, received nankar proportionate to their exigencies; besides which they had no other allowance. The nankar was deducted from the revenue payable to Government. Afterwards, on the decline of the Empire, villages were granted for nankar in lieu of money."[1] I have already pointed out that a jageer is essentially of the same character as nankar. The passage quoted refers to Behar, where jageers were more common, but where the zemindars seem originally to have received nankar in the shape of a deduction from the gross revenue; while in Bengal the other was the more usual mode of providing for the nankar.[2] This authority treats nankar as a reward for the faithful performance of duties, the amount being regulated by the merit displayed by the zemindar, as well as by the extent of his zemindary.[3] The Royroyan says that "the zemindars of the Soubah of Behar were allowed nankar lands and villages; dustoorat and malikhana in money, at the rate of from five to ten per cent. When the amount exceeded or fell short of these proportions, there

[1] Harington's Analysis, Vol. III, 320.
[2] Fifth Report, Vol. I, 341.
[3] Harington's Analysis, Vol. III, 320, 321.

always existed some special reason for the deviation."[1] And he speaks of these allowances as received "as the rights of proprietorship,"[2] and not for services rendered. Mr. Grant says that the zemindars have "certain specific allotments of landed property called nankar, or means of subsistence, included in their respective jurisdictions; such property being always of small comparative extent, seldom more than one-twentieth part of the whole zemindary, when rightfully held, and invariably annexed to the patent office of zemindar."[3] This he considers to be a reward for the services performed by the zemindar, other than that of collecting the revenue, for which he says the zemindar received a russoom or commission of five per cent. deducted from the gross revenue.[4] The result of these authorities is that nankar was a remuneration to the zemindar for the performance of his duties, and that it was originally deducted or remitted from the revenue; and, from the analogy of the desmookh's[5] and headman's emoluments, and from the nature of the case, we may fairly infer, as is distinctly alleged by one authority,[6] that the land as to which the revenue was remitted was land in the occupation of the zemindar; and that when he had no land of his own, the ryots were not dispossessed to furnish him with land, but a deduction from the revenue was allowed instead. This is further confirmed by the fact that the zemindars, when displaced or ejected, in some cases are said to have retained, and in other cases to have lost, their nankar:

[1] Harington's Analysis, Vol. III, 343.
[2] Ib., 344.
[3] Ib., 361.
[4] Fifth Report, Vol. I, 360, 467, 475.
[5] Ib., Vol. II, 155. Colebrooke's Supplement, 239.
[6] Land Tenure by a Civilian, 60, 69.

LECTURE IV.

they would naturally retain the land which yielded their nankar when it was their own land, but they would have to pay revenue; and this seems to be the explanation of the apparent conflict as to the loss of nankar on expulsion.

Extent of nankar.

The nankar lands were the same as the *saverums* of the Northern Circars;[1] and were dispersed in some cases through the zemindary, as was the case with the similar holdings by the predecessors of the zemindars.[2] Sometimes the land was that immediately surrounding the zemindar's house.[3] And sometimes it consisted of lands adapted for special crops, and supplying in the aggregate the chief requisites of life: thus the zemindar sometimes had one piece of revenue-free land for his rice, another for pasture, and so on for other products.[4] Of his rights to fisheries and water I shall speak immediately. The amount of his nankar is variously estimated at from one to ten per cent.; but the better opinion seems to be that the nankar originally amounted to about five per cent. on the gross revenue; and the other allowances, by way of deduction from the revenue, to another five per cent.[5] Besides these allowances there were certain deductions for expenses of collection, of which I shall speak hereafter. The zemindars as usual encroached upon the State in respect of their emoluments, and ultimately contrived to appropriate the

---

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

[2] Ib., 7, 155.

[3] Orissa, Vol. I, 54, 55; Vol. II, 232.

[4] Patton's Asiatic Monarchies, 157.

[5] Rouse's Dissertations, 295. Baillie's Land Tax, xli. Harington's Analysis, Vol. II, 234; Vol. III, 234, 239, 244, 343, 344. Orissa, Vol. I, 54, 55; Vol. II, 232. Great Rent Case, B. L. R., Sup. Vol., 211. Fifth Report, Vol. I, 18, 157, 360, 475.

revenues of whole villages and even whole pergunnahs as their nankar in some instances.[1]

The purjote.

In absorbing the other emoluments of the village headmen, the zemindar also appropriated, as part of his perquisites, the purjote or mohturfa, the fees paid by the non-agricultural members of the village community;[2] and also the rights known as julkur (water and fishery dues), bunkur (forest dues), ghasskur (pasturage dues), and phulkur (dues from fruit trees and orchards); he had also a preferential right to the use of the tanks, commons, and pasture lands of the village.[3] He claimed also the services of the village officers of all classes, and the gratuitous labour of some of the village labourers:[4] claims derived from the State on the one hand, and the village headman on the other. He took a seer on each maund of grain; and an anna and a half or two annas on a kutcha beegah, or half beegah, of other produce. He also took half an anna in the rupee of money revenue, which was paid by each cultivator to him as his zemindarana or malikana.[5] These dues were collected by the zemindar direct from the ryots as his perquisites, over and above the amount paid as the Government share; and he derived his right to them from the ancient headmen and malgoozars.[6] These sums did not in consequence appear in his accounts with the Government, but appeared in his accounts with the cultivators or

Julkur, bunkur, ghasskur, and phulkur.

[1] Fifth Report, Vol. II, 15. Compare the similar proceedings of the Poligars in Southern India; Fifth Report, Vol. II, 90, 91, 96, 97.

[2] Land Tenure by a Civilian, 60, 69.

[3] Ib Orissa, Vol. I, 56, 57; Vol. II, 235.

[4] Land Tenure by a Civilian, 60, 69, 70. Orissa, Vol. I, 56, 57; Vol. II, 235. Fifth Report, Vol. II, 9.

[5] Land Tenure by a Civilian, 60, 86.

[6] Ib.

LECTURE IV.

the village under the head of sewaee.[1] They were originally allowances for the risk and trouble of collection,[2] although the zemindars added to these many other sources of remuneration.

Cesses.

The zemindar's allowance for collection was nominally five per cent.,[3] and his whole allowance ten per cent.;[4] but his profits in some cases were altogether from twelve to twenty-five per cent. of the gross collections.[5]

Akbar had strictly forbidden all exactions beyond the assessed revenue,[6] but the prohibition had been ineffectual; the exaction and payment of cesses being too congenial to native ideas to be uprooted. Indeed, in spite of continued prohibitions, from the time of Akbar to the present day, the same system still flourishes. The zemindars in Bengal levied cesses on every domestic event occurring in their families, as well as on many other occasions and on various pretexts. Amongst these were *mangun*, a contribution to assist the zemindar when in embarrassed circumstances; *parbonee*, to enable him to celebrate festivals;[7] *najay*, an assessment upon the actual tenants to make up the loss arising from other tenants dying or absconding.[8] On births, marriages, and deaths in his family, on his being fined or incurring any extra

---

[1] Land Tenure by a Civilian, 70.

[2] Ib., 60, 61, 70.

[3] Fifth Report, Vol. I, 367.

[4] Ib., 274. Orissa, Vol. I, 53, 54; Vol. II, 232. Patton's Asiatic Monarchies, 161. Evidence of Mr. Tucker before the Select Committee of the House of Commons (1832), 1817, 1818, 2037.

[5] Orissa, Vol. II, 231 to 236.

[6] Ayeen Akbery, Vol. I, 383.

[7] Fifth Report, Vol. I, 141. Orissa, Vol. I, 56, 57; Vol. II, 235. Land Tenure by a Civilian, 60, 70.

[8] Harington's Analysis, Vol. II, 7.

expense for building or through contributing to any Government project, he exacted a cess from the ryots: if he constructed an embankment, the ryots had to contribute to pay for it; and he demanded a fee to defray his travelling expenses.[1] Many of these exactions, although rigorously forbidden, are still levied with little resistance.[2] Such exactions are probably of very ancient origin; and submission to them had become a habit in very early times, and one which it has been found impossible to uproot. For instance, the zemindars used also to collect the *sayer* duties, being the revenue derived from other sources than land: and these collections they accounted for separately from the mal or land-revenue.[3] Amongst these sayer duties were rents or dues for roads, and for stalls at markets. When the sayer was abolished by the English Government, the zemindars were compensated for the loss of their profit on the road dues and stall rents as well as on the collections generally. But according to an inveterate habit in India, the abolished imposts reappeared as extra cesses. The zemindar, like the State in Mahomedan times, by thus imposing special taxes, avoided as much as possible the appearance of increasing the assessment, wisely preferring to attain his object in an indirect way, and one congenial to the habits of the people. Sir George Campbell complains, that although in Orissa the respective rights of the zemindar and the ryot have been carefully ascertained and recorded, yet these illegal cesses are still in full vigour. The zemindar does not attempt to raise the rent to a rack-rent, but

[1] Rouse's Dissertations, 293, 294.

[2] Whinfield's Landlord and Tenant, 77. Harington's Analysis, Vol. II, 226 to 232.

[3] Land Tenure by a Civilian, 70, 112. Orissa, Vol. I, 53; Vol. II, 231 to 236.

LECTURE IV.

revives the old taxes on stalls and transit, for the abolition of which he has received compensation.[1] And he gives a list of twenty-seven illegal cesses still levied in the district of the Twenty-four Pergunnahs. The following remarks of his may usefully be quoted:[2]—"The agricultural cesses consist of various dues and charges levied from the ryots in addition to the regular rent and generally in proportion to the rent. The Permanent Settlement Regulations positively prohibited all such duties, strictly confining the zemindars to the customary rent proper, but in this as in other things these laws have been wholly set at defiance in modern times. The modern zemindar taxes his ryots for every extravagance or necessity that circumstances may suggest, as his predecessors taxed them in the past. He will tax them for the support of his agents of various kinds and degrees, for the payment of his income tax and his postal cess, for the purchase of an elephant for his own use, for the cost of the stationery of his establishment, for the cost of printing the forms of his rent receipts, for the payment of his lawyers. The milkman gives his milk, the oilman his oil, the weaver his clothes, the confectioner his sweetmeats, the fisherman his fish. The zemindar levies benevolences from his ryots for a festival, for a religious ceremony, for a birth, for a marriage; he exacts fees from them on all changes of their holdings, on the exchange of leases and agreements, and on all transfers and sales; he imposes a fine on them when he settles their petty disputes, and when the police or when the magistrate visit his estates; he levies blackmail on them when social scandals transpire; or when an offence or

[1] Administration Report, for 1872-73; Introduction, p. 16.
[2] Ib., The Report, p. 23.

an affray is committed. He establishes his private pound near his cutcherry, and realizes a fine for every head of cattle that is caught trespassing on the ryot's crops. The abwabs, as these illegal cesses are called, pervade the whole zemindari system. In every zemindari there is a naib; under the naib there are gomastahs; under the gomastah there are piyadas or peons. The naib exacts a 'hisabana' or perquisite for adjusting accounts annually. The naibs and gomastahs take their share in the regular abwabs; they have their little abwabs of their own. The naib occasionally indulges in an ominous raid in the mofussil: one rupee is exacted from every ryot who has a rental, as he comes to proffer his respects. Collecting peons, when they are sent to summon ryots to the landholder's cutcherry, exact from them daily four or five annas as summons fees."

Allowances to the zemindar.

The expenses incurred in keeping up establishments, cutcherries, &c., for the realization of the revenue, were allowed for in the accounts between the zemindar and the Government; and a sufficient amount of revenue was appropriated to the payment of such expenses: the balance, after deducting these expenses, with the nankar and other allowances under the head of muzkoorat, was the net revenue which the zemindar bound himself to pay to the State.[1] The details of these deductions will be more conveniently dealt with when I come to describe the mode of settlement for the revenue.

The zemindar's emoluments official in their origin.

The emoluments and privileges enjoyed by the zemindars have been shown to be attached to the office, and to be enjoyed by virtue of their "official connexion with the ruling power through a contract for the payment of the

[1] Harington's Analysis, Vol. III, 321.

LECTURE IV.

land revenue;"[1] and they consequently lost such rights when they were dismissed. If the zemindar declined to agree to the terms proposed by the State, or to pay the amount of revenue required, the revenue was farmed out in theeka or ijarah, and the zemindar reverted to his former position; paying revenue like other cultivators for any land occupied by him in the zemindary district.[2]

Dismissal of the zemindar.

It has been questioned whether a zemindar could be ousted. If my account of the origin and growth of his rights is well-founded, the zemindar would cherish a notion that he could not, under ordinary circumstances, be ousted; while the State, regarding him as an officer, would claim to dismiss him like any other officer, and would sometimes assert its right; and according to the course of events as already witnessed, the zemindar's claim would be likely to prevail in the end. And this is very much what we find actually taking place; the zemindar being theoretically liable to dismissal at pleasure, but practically scarcely ever dismissed. Thus Sir W. Boughton Rouse, a staunch advocate of the proprietary rights of the zemindars, says they could only be dispossessed on account of crime, failure to pay the stipulated revenue, rebellion, public robbery, or other flagrant misconduct.[3] This however shows that the zemindar's position was not quite that of an English proprietor. Another authority says that in the Northern Circars the ancient zemindary families were in

[1] Land Tenure by a Civilian, 72. Evidence of Mr. Fortescue before the Select Committee of the House of Commons, (1832), 2283 to 2285, 2288, 2289.

[2] Land Tenure by a Civilian, 60, 71, 86. Fifth Report, Vol. II, 176.

[3] Rouse's Dissertations, 78. Harington's Analysis, Vol. III, 242.

practice scarcely ever removed except for rebellion.[1] On the other hand, Mr. Grant says that the sunnud, specifying no term of office, was of indefinite duration, and could be revoked at pleasure.[2] And other authorities assert that the zemindar could be dismissed, like any other officer,[3] at the will of the Sovereign.[4] And it is further alleged that the zemindars were sometimes ejected; but apparently mainly on the grounds specified by Sir W. Boughton Rouse, and which were usually stated in the new sunnud;[5] and that, even when the occupant was ejected, the permanent and hereditary character of the office was so much regarded in practice that one of the family of the ejected zemindar was usually allowed to succeed;[6] and that it was only when no fit person could be found in the ejected zemindar's family that a stranger was appointed; but that even then the new zemindar was considered bound to make a provision by malikana or otherwise for the family of the former occupant.[7] Sometimes, moreover, the State took the zemindary into its own or khas management.[8] It was however probably only in later times, when the zemindar's rights were at their highest pitch, that dismissal was so rare; for we know that, during the vigorous times of Mahomedan rule, the

[1] Evidence of Mr. Campbell before the Select Committee of the House of Commons, (1832), 2358.

[2] Fifth Report, Vol. I, 360.

[3] Evidence of Mr. Fortescue before the Select Committee of the House of Commons, (1832), 2288, 2289.

[4] Land Tenure by a Civilian, 33, 72. Fifth Report, Vol. II, 572.

[5] Land Tenure by a Civilian, 72. Harington's Analysis, Vol. III, 242, 355.

[6] Land Tenure by a Civilian, 72. Harington's Analysis, Vol. III, 320, 343, 355.

[7] Harington's Analysis, Vol. III, 243, 320.

[8] Ib.

LECTURE IV.

zemindars were often expelled; and so late as the 18th century the Nizam's Government expelled the great majority of them throughout his dominions.[1] Jaffier Khan also expelled the old zemindars and introduced new ones.

Allowances to displaced zemindars.

The claims of the ancient zemindars and village headman, when thus displaced, were usually recognized to the extent of giving them an allowance for subsistence;[2] and sometimes they continued to receive this allowance in the shape of payments from the new occupants called *russoom-i-zemindaree*.[3] This practice probably accounts for the payment, to a displaced zemindar by his successor, of malikana for the subsistence of his family. When the zemindar was finally ejected, he ordinarily retained only his own lands and paid revenue for them;[4] but when only temporarily displaced he retained his nankar according to Mr. Shore.[5] Sometimes, when the zemindar was incompetent, Government appointed an officer to take khas possession of the zemindary; and in such cases, as also when the revenues were farmed, it was usual in the later Mahomedan and British periods to allow the zemindar malikana, at least in Behar, at the rate of ten per cent. on the revenue, although the zemindar performed none of the functions of the office.[6] And without dismissing the zemindar the State sometimes appointed an aumil or sezawul to check and control him, or to collect

[1] Fifth Report, Vol. II, 8. Harington's Analysis, Vol. III, 348.

[2] Land Tenures by a Civilian, 61. Fifth Report, Vol. I, 150, 161.

[3] Land Tenures by a Civilian, 76.

[4] Ib., 33. Harington's Analysis, Vol. III, 321, 322, 345, 432. Fifth Report, Vol. I, 161, 176.

[5] Fifth Report, Vol. I, 161.

[6] Harington's Analysis, Vol. III, 243, 321, 344.

the revenue when there was danger of default being made.[1] If the heirs of the zemindar failed the Government disposed of the zemindary. A zemindary so disposed of was called a jutekaly zemindary.[2]

Under-renting.

The zemindars grew to abuse their power to an oppressive extent. As the Government had delegated its authority to them, and created interests between itself and the cultivators without vigilantly maintaining the ancient checks and restrictions, the zemindars in turn delegated their authority to under-renters and farmers, and inaugurated the system of subtenancy which has developed, under the fostering influences of peace and a perpetual settlement, to its present dimensions. The zemindars and their mercenary under-farmers and renters had become very oppressive to the ryots in Mahomedan times.[3] If the crop turned out abundant they exacted the revenue in kind, although they had previously contracted for it in money;[4] and conversely. If the ryots were remiss in paying, they quartered their sezawuls and other officers upon them.[5] They removed ryots from lands which those ryots had rendered fertile in order to bestow the lands upon their friends and favourites.[6] Of their illegal exactions I have already spoken.

The proceedings of Jaffier Khan.

In the description I have given of the zemindars I have not attempted to distinguish between the various periods of Mahomedan rule, or the various stages of the zemindar's growth, except in a general way. The materials are not

[1] Harington's Analysis, Vol. III, 351.

[2] Rouse's Dissertations, 52.

[3] Fifth Report, Vol. II, 59, 60, 76. Compare the Poligars of Southern India; Fifth Report, Vol. II, 90, 91, 96, 97.

[4] Fifth Report, Vol. II, 9.

[5] Ib.

[6] Ib.

LECTURE IV.

forthcoming which would enable us satisfactorily to do this. But I must give some account of the radical changes which Jaffier Khan attempted to introduce, and to which I have often referred. A consideration of these changes will suggest such modification of the foregoing description as can be safely made without fuller information.

His attempt to reduce the zemindar's power.

Up to this period the zemindars who had developed out of the ancient system had continued to a great extent their old functions under a new name and with greatly increased and increasing power. The headmen, desmookhs, chowdhries and rajahs, as well as the Mahomedan revenue officers, tended to become zemindars; and the zemindar gradually absorbed all the functions and emoluments of those officers, and occupied their place in relation to the Government. But Jaffier Khan (otherwise called Moorshid Kooly Khan) who governed Bengal from 1711 to 1726, effected for the time a revolution in the position of the zemindars.[1] As I have before suggested, his aim was, besides an increase of revenue, greater centralisation and the destruction of the hereditary element in the zemindar's claims. He aimed at superseding the zemindar except as a paid official. With this view, as well as with a view to increase the revenue, he sought to appropriate for the use of the State the whole of the zemindar's emoluments and even more;[2] and as one mode of effecting this he was the first to impose on a large scale those variable assessments known as abwabs.[3] He also sought to obtain greater centralisation by making the fiscal divisions

[1] Land Tenure by a Civilian, 41, 43, 50. Baillie's Land Tax, xli.

[2] Land Tenure by a Civilian, 41, 43, 50. Harington's Analysis, Vol. III, 235, 236.

[3] Harington's Analysis, Vol. III, 236.

larger, and therefore formed the Soubah into chucklahs which gradually superseded the circars.[1] As the old chowdhries and crories, and the zemindars who had grown out of the old system, were refractory, he re-arranged Bengal into official zemindaries, increasing their extent and diminishing their number. Thus the large zemindaries of Rajshahy, Nuddea, and others were formed.[2] He abolished the military functions of the zemindars, and consequently allowed no charge against the revenue for sebundy or revenue peons or for a militia of any kind; the only army kept up consisting of 2,000 horse and 4,000 foot.[3]

A similar revolution had been effected in Behar in 1685; but it was not carried so far, and the zemindars and village maliks were not so generally dispossessed.[5] In Bengal the headmen and ancient zemindars were reduced to be dependent talookdars, under-renters, and middlemen or kutkinadars;[6] and generally the headmen sunk to be mere head ryots, without any share in the collection of the revenue, except as servants of the zemindars; as the munduls are at present wherever employed. They were still however sufficiently prominent to be made the medium of communication between the zemindar and the villagers; and, in return for their connivance at the zemindar's exactions, they were allowed to escape with a lower rate of revenue;[7]

[1] Fifth Report, Vol. I, 236, 389.

[2] Land Tenure by a Civilian, 41, 43, 50, 63. Fifth Report, Vol. I, 104, 258.

[3] Harington's Analysis, Vol. III, 273.

[4] Baillie's Land Tax, xli.

[5] Ib. Land Tenure by a Civilian, 66.

[6] Land Tenure by a Civilian, 64.

[7] Ib., 64, 65.

LECTURE IV.

and they still had the charge of directing and improving cultivation as servants of the zemindar.[1]

Severe measures adopted.

This violent change was brought about by violent means. Jaffier Khan resorted to great cruelties in order to break the power of the zemindars. He put them into a pit filled with filth, or tied them up in bags with cats and other animals, and committed other atrocities upon which it is unnecessary to dwell here.[2] He imprisoned the mutseddies, aumils, and canoongoes;[3] and forced defaulting zemindars to turn Mahomedans;[4] which shows that there were many Hindoos among them. Unable to bring the zemindars to forward his views, he ordered them to be imprisoned, and put the collection of the revenue into the hands of aumils, who were still Bengalees, it being probably difficult to find any others competent to undertake the office. These aumils executed tahuds and muchulkas and paid the collections into the treasury direct. He proceeded to measure all the land in cultivation together with the bunjer or fallow. And he advanced, direct from the treasury, loans or tuccavy, to enable the cultivators to buy implements or seed.[5] These proceedings seem to have completed the process of destruction of the ancient system.[6] It was a vigorous attempt to cut down the zemindar's power. The zemindar seems already to have assumed in many

[1] Fifth Report, Vol. I, 19, 142.

[2] Stewart's History of Bengal, 232 to 236.

[3] Fifth Report, Vol. I, 104, 260. Harington's Analysis, Vol. II, 355. Robinson's Land Tenures, 23.

[4] Harington's Analysis, Vol. II, 353; Vol. III, 273.

[5] Fifth Report, Vol. I, 104.

[6] Ib. Harington's Analysis, Vol. III, 272. Land Tenure by a Civilian, 41.

instances a right to the headman's emoluments;[1] and certainly after this date we cannot find that any rights of value were left to any of the ancient officials. The zemindar's power was only temporarily affected by Jaffier Khan's proceedings and soon revived again. Sujah Khan the successor of Jaffier Khan restored many of the zemindars;[2] and the result of the blow struck by Jaffier Khan was that the zemindar, at whom it was aimed, was the only one that survived it. And after this period the hereditary claims of the zemindars were recognised, and their acts became more oppressive than before, especially as the Mahomedan power was fast declining. It was after this that under-farming began to prevail so largely: the under-renters again underletting and so on.[3] Exactions were heavier than ever, and the ryot was squeezed to the utmost. One favourite mode of exaction was by threatening to measure the ryot's lands; since most ryots held more land than they were assessed for, this being probably their only barrier against utter ruin. Moreover the land could be made to appear upon measurement more than it was, by raising the middle of the measuring pole, or withholding the rope.[4]

The zemindars regained their power.

I shall conclude my account of the zemindar by comparing the accounts given of his position by various authorities. Mr. Grant says in his Political Survey of the Northern Circars:[5]—

Discussion of the zemindar's position.

[1] Land Tenure by a Civilian, 76.

[2] Fifth Report, Vol. I, 105. Harington's Analysis, Vol. III, 274. Stewart's History of Bengal, 261.

[3] Fifth Report, Vol. I, 132; Vol. II, 8, 9. Land Tenure by a Civilian, 64, 65. Harington's Analysis, Vol. II, 68.

[4] Fifth Report, Vol. I, 141. Land Tenure by a Civilian, 65. Colebrooke's Husbandry in Bengal, 57.

[5] Fifth Report, Vol. II, 237.

LECTURE IV.

"It hath been asserted, and we presume to think on grounds admitting of political demonstration, that no one tribe of Hindoo landholders, jointly or severally within the circars, or the whole of them collectively, under whatever denomination (excepting the ancient rajahs of the country, which have been particularized as descendants of the Royal family of Orissa or Gajeputty), have in right, form, or fact, the smallest pretensions to any territorial property beyond the extent of their specified official domains called saverum, making scarcely one-twentieth part of the local civil jurisdiction committed to their management by the sovereign proprietary Government. First.—The private right of a more extensive landholding could only be acquired by conquest, royal grant, hereditary or prescriptive tenure of free or feudal possession, while it is notorious that every zemindary title is the most limited and precarious in its nature, depending on the arbitrary will of the lowest provincial delegate; equivalent to a simple lease in tenancy subject to annual renewals, and to be traced to the same base and recent origin, within the period of British rule, as generally distinguishes the spurious claims of the farmers-occupant themselves;—to family pre-eminence from birth, or the enjoyment of large territorial income in prejudice of the prince's necessary undisputed regal dues. Second.—The form of such sunnuds or dewanny patents as constitute the desmookhs or zemindars official collectors of the revenue with inferior civil powers, at the same time that it ascertains the extent of their petty freehold estates appropriated for family subsistence with each local jurisdiction, determines specifically or comparatively, if we may be allowed to make use of an European term, the unqualified villainage to the sovereign or his feudal representative of the great

portion of land in occupancy; as well as the slavish dependence of the Hindoo landholder, for the whole of his uncertain tenure, on the lordly Mussulman jageerdar or aumil. That the possessors of such inferior grants should be reluctant now in producing their respective deeds, under the prevalence of a delusive idea which magnifies their relative importance, is perfectly natural; but that the rights and privileges of subjects as derived from Government should so frequently be agitated, and to this day acknowledged to be matters wholly undefined, or of the greatest doubt; and that yet the only sure, easy, and simple mode of discovering the truth, by a critical examination of sunnuds, should be neglected, appears altogether extraordinary and unaccountable. Third.—In point of fact, the most conclusive evidence offers itself of the sovereign's claim to the landholder's share of yearly territorial produce, that the whole body of zemindars were from the beginning and are still to be considered simply as intermediate agents for the State to realize the stipulated rent of the peasantry. This doctrine forms incontrovertibly the ground-work of the past and actual system of finance throughout all the dissevered members of the Mogul empire. It is practically enforced everywhere by the prince; acknowledged or acquiesced in by the ryots universally, as the foundation of their Magna Charta; stating the proportions to be invariably drawn of the produce of the soil, assisted by their labour, for the public service. Accordingly it may be clearly traced in the letter and spirit of the original instruments conferring investiture; describing the nature, local extent, with the powers of zemindary officers, as well as the annual cowle bestowing the temporary management of the revenue on the same generally permanent agents. It is manifested in the ever customary

LECTURE IV.

frequent acts of Government, at pleasure or for mal-administration, in suspending their authority as collectors and depriving them altogether of territorial jurisdiction with its assigned advantages; unless in some cases with the exception of saverum or subsistence in land: then transferring their employments, official rights and privileges, to others in perpetuity or for a time. And it is finally demonstrated by the tenor of the muchulka, or written obligation, of the zemindars to discharge faithfully the trusts reposed in them; otherwise implicitly acquiescing in the justice of suspension or entire exoneration, and never acquiring at any time anything in the nature of territorial property beyond the extent of their saverum; but always to account with the treasury for the last daum collected throughout the remainder of their local jurisdiction, whether constructively or positively by royal authority; and which, though they do in general abstract by false statements of receipts and disbursements, never doth or can supersede the sovereign's right to enter into detail, resume defalcations and curtail unecessary sebundy or exorbitant mofussil expenses of the circar or state; being all that is contended for, as requiring public investigation and economical reform, in order to reduce the emoluments of intermediate agents, to the primitive, legal, and equitable standard of russooms and saverums, virtually as well as in form." In this passage we have the extreme theory of the merely official position of the zemindar. We have seen that the official element was that which the Mahomedan theory brought into prominence: but we gather from this passage, as well as from the general result of Mr. Grant's enquiries, that there was in practice another element of hereditary proprietary claim; although in strict adherence to Mahomedan theory

he rejects this element. Again in a letter to the Board of Revenue, dated 1st March 1787, Mr. Grant says, as regards the zemindar's privileges:[1]—"These though not ascertainable by their sunnuds, are equally to be learned as precise matters of fact from notorious usage and revolving customary forms of the year in settling the jummabundy. The first essential privilege is that by which the zemindar is entitled to stand in the place of a perpetual farmer-general of the lawful rents claimed by Government within the circle of his jurisdiction; nor can he, or ought he, constitutionally to be deprived of any contingent emoluments proceeding from his control, during the periods of his agreements, though such should arise in concealment of the entire public resources on his part, with the corruption or ignorance of the other financial officers of the State. A second privilege annexed to the officer of zemindar is that of being made the channel of all mofussil serinjamy disbursements. A third is that of improving waste grounds, under certain limitation, to his private advantage, at least for the period of his bundobusty engagement; though not, as more recently practised, by the depopulation or fallow of other productive lands, assessed for rent to the exchequer. A fourth is that of granting pottahs for untenanted farms in the ordinary terms of an Indian leasehold, yet more or less substantially beneficial to the occupant, in proportion to the favour of his superior landholder. A fifth is the privilege of distributing internally as he pleases the burthen of abwabs or additional assessments, when levied, as in Bengal, on the ausil jumma by zemindary jurisdictions; and not specifically by pergunnahs.

[1] Harington's Analysis, Vol. III, 362.

LECTURE IV.

A sixth is that of paying his rents in money or kind, agreeable to established rules adapted to either mode, provided these obtain universally over one or more stated divisions of country. A seventh is that of adoption, or nomination of a successor to his zemindary when done in his own life-time, and not by will, with the approbation of the sovereign representative; to be confirmed by dewanny sunnuds. An eighth privilege is that of being considered to appear in the huzoor, or presence, by deputy in his proper behalf, or that of any of the ryots subordinate to his authority, unless summoned on some extraordinary occasions by a special writ applicable personally to himself. And these appear to me to be all the real privileges of a zemindar."

Again he sums up their functions[1] as "zemindars, acting permanently in one or all of the following official capacities, by virtue of sunnuds or letters patent from the high dewanny delegate of Government: viz., either as annual contracting farmers-general of the public rents; formal representatives of the peasantry; collectors of the royal proprietary revenue, entitled to a russoom or commission of five per cent. on the net receipts of the mofussil or subordinate treasuries: or as financial superintendents of a described local jurisdiction, periodically variable in extent, and denominated cantimam, trust or tenure of zemindary, talookdary or territorial servile holding in tenancy, within which however is appropriated a certain small portion of land called nancar partaking of the nature of a freehold; serving as a family subsistence to the superior landholder, to give him an attachment for the soil, and make up the

[1] Fifth Report, Vol. I, 274.

remainder of his yearly stated tithe, for personal management in behalf of the State."

Mr. Shore in a Minute of 8th December, 1789, says:—"The most cursory observation shows the situation of things in this country to be singularly confused. The relation of a zemindar to Government and of a ryot to a zemindar is neither that of a proprietor nor a vassal, but a compound of both. The former performs acts of authority unconnected with proprietary right; the latter has rights without real property; and the property of the one and rights of the other are in a great measure held at discretion. Such was the system which we found; and which we have been under the necessity of adopting. Much time will, I fear, elapse before we can establish a system perfectly consistent in all its parts; and before we can reduce the compound relation of a zemindar to Government and of a ryot to a zemindar, to the principles of landlord and tenant."[3] And Mr. Harington goes on to remark:—"In truth this is the principal source and origin of whatever confusion really exists in the discussions which have taken place relative to the tenures of land in India. It is by attempting to assimilate the complicated system which we found in this country with the simple principles of landlord and tenant in our own, and especially in applying to the Indian system terms of appropriate and familiar signification which do not without considerable limitation properly belong to it, that much, if not all, of the perplexity ascribed to the subject has arisen. If by the terms 'proprietor of land,' and 'actual proprietor of the soil,' be meant a landholder possessing the full rights of an English landlord or free-

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

LECTURE IV.

holder in fee simple, with equal liberty to dispose of all the lands forming part of his estate, as he may think most for his own advantage; to oust his tenants, whether for life or for a term of years, on the termination of their respective leaseholds; and to advance their rents on the expiration of leases at his discretion; such a designation, it may be admitted, is not strictly and correctly applicable to a Bengal zemindar; who does not possess so unlimited a power over the khoodkasht ryots, and other descriptions of under-tenants, possessing as well as himself certain rights and interests in the lands which constitute his zemindary. But Colonel Wilks, with a view to guard against this ambiguity of expression, has defined the sense in which he proposes to use the word 'proprietor' as follows: 'In England a proprietor of land, who farms it out to another, is generally supposed to receive as rent a value equal to about one-third of the gross produce. This proportion will vary in different countries according to circumstances; but, whatever it may be, the portion of it which remains after payment of the demands of the public may safely be described as the proprietor's share of the produce of his own land; that which remains to him after defraying all public taxes and all charges of management. Wherever we can find this share, and the person entitled to receive it, him we may without the risk of error, consider as the proprietor, and, if this right has descended to him by fixed rules from his ancestors, as the hereditary proprietor.' According to this definition, it cannot, I think, be denied that a zemindar is in a restricted sense an hereditary proprietor. His zemindary descends to his legal heirs by fixed rules of inheritance. It is also transferable by sale, gift, or bequest. And he is entitled to a certain share of the rent produce of his estate, if it be

taken out of his management; or, if he manage it, and engage for the public assessments, he receives whatever part of the rents may remain after paying the assessment and defraying the charges of management. It must, however, be allowed that the peculiar tenure of a zemindar, as it existed under the Mussulman Government of Bengal and the adjacent provinces (especially with regard to the principal zemindars, who held their zemindaries, with certain services attached to them, under a sunnud of grant or confirmation), partook more of the nature of an hereditary office, with certain rights and privileges attached to it, than of a proprietary estate in land; though it is justly observed by Mr. Rouse that 'if the zemindary be even an office, and such office give possession of land, which has by claim or custom descended from father to son or to collaterals, with other circumstances incident to property such as mortgage, alienation, bequest, or adoption, it is in reality a landed inheritance.' The subjoined definition of a zemindar with a slight alteration formed part of the remarks submitted by me to Lord Cornwallis in March 1789 on Mr. Law's plan of settlement. 'The zemindar (or zumeendar) appears to be a landholder of a peculiar description, not definable by any single term in our language. A receiver of the territorial revenue of the State from the ryots, and other tenants of land. Allowed to succeed to his zemindary by inheritance; yet in general required to take out a renewal of his title from the sovereign or his representative on payment of a peshkush or fine of investiture to the Emperor, and a nuzranah or present to his provincial delegate the Nazim. Permitted to transfer his zemindary by sale or gift; yet commonly expected to obtain previous special permission. Privileged to be generally the annual contractor for the

LECTURE IV.

public revenue receivable from his zemindary; yet set aside with a limited provision in land or money whenever it was the pleasure of Government to collect the rents by separate agency, or to assign them temporarily or permanently by the grant of a jageer or ultumgha. Authorized in Bengal since the early part of the present century, to apportion to the pergunnahs, villages, and lesser divisions of land within his zemindary the abwab or cesses imposed by the Soobadar; usually in some proportion to the standard assessment of the zemindary established by Torunmul and others; yet subject to the discretionary interference of public authority, either to equalize the amount assessed on particular divisions, or to abolish what appeared oppressive to the ryot. Entitled to any contingent emoluments proceeding from his contract during the period of his agreement; yet bound by the terms of his tenure to deliver in a faithful account of his receipts. Responsible by the same terms for keeping the peace within his jurisdiction; but apparently allowed to apprehend only and deliver over to a Mussulman magistrate for trial and punishment. This is in abstract, my present idea of a zemindar under the Moghul constitution and practice.' I will now add, in concluding this imperfect statement of the discussions which have taken place relative to the rights of zemindars, that after the elapse of twenty-eight years since the above definition was given I see no reason to alter it, as applicable to the principal zemindars of Bengal and Behar, before the conclusion of a permanent settlement with them for the land of their respective zemindaries."[1] This definition, it will be seen, substantially agrees with the description I have given of the zemindar's position.

[1] Harington's Analysis, Vol. III, 398 to 400.

In the Fifth Report of the Select Committee[1] it is said,— "The hill zemindars, who were descended from the rajahs of the kingdom of Orissa, and who were entrusted with the protection of a district from the incursions of robbers and wild beasts and with the suppression of internal commotions, were, on account of the difficulty of keeping them in strict subjection, allowed by the Mussulman conquerors to retain their former habits, and to enjoy the Government share of the produce from their mountainous but fertile lands on condition of paying a tribute, and the performance of the duties of protection above-mentioned, which they had been accustomed to discharge. But the zemindars in general, whom it does not appear could be made to submit to the Mahomedan authority, were never acknowledged by their rulers as independent or tributary chiefs, or as even having any property in the land. On the contrary it would seem, from the process which the Mussulman Government observed when capable of vigour, in realizing the revenues of the districts, as well as from the constitutional checks established through every part of them (checks similar to those which the Committee have described as having existed in the Bengal territories) that zemindaries were offices of trust, and that the possessors of them were accountable managers and collectors, and not lords and proprietors of the lands; that the money they paid to Government, instead of being in the nature of a tribute, or mere acknowledgment of subjection or fealty, was no other than a jumma or revenue annually calculated upon the produce of the several zemindaries; that, as a check upon the conduct of the zemindars there

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

LECTURE IV.

were officers appointed by the State to keep an account of the cultivation and produce, and whose duty it was to furnish the foujdar, or governor of the country, at the proper season with accounts and statements of the past and present state of its produce; who thereupon formed the jummabundy or revenue settlement of the year, which was variable in its amount and in general proportionate to the estimated value of the harvest. The duty of the zemindar, as declared in his sunnud of appointment, was to superintend that portion of country committed to his charge, to do justice to the ryots or peasants, to furnish them with the necessary advances for cultivation, and to collect the rent of Government; and as a compensation for the discharge of this duty, he enjoyed, as did the zemindars of Bengal, certain allotments of land rent-free termed saverum, which were conveniently dispersed through the district, so as to make his presence necessary everywhere, in order to give the greater effect to his superintendence. He was also entitled to receive certain russooms or fees on the crops, and other perquisites drawn from the sayer or customs, and from the quit rents of houses. These personal or rather official lands and perquisites amounted altogether to about ten per cent. on the collections he made in his district or zemindary. The office itself was to be traced as far back as the Hindoo rajahs. It originally went by the name of chowdrie, which was changed by the Mahomedans for that of crorie, in consequence of an arrangement by which the land was so divided among the collectors that each had the charge of a portion of country yielding about a crore of dams, or two and a half lacs of rupees. It was not until a late period of the Mahomedan Government that the term crorie was superseded by that of zemindar; which literally

signifying a possessor of land, gave a colour to that misconstruction of their tenure, which assigned to them an hereditary right to the soil. It accordingly appears that in the year 1769, on the establishment of European agency in the management of the Northern Circars, the zemindaries were described by the presidency of Fort St. George as 'lands held by certain rajahs or chiefs as their hereditary estates, paying a certain tribute to the Government, and being subject to suit and service in a manner very similar to the ancient feudal tenures.' An idea was also entertained in 1771, by the chief and council at Masulipatam that 'the zemindaries were no other than feudal districts, for which the rajahs who were proprietors of them paid a tribute to Government in proportion to their value, and if called upon ought to attend in time of war with a certain number of troops.' And in subsequent years it would appear that a very close adherence to the tributary system was observed in the conduct of the British Government towards the zemindars; until the general investigations of the Committee of Circuit, and the more particular researches of several enlightened servants of the Company, established the fallacy of the construction which had been at least tacitly admitted with respect to zemindary rights, and set them forth in their true character. While the strength of the Mahomedan Government was entire, and indeed whenever it was afterwards enabled on occasions to exert it, the conduct of the zemindars was subject to a rigid control, and many instances of punishment the most severe are recorded in the annals of the country. It appears that they were in general continued hereditarily in the management of the lands, but not necessarily so; for it was no very uncommon practice to remove them for acts of misconduct and dis-

LECTURE IV.

obedience; and an instance is on record of their having been generally displaced by the Nizam's Government in the last century. In the early period also of the French Government the greater part of them were dismissed from their employments, but permitted to enjoy their saverum lands, and the other privileges or fees which, as has been shown, constituted the authorized emoluments attached to the office of a zemindar."

In the following extract Mr. Shore compares the zemindars of Bengal and Behar.[1] "1. First,—In Bengal the zemindaries are very extensive; and that of Burdwan alone is equal in produce to three-fourths of the rental of Behar; in which province the zemindaries are comparatively small. The power and influence of the principal zemindars in Bengal is proportionably great; and they have been able to maintain a degree of independence which the inferior zemindars of the Behar province have lost. The latter also having been placed under the authority of a provincial administration, from distance as well as comparative inferiority, have been precluded from that information which the zemindars of Bengal, from their vicinity to Calcutta, and their access to the members and officers of Government, have been able to obtain; the latter have acquired ideas of right and assume principles of conduct or reasoning which do not extend to the zemindars of Behar. Secondly.—The proprietors of the soil in Behar universally claim and possess a right of malikhana; which, whenever they are dispossessed of the management of their lands, they receive from the aumil as well as from the tenants of the jaghirs and proprietors of altumghas. In Bengal, no such custom has ever been formally established, although there

[1] Fifth Report, Vol. I, 555.

is some affinity between this and the allowance of moshaira. Thirdly.—The lands of Behar have, from time immemorial, been let to farm; and no general settlement, as far as we can trace since the acquisition of the Dewanny, has been concluded between the Government and the real proprietors of the soil. The Collector of Sarun asserts that this has ever been the usage in the districts under his charge. The aumil or farmer has deemed himself entitled to avail himself of the agency of the zemindars and talookdars, or dispense with it at his own discretion. This power was formally delegated to the farmers in 1771, by the provincial council at Patna, with the sanction of the superior authority at Calcutta; and the rate of malikhana was then settled, for the dispossessed proprietors of the land, at ten per cent., as the ancient allowance agreeable to the constitution of the country Government. Fourthly.—The numerous grants of lands in Behar, under various denominations, have had an influence upon the proprietary rights of the zemindars and talookdars and upon their opinions of those rights. There are few instances of jaghirs in Bengal. I cannot recollect more than three or four. Fifthly.—The custom of dividing the produce of the land in certain proportions between the cultivator and the Government, or the collector who stands in its place, is general but not universal throughout Behar. In Bengal the custom is very partial and limited. Sixthly.—The settlement in Behar, whether by the aumil or manager on the part of Government, is annually formed upon an estimate of the produce. In Bengal, the mofussil farmers, with some exceptions, collect by different rules.

"2. In Behar the functions of the mofussil canoongoes, however they may have been perverted, have not been

LECTURE IV.

superseded; and their accounts, admitting the uncertainty of them, furnish detailed information of the rents which is not procurable in Bengal from the same sources.

"3. The preceding circumstances will sufficiently account for what is actually the case,—the very degraded state of the proprietors of the soil in Behar, comparatively with those in Bengal. The former unnoticed by Government, and left at the mercy of aumils, have in fact considered themselves as proprietors only of a tythe of their real estates; and assured of this when dispossessed, they have been less anxious to retain a management which exposed them to the chance of losing a part of what they received without it. The neglect of Government, with respect to their situation, is very apparent from the mokurrery grants of entire pergunnahs upon individuals, without any stipulations in favour of the zemindars and talookdars holding property within them.

"4. I know but three principal zemindars at present in Behar, the Rajahs of Tirhoot, Shahabad, and Sunnote Tekarry. Their jurisdiction comprehends much more than their actual property; and extends over numerous landholders possessing rights as fixed and indefeasible as their own. With respect to this class of proprietors, the superior zemindars are to be considered in the light of aumils only; and I think it probable that the origin of their jurisdiction arose, either from their influence with the supreme provincial authority, or from the facility of such a plan for managing and collecting the revenue. In this point of view it has its advantages; although it is attended with this obvious evil, that it is the interest of the principal zemindars to throw additional burthens upon the inferior pro-

prietors of the soil, with a view to save his own lands and augment their value.

"5. There is an apparent analogy between the talookdars in Bengal situated within the jurisdiction of a principal zemindar, and that of the proprietors of the soil of Behar in a similar predicament; but in their reciprocal rights I understand there exists a material difference. The muskoory talookdars of Bengal are dependent upon the zemindar, and have no right to be separated from him, except by special agreement, or in the case of oppression, or where their talook existed previous to the zemindary; neither do they possess the right of malikhana. I wish I could account for this important variation from authoritative information or records; but wanting these, I can only conjecture the grounds of it, which may be the following:— that the talookdars in Behar are the original proprietors of the soil, whereas in Bengal most of the muskoory talookdars have obtained their tenures by grant or purchase from the zemindars; if this were not the case, the talookdars in the principal zemindary jurisdictions in Bengal would, I think, be more numerous than they are.

"6. With respect to the malikhana in Behar I have in vain endeavoured to trace its origin. If the provincial council of Patna are correct in their information as to the antiquity of it, which is confirmed by Busteram, the darogah of the amanut dufter in Behar, I should suppose it to have arisen from the custom established in that province of dividing the produce between the cultivator and Government, in order to afford the proprietor of the soil a proportion of the produce, which, under such an usage strictly enforced, he could never receive without some authorized allowance in his favour; instances have lately occurred, and

LECTURE IV.

are adverted to in the letters now before the Board for consideration, of zemindars who have obtained a separate grant for their malikhana, and have subsisted upon that without any interference in the management of their zemindary lands." This extract, although not strictly confined to our present inquiry, seemed to me useful as confirming, though from a different point of view, several of the conclusions to which the discussion of the subject had led us.

LECTURE V.

THE TALOOKDAR AND OTHER OFFICERS: THE ASSESSMENT OF REVENUE AND RENT AND THEIR AMOUNT.

The talookdar—One class sprung from the ancient rajahs—Hereditary claim—Another class of modern talookdars—The talookdar's position—The talookdar's emoluments—Subordinate interests—Talooks created by zemindars—Discussion of the talookdar's position—The canoongoe—His duties—His emoluments—Abolition and restoration of the office—The putwarry—His duties—His emoluments—Mode of assessment—The koot and the tookhem rezi—The doul bundobust—The hat-hackeut—Net revenue payable by the zemindar—Khas collection and farming—Accounts—The muzkoorat—Rent and revenue—Settlement with the ryots—Cesses—The condition of the ryots—Rates paid by the ryots—Amount of revenue—The assul—Abwabs—Khasnoveesy—Jaffier Khan's abwabs—Nuzzeranah mocurrery—Zer mathoot—Mathoot feelkhaneh—Foujdarry—Chout Mahratta—Ahuk—Nuzzeranah Munsoorgunge—Cossim Ali's abwabs—Serf sicca half anna—The tuckseem—Proportion of produce taken as revenue.

The talookdar.

THE origin of the talookdar is even more obscure than that of the zemindar. The word *talook* means a dependency.[1] There seem to have been two classes of talooks arising at different periods. One class is said to have arisen chiefly from the ancient rajahs who were allowed to retain their possessions, engaging to pay the revenue demanded by the State, but made subject to the control of the aumils in matters with which the State was concerned.[2] This class kept up troops for the service of the State, and received certain remissions of revenue for their support by way of jageer.[3] It is obvious that this class of talookdar differed little if at all originally from

One class sprung from the ancient rajahs.

[1] Harington's Analysis, Vol. III, 247. Whinfield's Landlord and Tenant, 5.

[2] Orissa, Vol. II, 225. Land Tenure by a Civilian, 73.

[3] Land Tenure by a Civilian, 73. Baillie's Land Tax, xxxviii to xl.

LECTURE V.

the zemindar, and they grew to be zemindars in many cases. The main distinction between the zemindar and the talookdar was that the talookdar did not represent the State to the same extent. Originally subject to the aumil in common with the zemindar, he became, when the zemindars had absorbed the functions of the aumil, subject in many instances to the zemindar. In some cases he paid his revenue also through the zemindar, and became a dependent talookdar. This would seem from the name of the class to be the original position of a talookdar;—one who, whether an ancient rajah or other personage, was permitted to remain in the management of a certain district on condition of paying revenue through the Government officers and subject to their control. The revenue would of course originally be paid to the ordinary officer; and when that officer grew to be a zemindar, the talookdar would sink into the position of a muzkooree instead of an huzooree malgoozar. On the other hand, the talookdar would tend himself to become a zemindar, and then would pay revenue direct to the State, and be a zemindar in his talook, or an independent talookdar. This view will, I think, explain most of the facts known to us, and it assimilates the development of the talookdar so closely to that of the zemindar that most of the remarks already made upon that subject will apply equally to the talookdars. It comes very much to this, that those who were left in the management of districts which they had formerly managed, and who did not become zemindars, were the real talookdars; while those who gained the position of zemindars were simply zemindars under the name of talookdars. And we should expect to find the hereditary claim rather stronger in these classes of talookdars,

Hereditary claim.

because their position was originally less purely official than that of most of the other functionaries out of whom the zemindar grew. This hereditary element seems in a vague way to have been recognized; for it is said that the succession to the talook differed from that to the zemindary in not requiring the confirmation of the State; although that confirmation was required in case of sale or exchange.[1] The sunnud in the case of independent talooks was the same in form as the zemindar's sunnud.[2] But the acceptance of a sunnud was probably less insisted upon by the State as a condition of recognition in the case of the independent talookdar, while the dependent talookdar would hardly require a sunnud from the State. Indeed the talookdar's position is said by one authority not to be that of an officer, but to be based upon an hereditary right of possession like the ryots.[3] And some talookdars became little more than khoodkasht ryots in later times.[4]

Another class of modern talookdars.

Talooks created as above described, and which were formed in the same way as zemindaries, would generally not be of greater extent than zemindaries. But there was a second class of talooks, which were generally larger. They are said to have been formed chiefly in the declining period of Mahomedan rule, and after Jaffier Khan had attempted to uproot the zemindars. These talookdars indeed appear to have arisen upon the temporary fall of the zemindars; and to have contracted for, and generally acted as zemindars of, the larger official zemindaries created by Jaffier Khan. They obtained acceptance by engaging

[1] Patton's Asiatic Monarchies, 144; see Orissa, Vol. II, 225, 226.
[2] Rouse's Dissertations, 25. Orissa, Vol. II, 230.
[3] Patton's Asiatic Monarchies, 144.
[4] Harington's Analysis, Vol. III, 249.

LECTURE V.

for a higher amount of revenue than the old zemindars would pay; and they were probably at first entirely dependent on the aumil at the head of the chucklah, and were shorn of the zemindar's powers; since it was Jaffier Khan's policy to separate those powers from the office of contractor for the revenue. However the old system gradually revived; and the old zemindars who were restored, as well as the new talookdars and zemindars, continued in the decline of the empire to build up their power; the zemindars resuming their former functions, with perhaps the exception of the military duties; and the talookdars, when powerful, becoming independent talookdars or zemindars, and when weak falling back into dependence upon the zemindar.

The growth of the second class of talookdars chiefly took place in the period which includes Jaffier Khan's government of Bengal. Thus in 1715, in the reign of Farokshir, thirty-eight villages were granted to the East India Company as a talook, subject to a fixed revenue, and the Company was required to purchase the rights of the subordinate holders.[1] But in the time of Mahommed Shah, the successor of Farokshir (1719 to 1748), the talookdars became still more powerful; and it is from this time that the Mogul empire decayed so rapidly.[2]

The talookdar's position.

The position of the talookdars is generally described in much the same way as that of the zemindars. Sir W. Boughton Rouse says there is no distinction between the two in respect of permanent and hereditary proprietary right; but that with respect to the judicial functions conferred by the sunnud there may be a differ-

[1] Patton's Asiatic Monarchies, 147.

[2] Land Tenure by a Civilian, 73.

ence; the talookdar being generally but not universally subordinate: but when the talookdar took a separate sunnud, and had his name recorded as a separate proprietor, he paid his revenue direct to the treasury.[1] And another authority describes a talook as a large estate, consisting of many villages, in which the State has by sunnud made over its rights, accompanied with an obligation to pay the revenue; for the collection of which the talookdar is allowed a certain percentage upon the amount of revenue, together with other privileges.[2] In some cases they seem to have had nankar; to which they would by analogy be entitled in all cases in which they were zemindars in their talooks.[3] In general they appear to have shared with the ancient malgoozars of whatever description the perquisites of the malgoozar; and this is sometimes said to be the distinguishing feature of the talookdar's position, that he shared with the ancient malgoozars or the zemindar the perquisites formerly enjoyed by the headman and others;[4] or that if he received in the first place the whole of those profits he had to pay a proportion as malikana to the ancient zemindars, in either case sharing the perquisites.[5] This appears to refer to the malgoozars and zemindars whom the talookdars had displaced; but whose rights were still recognised by the payment of malikana or russoom-i-zemindaree.[6] The result is that the characteristic feature of a talookdar's position is that

[1] Dissertations, 24, 25. Fifth Report, Vol. I, 162. Harington's Analysis, 248. Orissa, Vol. II, 225.

[2] Thomason's Selections, 17. Directions for Revenue Officers, 54, 55.

[3] Land Tenure by a Civilian, 61.

[4] Directions for Revenue Officers, 50, 54, 55, 57.

[5] Land Tenure by a Civilian, 42, 76.

[6] Ib.

LECTURE V.

he either has a zemindar above him, and then gets only a share of the profits of collection; or if there is no zemindar, he yields a portion of those profits to a representative of the former zemindar.[1] When neither of these restrictions is present, he is practically a zemindar; although he may still be called by the name of talookdar, after he has outgrown its limitations. It is certain that in some cases the talookdar enjoyed full zemindary rights, although in others he did not.

The talookdar's emoluments.

In any case his chief direct emolument was, like that of the modern zemindar, the surplus revenue, or a share thereof, after paying the sum engaged for, although he had also julkur and similar rights;[2] and as the talookdars grew powerful and the Government grew weak, they contrived always to be very lightly assessed.[3] So that one of the results of the re-distribution into larger districts, which was intended to destroy the old zemindars, was ultimately to create a more powerful class of talookdars. The talookdars are said to have cultivated only a very small portion of the talook themselves, sufficient to supply their establishments with food;[4] so that they derived no benefit from this source. Their main emoluments were the surplus revenue and the other perquisites which were independent of the cultivation of land by them.

Subordinate interests.

The talookdar's claims did not override the subordinate rights to quite the same extent as in the case of the zemindar, the subordinate interests being still recognised. Thus in talook Moorsaun in zillah Allyghur the

[1] Directions for Revenue Officers, 50, 54, 55, 57.
[2] Land Tenure by a Civilian, 75.
[3] Ib.
[4] Ib., 68, 75.

talookdar was found to share his profits with certain village proprietors called zemindars and biswahdars who seem to have been the representatives of the old headmen :[1] while in other villages the talookdars claimed the sole right and appropriated the whole of the profits,[2] the talookdar's claims in the latter case having overborne those of the village headmen.[3] Again the ryots were entitled, whether under a zemindar or a talookdar, to hold in the customary way.[4] But this right also was liable to be overridden. In Lower Bengal the talookdars were less numerous in British times than in other parts, the country being chiefly in the hands of zemindars; but in the North-West Provinces the talookdary rights are said to have exhibited distinctive features down to a late period.[5]

Talooks created by zemindars.

There is another way in which talooks have grown up in modern times; namely, by the zemindar allotting portions of the zemindary or its revenue as a provision for dependants and relations, or as a reward for services. Some are also said to have been created in order to bring waste into cultivation. These were probably granted at a low rate of revenue, and both kinds of grant were sometimes of the nature of jageers. These talookdars also in turn under-let in the same way as the zemindars.[6]

Discussion of the talookdar's position.

As in the case of the zemindar I shall conclude my account of the talookdar by quoting some of the descriptions of his position which are to be found in the authorities. Thus Mr. Grant says "that within the larger zemin-

[1] Thomason's Selections, 18.
[2] Ib., 18, 19, 25, 26.
[3] Ib., 23.
[4] Directions for Revenue Officers, 56, 57.
[5] Robinson's Land Tenures, 13.
[6] Land Tenure by a Civilian, 87.

LECTURE V.

dary jurisdictions, sometimes the proper official possessors of these, and in many instances other natives called talookdars, hold certain copy-hold rights of property, otherwise independent of the zemindary; and which being of inconsiderable extent, of accurately ascertained value, and fixed rental, frequently acquired by purchase, though generally in the first instance through Court favour, bestowed on wealthy individuals resident in or near the Mussulman capitals, are usually allowed to descend by the rule of inheritance; and with the special sanction of the dewanny or financial administration may be otherwise transferred or sold at the discretion of the actual occupant; reserving always to the Crown its proper original dues of rent."[1] This passage appears to refer mainly to the dependent talooks, created for the purpose of affording a provision for the talookdar, and on which as a rule the Government demand, made through the zemindar ,remained fixed.

The following is Mr. Shore's account of the talookdar:[2]— "The word talookdar means the holder or possessor of a dependency. The tenures held by persons under this description are dispersed over the whole country, and too various to be minutely ascertained. The principal distinction in the rights of talookdars arises from the privilege which many possess of paying their rents immediately at the khalsa or exchequer, instead of to the zemindars, from whose authority they are wholly exempt; being immediately subordinate to that of the Government. Talookdars of this description differ but little from zemindars; except in the limited extent of territorial jurisdiction. They are all equally bound in the performance of the same services and

[1] Harington's Analysis, Vol. III, 361.
[2] Ib., 247.

the payment of rents. Lately, they have with them been made subject to an enhancement of their rents; but this I understand to be contrary to more regular practice and usage. These talooks in general appear to have been originally portions of zemindaries, sold or given by the zemindars; and to have been separated from their jurisdiction, either with their consent, or by the interest of the talookdars with the governing power. Some may perhaps have been conferred by the special authority of the dewan or nazim in default of legal heirs, or in consequence of the dismission of the former talookdars for delinquency. When the separations took place the rents of the talooks were regulated by the standard of the toomar with an accumulation of subsequent imposts and charges: and this is a reason assigned for the former established practice of limiting the talookdary rents to a fixed sum, not admitting of any increase. The talookdars, whose lands have not been separated from the zemindary of which they are portions, pay their rents to the zemindars by various rules; some at a fixed rate consisting of the toomar jumma and an addition for expenses; others are assessed according to the variable demands of the Government upon the zemindar, and pay their proportion of all the charges for which he is answerable. In Behar the talookdars pay according to the produce of their lands; and enjoy the same allowance which the zemindars themselves possess of ten per cent. malikana. Talooks of the latter description have chiefly been acquired by purchase, gift, or on condition of cultivating waste or forest lands; and far exceed the proportion of those separated from the zemindary jurisdiction. Some talookdars are little better than ryots, with a right of perpetual occupancy whilst they discharge

LECTURE V.

their rents agreeably to the terms of their pottahs or leases. It is generally understood as an universal rule that talooks ought not to be separated from a zemindary unless the zemindars should be guilty of oppression or extortion upon the talookdars. The latter are as anxious to obtain the immunity, as the former are strenuous in opposing it; for exclusive of the diminution of their jurisdiction, they would by this separation lose, what perhaps they have no right to exact, a russoom or fee which they generally levy over and above the established rents of the talooks. This, when talookdars are in other respects treated with lenity and justice, is acquiesced in without demur. All talookdars, unless restricted by the terms of the grants under which they hold, have a right to dispose of their lands by sale, gift, or otherwise; still subject to the same dues to which they themselves were liable; and indeed this practice prevails in opposition to the conditions of their pottahs. A zemindar has no power to resume or dispose of the lands of a talookdar. From this explanation it must appear extraordinary that a talookdar, or holder of a dependent jurisdiction, should (as has been asserted) possess a right which is denied to his superior; that of disposing of his lands by sale. In my opinion the acknowledged right of all talookdars, whether paying their revenues to the khalsa or to the zemindars, to sell their lands, is as strong a proof as can be adduced of the zemindars being invested with the same right; for we cannot on any principle admit that the latter could convey a privilege to others which they do not themselves possess."

There are two other permanent hereditary revenue officers of whom some account will be useful. These are the canoongoe and putwarry.

The canoongoe was known by different names in various parts of the country. He was originally called bhuimul by the Hindoos;[1] and by the Mahomedans, despandeah in the Deccan,[2] canoongoe in Bengal and other parts, and in Orissa wilayati canoongoe to distinguish him from the putwarry or village canoongoe.[3] The office was a Hindoo one and consequently hereditary. Indeed it is suggested that the Hindoos may have adopted the institution from the aboriginal inhabitants; since these officers in Orissa generally belonged to the Karan caste, which is supposed to have been the remnants of the aboriginal rural aristocracy.[4] The canoongoe in other parts was usually a brahmin. He served as a check upon the zemindar and the subordinate officers on the one hand, and on the aumildar and his agents on the other.[5] He was a confidential agent of the Government attached to the pergunnah.[6] There were however sometimes several attached to a single pergunnah.[7] The canoongoes of the Province or Soubah were under the control of a head canoongoe, or superintendent of the

The canoongoe.

[1] Orissa, Vol. II, 217.

[2] Fifth Report, Vol. II, 157, 170. Steele's Deccan Castes, 204. Evidence of Lieut.-Col. Sykes before the Select Committee of the House of Commons (1832), 2173.

[3] Orissa, Vol. II, 217. Compare the mujmoodar in Guzerat; Evidence of Lieut.-Col. Barnewall before the Select Committee of the House of Commons (1832), 1734.

[4] Orissa, Vol. II, 217.

[5] Fifth Report, Vol. I, 18, 143; Vol. II, 7, 11, 12, 60, 157. Patton's Asiatic Monarchies, 118. Harington's Analysis, Vol. II, 28. Directions for Revenue Officers, 179.

[6] Fifth Report, Vol. I, 18, 143; Vol. II, 157. Ayeen Akbery, Vol. I, 358. Orissa, Vol. II, 217. Directions for Revenue Officers, 179.

[7] Orissa, Vol. II, 217.

LECTURE V.

treasury, who in conjunction with the Soubahdar forwarded the revenue as well as the revenue accounts to the capital.[1]

His duties.

The canoongoe kept the records of the pergunnah. In these were entered all firmans, sunnuds, and grants, all rules, ordinances and regulations relating to the police organisation of the pergunnah, and all judicial decrees and proceedings. In his office was kept the rent or revenue roll as it existed at various periods, and called in its ultimate revised form jumma-kaumil-toomar (original revised details of revenue). This showed the standard of assessment for all parts of the pergunnah; together with the assignments of revenue by way of jageers, and for religious and charitable purposes. The hustabood was also kept by him, showing the actual collections made by the zemindar from the ryots, and upon which the jumma-kaumil-toomar was supposed to be based. He prepared the jumma-wasil-bakee papers, or annual account of the amount of revenue actually settled for, the amount paid, and the balance still due. He also kept minute records of everything relating to the pergunnah which could in any way concern the Government; full records of "the divisions, measurements, quality, and produce of the land; detailed accounts of the villages, farms, husbandmen, manufacturers or artificers liable to taxation, and generally of all donations, arrangements, and circumstances affecting real or personal property, and specially those affecting the proprietary interests of the State."

[1] Fifth Report, Vol. I, 20; Vol. II, 12. The Tepukchy seems to have been an officer intermediate to the canoongoe and aumil; Ayeen Akbery, Vol. I, 382, 384.

Transactions affecting the interests of the State were invalid unless registered by him.[1]

His emoluments.

The canoongoe was remunerated by a russoom or commission of 2½ per cent. on the amount shown by his vouchers to have been collected:[2] but in some cases a grant of revenue was substituted for this commission. Thus many canoongoes or despandeahs in Southern India claimed to hold meerasy, hereditary villages free of revenue in substitution for their russoom, or they claimed to hold at a low fixed rent, such a tenure being called bilmookta.[3] Following the example of the zemindars and other officers, the canoongoes contrived to appropriate more than their proper allowances; especially in later times[4] when they became underrenters in some parts, and almost zemindars in other parts.[5]

Abolition and restoration of the office.

The office had fallen very much into disuse before British times, particularly in Bengal,[6] and it was abolished in Bengal and Behar at the Perpetual Settlement in 1793 (July 5).[7] An attempt was made afterwards to revive the functions of the canoongoe, and the office was re-established in 1817, but it was then too late: the old race of canoongoes had died out, and the gap in the records could not be filled up. The office was therefore again abolished in 1828.[8]

[1] Fifth Report, Vol. I, 19, 143; Vol. II, 12, 79, 157. Harington's Analysis, Vol. III, 428. Orissa, Vol. II, 217, 237. For full details of the accounts kept by the canoongoes, see Fifth Report, Vol. I, 219, Galloway's Law and Constitution of India, 282, 283, and Harington's Analysis, Vol. II, 69.

[2] Fifth Report, Vol. II, 157.

[3] Ib.

[4] Ib., 15, 60, 76.

[5] Ib., 12.

[6] Ib., Vol. I, 20, 23; Vol. II, 12.

[7] Ib., Vol. I, 19. Harington's Analysis, Vol. II, 145. Land Tenure by a Civilian, 122.

[8] Land Tenure by a Civilian, 123.

LECTURE V.

The abolition of this office at the Perpetual Settlement went upon the supposition that, the assessment being permanently fixed, the Government would no longer have any interest in ascertaining the exact resources of the zemindars. It was found however to be required for many other purposes, particularly for the protection of the ryots, and its abolition was soon regretted; the more so as the usefulness of the office in Benares and the Ceded and Conquered Provinces, where it had been retained,[1] was demonstrated by the results. A similar office has once more been established in Bengal and Behar by Sir George Campbell; who says that this "may be taken as an earnest and beginning of a return to the old system under which we sought to have some knowledge of affairs connected with the land, and to secure some system of reliable account between the tillers of the soil and the landholders inferior and superior."[2]

The putwarry.

The office of the putwarry has never been abolished. His functions were similar to those of the canoongoe; to whom he supplied the materials for the pergunnah records. The putwarry also bore various titles in different parts of the country. In some parts he was called a koolkurny, and in others a curnum.[3] We have seen that the putwarry was one of the village officers: the office was consequently an hereditary one;[4] but there was as usual in Hindoo

[1] Fifth Report, Vol. I, 19.

[2] Administration Report for 1872—73, Introduction, p. 14.

[3] Fifth Report, Vol. II, 12, 157. Harington's Analysis, Vol. II, 67. Steele's Deccan Castes, 205. Evidence of Lieut.-Colonel Sykes before the Select Committee of the House of Commons (1832), 2173. Compare the *tullattie* in Guzerat:—Evidence of Lieut.-Colonel Barnewall before the same Committee, 1734.

[4] Fifth Report, Vol. II, 12, 300. Patton's Asiatic Monarchies, 118. Directions for Revenue Officers, 179.

offices a mixture of election with hereditary right: indicating probably a period when the office was purely elective. As in Europe so also in India the hereditary principle seems to have gradually grown up: an office originally conferred by choice or election went usually at a later stage to the heir of the previous occupant if found qualified, and at a still later stage was claimed as hereditary, its original elective character being however still asserted, and in exceptional cases acted upon by the dismissal of the officer. This was the case with the headman, who like the putwarry owed his position to a mixture of hereditary right and choice by the village. The putwarry also was appointed originally by the village with the sanction of the State; but in later times the zemindar claimed to appoint; the village having so far declined in influence as to have retained of its former right of choice only the barren privilege of approving the zemindar's choice.[1]

His duties.

There was a putwarry to every village; of which he was the accountant and record-keeper.[2] He kept accounts showing the live and dead stock owned by each cultivator, the quantity and quality of land occupied, and the description and rotation of crops raised. He also kept accounts of the amount of revenue and cesses payable by each, and of the amount paid, and the balance remaining due. From these accounts the hustabood or detailed statement of the past and present sources of revenue of the village, and the jumma-wasil-bakee papers, or abstract of the revenue payable, the amount paid and the unpaid balance

[1] Fifth Report, Vol. I, 143. Harington's Analysis, Vol. II, 67. Land Tenure by a Civilian, 121. Ayeen Akbery, Vol. I, 358.

[2] Fifth Report, Vol. I, 143. Harington's Analysis, Vol. III, 428. Directions for Revenue Officers, 179.

LECTURE V.

at the end of the year, were drawn up. These when drawn up and recorded, were copied and forwarded to the office of the canoongoe, who also recorded them and furnished a copy thereof to the zemindar.[1] The putwarry is spoken of in the Ayeen Akbery; and he together with the mohurrir is directed to keep his accounts in the same manner as the karkun. The aumil is enjoined to compare the accounts and to affix his seal, the karkun, mohurrir, and putwarry retaining copies of their respective documents. When the accounts of the village crops are completed it is ordered that they shall be subjoined to the *montijee* (or account of assets); and after being authenticated by the karkun and putwarry, they are to be forwarded to the presence every week.[2] In places where the kunkoot system prevailed, that is, the payment of revenue upon a valuation of the actual crop whether realised or expected, it was the putwarry's duty to assist the headman in making an estimate of the crop.[3] This officer was designed to be a check upon the malgoozar;[4] but in some cases he became himself an under-renter, and even a zemindar like the canoongoe.[5]

His emoluments.

He was paid like the canoongoe by a russoom. He received a quarter of an anna in every rupee of money revenue, and a quarter of a seer in the maund of revenue paid in kind, besides receiving a few rupees out of the

---

[1] Fifth Report, Vol. I, 19, 143, 164; Vol. II, 11, 13, 300, 353. Harington's Analysis, Vol. II, 67, 68; Vol. III, 350, 428. Galloway's Law and Constitution of India, 283 to 287. Land Tenure by a Civilian, 121. For full details of the putwarry's accounts see Harington's Analysis, Vol. II, 70 to 73, and Whinfield's Landlord and Tenant, 295.

[2] Ayeen Akbery, Vol. I, 381.

[3] Whinfield's Landlord and Tenant, 73.

[4] Fifth Report, Vol. II, 11, 60.

[5] Ib., 12.

village fund (deh khurcha).[1] The russsoom of the putwarry and canoongoe was before Akbar's time one per cent. each on the collections; at that period the canoongoe's one per cent. was abolished, and those officers were paid a salary of from twenty to fifty rupees a month according to their rank, and had a jageer granted to them. The putwarry's russoom was however continued.[2] In some parts of the country the putwarry also had a jageer, or assignment or remission of revenue. This appears to have been the practice to a considerable extent in Bengal.[3] In the Deccan they had not generally assignments of revenue (known in that part of the country as *enams*), but occupied, probably as original meerassee or khoodkasht ryots of the village, some meeras or khoodkasht land. The putwarry's perquisites or *huks*, with his jageer or enam, were included in the generic denomination of *wuttun*. This was sometimes enjoyed in turns by the members of the joint family of the putwarry; but in some places the eldest son took the duty with the huks, and the meeras land, which as I have suggested was probably to some extent independent of the office, was equally shared between the family. When this meeras land was exempted from revenue, the exemption would be part of the wuttun, and would attach as an enam to the office.[4]

Mode of assessment.

Having now described the fiscal machinery, I proceed to consider the way in which it acted in actually fixing the amount of assessment and in collecting the revenue. And

[1] Steele's Deccan Castes, 205. Land Tenure by a Civilian, 84.

[2] Ayeen Akbery, Vol. I, 358.

[3] Fifth Report, Vol. I, 341; Vol. II, 12, 13, 89, 90, 95, 155, 157. Whinfield's Landlord and Tenant, 34. Harington's Analysis, Vol. II, 65, 235 (*n*).

[4] Steele's Deccan Castes, 205.

LECTURE V.

in the first place I shall give some account of the mode in which the settlement was made between the Government and the zemindar on the one hand, and between the zemindar and the ryots on the other. The details which follow are mainly taken from the account of the mode adopted in Southern India, but they are probably to a great extent applicable to Bengal.[1] Just before the rains, when the early crops were beginning to be gathered and the late crops to be sown, a notice was issued to the zemindars, notifying that their engagement for revenue would be renewed. The putwarries or koolkurnies were at the same time directed to ascertain the quantity of land in cultivation and the actual or estimated quantity of seed sown. This order was called a *koot* or *anchumna;* and the estimate drawn up in pursuance of it was called the *tookhem rezi.*[2] The jumma-kaumil-toomar, showing the land in cultivation or capable of cultivation and therefore liable to revenue, and the revenue for which it was liable, estimated on the buttai principle and stated in money, was then compared with the hustabood jumma or comparative statement of past and present sources of revenue.[3] The zemindar was then called upon to produce his *doul bundobust,* or account of engagements with the cultivators, or inferior farmers, as attested by the canoongoes. This showed the past rental of his zemindary.[4] The doul bundobust ought to correspond with the *hathackcut,* or present state of revenue as shown in that part

The koot and the tookhem rezi.

The doul bundobust.

The hat-hackcut.

[1] Fifth Report, Vol. I, 19; Vol. II, 354.

[2] Fifth Report, Vol. II, 173, 353, 354. Robinson's Land Tenures, 44.

[3] Fifth Report, Vol. II, 174. Land Tenure by a Civilian, 42, 47.

[4] Whinfield's Landlord and Tenant, 63. Harington's Analysis, Vol. II, 73.

of the hustabood which set forth the actual settlements of the current year, or the collections of the last year, for the whole zemindary, including both khalsa and jageer lands. The actual Government share should then be capable of ascertainment from these documents: and thence the proper assessment, according to the principles of Akbar's settlement, would be deducible for the whole zemindary, including both the khalsa and jageer lands. The gross revenue payable by the zemindar would then be arrived at by deducting from the entire assessment the proportion assigned to the jageer lands. But the net revenue to be actually paid would be arrived at by further deducting the expenses of collection and management as allowed to the zemindar. These were the expenses of the zemindary cutcherries, including the allowances to the zemindar and his subordinates, and were known as the *khurcha mofussil*. The net revenue thus obtained was the amount to be actually paid into the treasury and was called *veek*. These deductions for khurcha mofussil when restricted to their primitive amount are said not to have exceeded fourteen per cent. of the collections, but in later times were nearly half the gross revenue; chiefly on account of the large sums allowed as sebundy for the maintenance of revenue peons and militia.[1] We have seen that Jaffier Khan abolished this item, but it seems to have found its way back into the zemindar's accounts.

Net revenue payable by the zemindar.

The assessment for the year was sometimes roughly fixed without any local scrutiny or valuation by an enhancement upon the old revenue called months or twelfths: but this was probably the case only under arbitrary rulers or in

[1] Fifth Report, Vol. I, 150; Vol. II, 175.

LECTURE V.

exceptional cases.[1] The settlement was generally renewed yearly, in whatever mode arrived at: sometimes however, especially in modern times, it was for a term of years, and this was one of the sources of the zemindar's profit.[2]

Khas collection and farming.

If the zemindar refused to agree to the assessment proposed, and the Government officers insisted upon that assessment, the zemindar was put aside for the year, generally retaining his nankar or some portion of it, and the revenue was collected by the officers of the State, such as ameens and tehsildars.[3] Or, if there was still time, a settlement was sometimes made with a farmer, who took the place of the zemindar for the year, and who gave security to the Government for the proper assessment of the cultivators, and for the due payment of the revenue agreed for by him.[4] If before any settlement was made the harvest time arrived, the ryots received an order to reap and the revenue was collected from them.[5]

Accounts.

At the end of the year a jumma-wasil-bakee was made up showing the jumma agreed upon, the amount paid, and the balance outstanding. This was signed by the zemindar, and attested and recorded by the canoongoes, and deposited in the khalsa to form part of the materials for the next year's settlement.[6] The aumildar or collector-general was also required, at least in the Deccan, to produce a *muchulka-in-darud*, signed by the desmookhs and despandeahs, to show that the zemindars or collecting officers had given no bribes to the Government representatives.

[1] Rouse's Dissertations, 28.
[2] Fifth Report, Vol. I, 19; Vol, II, 572.
[3] Ib., Vol. II, 25, 176.
[4] Ib., Vol. I, 19; Vol. II, 25.
[5] Ib., Vol. II, 178.
[6] Ib.

I have mentioned that the mofussil expenses were deducted in order to arrive at the net jumma.[1] These deductions included a variety of items, usually called muzkoorat or petty allowances. The muzkoorat included the allowance to the zemindar as nankar or dustoorat, whether this allowance was provided for by a remission of revenue or by a money allowance. This was from five to ten per cent. of the collections originally. It also included the similar allowances to the headmen, canoongoes, putwarries, and village officers. Thus it included an item called *mokuddemy*, the headman's allowance of about five per cent.; or malikana to the ancient zemindar, who was sometimes the existing zemindar. Also an item of *neemtucky* the canoongoe's russoom; another item for the putwarry's russoom; *paikan* and *gorayt*, allowances for peons; *kyally*, the weighman's fees; with other allowances for repairing highways, for providing guides, and for deh khurcha, or general village expenses: all of which had to be deducted from the year's revenue in order to ascertain the amount to be actually paid by the zemindar. Besides these, certain deductions were allowed from the revenue for religious and charitable purposes. These originated in small assignments of the revenue made by the zemindars, and afterwards sanctioned by the State. Thus under the head of muzkoorat there were allowed in this account certain deductions for ayma, muddudmash, and enam endowments; *rozinah* for daily distributions; *kheyrat* for alms; *chiraghy*, for lamps for the tombs; *kuddum-russool*, for preserving the footprints of the prophet; *mehurany*, for entertaining fakeers; and other allowances for similar purposes.[2]

[1] See Harington's Analysis, Vol. III, 321, 340, 343, 344.

[2] Fifth Report, Vol. I, 216, 217, 310, 311. Harington's Analysis, Vol. III, 239, 321, 344. Baillie's Land Tax, xli. Land Tenure by a Civilian, 61.

LECTURE V.

Rent and revenue.

As we have seen the jumma to be paid by the zemindars was originally, as in theory it continued to be, the amount which the zemindar was authorised to collect from the ryots after deducting the various sums allowed for mofussil expenses. Thus there was originally no distinction between the rent and revenue of British times: afterwards the amount paid by the ryot to the zemindar was called rent, and the jumma paid by the zemindar to the State was called revenue. And in settling the amount of assessment to be paid by the ryots, the zemindar acted at first merely as the agent of the State; receiving from the ryots the assessment authorised by the State, upon the footing of which assessment his own engagement was based, and for the due payment of which he was responsible. But in course of time, owing to the Government agreeing with the zemindar for a lump sum, in some cases without particular reference to the exact amount to be collected from the ryots for the year; or owing to the settlement being made with the zemindar for a term of years; and generally to the encroaching tendency of the zemindars, the ryot's assessment tended to diverge from the zemindar's assessment. This encroaching tendency of the zemindar showed itself not only in the enhancement of the ryot's assessment, but also in the exaction of abwabs; and by the time of the British accession, the revenue paid by the zemindars had so little apparent connexion with that paid by the ryots, that they were considered quite distinct; and the zemindar was held free to exact within certain limits any sum he thought fit from the ryots, in the same way as an English landlord might demand rent; and on the other hand was bound to pay to the State the amount demanded from him; this amount being looked upon as a tax, having little original connexion with his receipts, although necessarily based upon

them. It therefore now becomes necessary to consider the distribution of the burden of assessment upon the cultivators separately from the demand made by the State upon the zemindar.

Settlement with the ryots.

The settlement made with the ryots was always annual, whatever the settlement by the zemindar with the Government might be.[1] It was made at the same season of the year, that is just before the rains.[2] But the zemindars sometimes under-farmed the zemindary, especially after Jaffier Khan's time: and the under-farmers were even more prone to extortion than the zemindars; usually effecting their object by threatening to measure the ryot's lands.[3] The ryot's payments were however regulated ostensibly by the customary rates, which were known and registered in the putwarry's records, and which were called the *nirkh* (or *nirrik*).[4] These rates sometimes extended to the whole pergunnah, and sometimes only to the village. The records of these rates were known as the village and pergunnah reybundees.[5] If such rates did not exist for any particular village, a reference was made to the rates of the neighbourhood.[6] These rates corresponded to and were sometimes originally derived from the assul jumma, and in like manner as in the case of the assul jumma abwabs and cesses were assessed beyond those

[1] Land Tenure by a Civilian, 65, 66.

[2] Ib., 59. Directions for Revenue Officers, 4.

[3] Land Tenure by a Civilian, 65.

[4] Fifth Report, Vol. I, 141, 162, 163. Directions for Revenue Officers, 4.

[5] Land Tenure by a Civilian, 59.

[6] Fifth Report, Vol. I, 163, 164.

LECTURE V.

Cesses.

rates, and from time to time consolidated with them.[1] These cesses have been before mentioned. Amongst them were chout, poolbundy, nuzzerana, mangun, foujdarry, batta, khelaat, &c.[2] Sometimes a fixed rate was charged for each beegah, without reference to the assul, and independent of the actual crop.[3] But whichever might be the mode adopted in any particular zemindary or village, the rates were known; and only the customary rates could be charged, although additional cesses were levied for certain purposes. Sometimes the ryot's land was measured each year just before harvest; but this was apparently not the general practice: and the threat of measurement was, as we have seen, one of the means of exaction employed by the under-farmers.[4]

The condition of the ryots.

In whatever way the ryots were assessed, the assessment, as has been mentioned, admitted of certain allowances to the zemindar. And when the zemindar came to have the matter of fixing the revenue entirely in his own hands, and to regard it as entirely a matter between himself and the ryots, we may feel assured that he did not neglect to leave a surplus for himself, after paying the Government revenue.[5] He, on his part, was constantly striving to increase the assessment upon the ryots, by cesses and otherwise, while endeavouring to diminish the assessment upon himself. The ryot, on the other hand, endeavoured, but less successfully, to keep down the assessment upon

---

[1] Fifth Report, 140, 170. Harington's Analysis, Vol. III, 346.

[2] Fifth Report, Vol. I, 163.

[3] Ib., 140.

[4] Fifth Report, Vol. I, 140, 141. Land Tenure by a Civilian, 65.

[5] Harington's Analysis, Vol. III, 324. Land Tenure by a Civilian, 59.

himself, and to include as much unmeasured land as possible in his holding, paying only for the land originally held by him, and recorded in the putwarry's registers. He clung to the customary rates, but he was obliged to yield to cesses from time to time. On the other hand, he resisted any measurement of his land, and preferred to pay an arbitrary cess. There were however some ryots more completely at the mercy of the zemindar, who could not claim to pay customary rates; for instance, those who did not form part of any village organisation.[1] And this was the condition to which in later times the great body of cultivators in Bengal tended to sink: the customary rates grew to be almost ignored; the canoongoe's office fell into disuse, and the zemindar squeezed what he could out of the ryot. The ryots, tenacious of the customary rates, were averse to receiving pottahs (or leases).[2] They could however be required to take pottahs at the customary rates; but when those rates came to be less regarded, and the canoongoe's office fell into disuse, the ryots were still unwilling to receive pottahs unless they could stipulate in them for some customary or ancient rate, such as the usual village or pergunnah rate, or the rate charged in a certain year, or paid by a certain previous holder of the land.[3] Sometimes the pottah fixed a rate which included all cesses, and sometimes the cesses were charged as an extra tax.[4]

[1] Orissa, Vol. I, 54, 55; Vol. II, 232, 245. Directions for Revenue Officers, 66.

[2] Fifth Report, Vol. I, 23, 141. Orissa, Vol. II, 242.

[3] Ib., 140.

[4] Ib., 163.

LECTURE V.

The zemindar and cultivator in Bengal sometimes divided the produce in equal shares on the buttai system: but in later times the zemindar frequently exacted even more than this proportion, generally however upon a money assessment, which was probably not felt to be so oppressive as an equal increase of the rent taken in kind. The rates seem to have been raised to two-thirds of the crop in some places: from one-third to two-thirds of the crop being the usual assessment, the lower rate being however more general.[1] The tenants were classified under different names according to the mode in which they were assessed. Those paying a fixed rate for the beegah were called *hari* ryots, and those paying according to the crops produced were called *fasli* ryots.[2] Again, lands assessed in money were called *ryotty*. Lands assessed in cash according to the estimated produce were called *raikunkuti;* and those assessed at a rate depending upon the actual crop *kulhasili*.[3]

Amount of revenue.

Having now described the mode in which the revenue was assessed both upon the zemindar and upon the ryots, it will be useful to give some particulars of the details of the assessment, and of the amount paid by the zemindar. The revenue was classed under two heads,—*mal,* the revenue derived from the land; and *sayer,* the variable personal taxes, including duties, customs, &c.[4] These were both included in the jumma; and the zemindar collected

[1] Land Tenure by a Civilian, 65.

[2] Whinfield's Landlord and Tenant, 70. Harington's Analysis, Vol. II, 65.

[3] Whinfield's Landlord and Tenant, 70. Fifth Report, Vol. I, 164.

[4] Fifth Report, Vol. I, 239; Vol. II, 163. Harington's Analysis, Vol. II, 60.

both accounting separately for each.[1] The sayer was about one-tenth of the whole revenue. Besides the regular revenue there were also occasional sources of revenue, consisting mainly of later exactions, and included under the head of bazee jumma; such as fines, forfeitures, marriage fees, grazing fees, &c.[2]

The assessment by Todar Mull was, as already mentioned, the assumed basis of all subsequent assessments, wherever it had been applied. That assessment with its details was called the assul-toomar-jumma[3] (or original rent or revenue roll); and under this name, or in its revised form, called jumma-kaumil-toomar (original revised revenue details), was referred to throughout the country as the ultimate standard of revenue.[4] This original assessment, called shortly the assul, was fixed, as we have seen, at a certain rate for the beegah, varying with the quality of the soil and the facilities for securing an artificial supply of water.[5] The amount of the assul jumma for Bengal was originally Rs. 106,93,152.[6] This was increased by about twenty-four lacs of rupees in the reign of Aurungzebe or Alumgir, Bengal being then under the administration of Shah Sujah (A.D., 1658): but the new standard still continued to be called by the name of Todar Mull.[7] Again, in 1722 Jaffier Khan

The assul.

[1] Fifth Report, Vol. I, 103, 265, 266. Land Tenure by a Civilian, 70, 112. Orissa, Vol. I, 53; Vol. II, 231 to 236.

[2] Fifth Report, Vol. II, 162. Harington's Analysis, Vol. II, 60, 69, 70, 76, 77, 226 to 232.

[3] Fifth Report, Vol. I, 360, 361; Vol. II, 164. Harington's Analysis, Vol. II, 59.

[4] Fifth Report, Vol. II, 157.

[5] Ib., Vol. I, 216. Harington's Analysis, Vol. II, 69.

[6] Fifth Report, Vol. I, 103, 189.

[7] Ib., 103, 173, 245, 246 to 250, 360. Harington's Analysis, Vol. II, 59; Vol. III, 235. Baillie's Land Tax, xl.

LECTURE V.

increased the jumma; and a new assul-toomar-jumma was framed, and *teshkees* drawn up on the footing of the divisions into zemindaries.[1] This was probably the first official recognition of the modern zemindary divisions. This assessment was adopted by Jaffier Khan's successor Sujah Khan in 1728. The increase of revenue thus effected was about 21½ lacs, being an actual increase of 11½ lacs, and a reduction of the allowances out of the revenue to the extent of 10 lacs.[2] The jumma, which was still called Todar Mull's assessment, was after this period not directly increased: the further exactions being made in the shape of abwabs, and kept separate in the revenue records.[3]

Abwabs.

These abwabs were imposed by successive rulers; and were the means by which the State appropriated what share it could of the improved condition of the land, or of the increased revenue which the zemindar had contrived to wring out of the ryots.[4] These abwabs were imposed, as we shall see, upon various pretexts. Mr. Grant says that the revenue was thus only kept up to the original standard; the amount of revenue having practically diminished in consequence of the depreciation of the precious metals which followed the discovery of America.[5] Others consider these additions as mere arbitrary exactions, enforced by the strong hand: while others again treat the imposition of abwabs as the assertion by the State of its original

[1] Fifth Report, Vol. I, 259 to 272, 273. Harington's Analysis, Vol. II, 59.

[2] Fifth Report, Vol. I, 252 to 255.

[3] Ib., 109. Harington's Analysis, Vol. II, 69. Land Tenure by a Civilian, 66.

[4] See for a specimen of the jumma as calculated with abwabs the case of Dinajepore; Fifth Report, Vol I, 110, 190.

[5] Fifth Report, Vol. I, 272.

right to the soil, and its consequent right to a proportion of the improved value of it.[1] But the mode in which an increased assessment was obtained leads Mr. John Stuart Mill to infer, and with reason, that the ryots had customary rights, which could not safely be infringed in any more direct way. The former additions to the toomar jumma had been indeed made by a direct increase; but the details of those additions show that they professed to be based upon a more correct valuation of the sources of revenue, such as increased land brought into cultivation, increased value of the produce, and the resumption of allowances of various kinds, which had before been deducted from the revenue.[2] The passage from Mr. Mill may be usefully quoted here:—

"In India and other Asiatic communities similarly constituted the ryots or peasant farmers are not regarded as tenants-at-will, nor even as tenants by virtue of a lease. In most villages there are indeed some ryots on this precarious footing consisting of those or the descendants of those who have settled in the place at a known and comparatively recent period: but all who are looked upon as descendants or representatives of the original inhabitants, and even many more tenants of ancient date, are thought entitled to retain their land as long as they pay the customary rents. What these customary rents are or ought to be has indeed in most cases become a matter of obscurity; usurpation, tyranny, and foreign conquest having to a great

[1] Rickards' History of India, Vol. II, 224, 236. Patton's Asiatic Monarchies, 73, 175. Fifth Report, Vol. II, 9. Evidence of Lieut.-Col. Barnewall before the Select Committee of the House of Commons (1832), 1753 to 1756, 1758. Directions for Revenue Officers, 3, 21.

[2] Fifth Report, Vol. I, 246 to 250, 253 to 255. Land Tenure by a Civilian, 47 to 51.

LECTURE V.

degree obliterated the evidences of them. But when an old and purely Hindoo principality falls under the dominion of the British Government, or the management of its officers, and when the details of the revenue system come to be enquired into, it is usually found that though the demands of the great landholder, the State, have been swelled by fiscal rapacity until all limit is practically lost sight of, it has yet been thought necessary to have a distinct name and a separate pretext for each increase of exaction; so that the demand has sometimes come to consist of thirty or forty different items in addition to the nominal rent. This circuitous mode of increasing the payments assuredly would not have been resorted to if there had been an acknowledged right in the landlord to increase the rent. Its adoption is a proof that there was once an effective limitation, a real customary rent: and that the understood right of the ryot to the land, so long as he paid rent according to custom, was at some time or other more than nominal."[1]

The following remarks of Mr. Justice (now Sir George) Campbell on the mode of imposing cesses upon the ryots may also be quoted:—

"A common process seems to have been a mere repetition of the old process by which Toran Mull's assessment was enhanced. In spite of the prohibition against adding abwabs or cesses to the consolidated rates of the time of settlement, illegal cesses (almost always in the regulated form of percentages, so many annas or pie in the rupee, or so many seers in the maund) were from time to time added on and gradually annexed to the customary rate: then as

[1] Political Economy, Bk. ii, Ch. iv, § 2; People's Edn., p. 148.

they became complicated and heavy, and led to resistance, a compromise was effected, and the extra cesses were merged into a rate somewhat enhanced, to which the ryots consented: then as a further increase of value took place, more cesses were super-imposed on the rates, and presently another compromise took place. Sometimes in one way and sometimes in another the rates by mutual compromise and consent were from time to time enhanced, and the pergunnah rates were frequently split up into local rates, special to estates and subdivisions, according to the area of each new compromise. Still the new rates always had and have some local area. They were and are common to the body of the ryots of that locality. When the majority or body of the ryots had consented to an equitable compromise, an enhanced local rate was established; and refractory individuals could be and were raised to that standard."[1]

Khasnoveesy.

These abwabs were imposed in Bengal chiefly.[2] The first was called *khasnoveesy* (1711 to 1726), and was imposed by Jaffier Khan on the khalsa lands of Bengal. It had its origin in a fee exacted by the mutseddies (writers) from the zemindars on the renewal of their annual settlements. The amount of this item was Rs. 1,91,095. To this was added Rs. 65,511, the value of $4{,}679\frac{3}{8}$ gold mohurs sent yearly to Delhi to meet the expense of the usual recoinage on the accession of a new emperor; and to provide for the customary nuzzeranah on the occasion of public festivals. The whole, together with a small addition to the sayer, amounted to $2\frac{1}{2}$ per cent. on the original revenue.[3]

[1] B. L. R., Sup. Vol., 256.

[2] Land Tenure by a Civilian, 44; see details 51 to 54.

[3] Fifth Report, Vol. I, 276.

LECTURE V.

Jaffier Khan's abwabs.

Jaffier Khan also imposed several temporary abwabs to the amount of about fifteen lacs; some of which—nuzzeranah for instance—became permanent under his successor, and were included in the abwabs attributed to him. In all, Jaffier Khan's abwabs amounted to twenty-two per cent. of the jumma.[1]

Sujah Khan his son, who administered Bengal from 1726 to 1739, imposed or made permanent four abwabs:—

Nuzzerana mocurrery.

1. *Nuzzeranah mocurrery,* to the extent of 6½ per cent. on the khalsa jumma. This amounted to Rs. 6,48,040, and was ostensibly claimed to enable the Soubahdar to send a suitable present to Delhi at the two principal yearly festivals of the Mahomedans, as well as on other occasions of ceremony. Such presents were similar to those given by the jageerdars. In reality the presents thus provided for and made by the Soubahdar acted as a bribe to those about the Court, whose connivance the Soubahdar required in his misappropriations of the ordinary revenue.[2]

Zer mathoot.

2. *Zer mathoot* to the extent of 1½ per cent. on the khalsa jumma and amounting to Rs. 1,52,786. It included four items:—(*a.*) *Nuzzer-pooneah,* being in lieu of the presents exacted by the officers of the Exchequer from the zemindars upon the conclusion of the annual settlements. This was similar to one of the component parts of the khas-noveesy, and was now claimed a second time. Probably, a revival of such exactions by the Government officers had shown the Government that the zemindars could bear still further pressure. (*b.*) *Bhay-khelat,* in order to meet the expense of providing the robes usually presented by the Soubahdar to the zemindars at the time of

[1] Fifth Report, Vol. I, 276, 280.
[2] Ib., 277.

settlement as marks of investiture. (*c.*) *Pooshtabundy,* to defray the cost of embanking the river near the Lal Baug, and the killah of Moorshedabad. (*d.*) *Russoom-nezarut,* instead of a commission formerly paid by the zemindar to the nazir jemmadar, or head peon, on the treasure brought from the mofussil. This was ten annas in the thousand rupees.[1]

Mathoot feel-khaneh.

3. *Mathoot feel-khaneh,* a tax chiefly levied from the interior districts to pay for feeding the elephants of the nazim and dewan at Moorshedabad: it amounted to Rs. 3,22,631.

Foujdarry.

4. *Foujdarry,* an increased assessment by way of abwab upon the imperfectly-settled districts which were chiefly under the jurisdiction of foujdars and tannahdars (or military governors supported by jageers,) and not of zemindars. This abwab also included a duty on cattle brought to Moorshedabad for sale, and a tax for the support of small garrisons in various parts of the Soubah.[2] The whole of Sujah Khan's abwabs amounted to about one-fifth of the assul jumma: this included those of Jaffier Khan's temporary abwabs which were made permanent by his successor.[3] We have seen that Sujah Khan also adopted a new assessment framed by Jaffier Khan upon the basis of the zemindary divisions introduced by him. The increased assessment upon the zemindars during these two periods is said by Mr. Shore to be thirty-three per cent.,[4] while that upon the ryots was fifty per cent.

The next in succession to Sujah Khan as ruler of Bengal,

[1] Fifth Report, Vol. I, 278.
[2] Ib., 279.
[3] Ib., 280.
[4] Ib., 108.

LECTURE V.

Aliverdy Khan, who administered the province from 1740 to 1755, imposed three abwabs:—

Chout Mahratta.

1. The *Chout Mahratta* or Mahratta fourth. This was imposed to supply the loss of revenue from the cession of Orissa to the Mahrattas, which was made in place of tribute. The Mahrattas claimed one-fourth of the revenue in imitation of the claim of the Mogul sovereign to the rebba, or one-fourth of the produce, and succeeded in levying this tribute. And Mahomed Shah having recognised this claim, the greater part of Orissa was ultimately ceded to the Mahrattas in liquidation of it as far as Bengal was concerned: the Soubahdar imposing on the rest of his jurisdiction the present abwab, as a substitute for tribute before collected by the Mahrattas and to indemnify the State for the loss of the revenue of Orissa. Its amount was Rs. 15,31,817.[1]

Ahuk.

2. *Ahuk*, an abwab levied on some interior districts, ostensibly for the purpose of bringing lime and chunam from Sylhet to the killah of Moorshedabad. This abwab also included *kimut kheshtgour*, for the cost of dismantling the city of Gour, the former capital, and of bringing thence a particular kind of enamelled brick.[2]

Nuzzeranah Munsoorgunge.

3. *Nuzzeranah Munsoorgunge*, an abwab levied from the larger zemindaries in the interior under the following circumstances. Aliverdi's grandson, Suraj-ul-Dowlah, had built for himself a pleasure-house which he invited Alverdi to visit; during his visit Suraj-ul-Dowlah contrived to lock him up in the new house, and threatened to keep him there unless the chief zemindars present would

[1] Fifth Report, Vol. I, 282 to 289; Vol. II, 163.
[2] Ib., 289, 290.

ransom him. This probably collusive contrivance resulted in the chief zemindars agreeing to the abwab above-named. The house was named from this occurrence Munsoorgunge, or the store-house of the victor: the privilege of establishing a gunge, granary, or market having been voluntarily conferred by Aliverdy on Suraj-ul-Dowlah.[1] The increase of assessment during Aliverdi's time amounted to Rs. 22,25,554:[2] nevertheless, the actual receipts fell off during his time to the extent of ten lacs of rupees.[3]

Cossim Ali's abwabs.

The next important abwab was that imposed by Cossim Ali, who governed Bengal from 1760 to 1763; and who seems to have been considered specially oppressive in his exactions.[4] He endeavoured, it is said, not only to secure for the State nearly all the ryots then paid, but even attempted to take away from the ryots the bare subsistence which had hitherto been left to them. He employed agents to ascertain the exactions and sources of emolument of the zemindars and officers of the revenue, and at once demanded an increase of revenue to the amount of Rs. 74,81,340; but it does not appear that he ever succeeded in realising this increased sum.[5] Indeed, as we have seen, the revenue had already begun to decrease in spite of all exactions. The abwab which Cossim Ali imposed was called the *serf sicca half anna*. The zemindars had been allowed to levy an increased assessment at the recoinage in Jaffier Khan's time to make up the loss they suffered thereby. The amount allowed to be levied was about two per cent.; but

Serf sicca half anna.

[1] Fifth Report, Vol. I, 290.
[2] Ib., 105.
[3] Ib., 291.
[4] Ib., 292, 293.
[5] Ib., 108, 109.

LECTURE V.

the zemindars in reality managed to exact much more. Cossim Ali having discovered this practice endeavoured to transfer the benefit of it from the zemindars to himself, by levying the serf as an abwab. This was an anna and a half in the rupee upon the whole hustabood or gross revenue including the former abwabs.[1] This charge was, as just mentioned, formerly allowed against the revenue; it came under the head of deh khurcha or village expenses.[2] A similar abwab had been expressly prohibited by Akbar.[3]

Cossim Ali also increased the jumma by enhancing the assessment of insufficiently assessed lands, by assessing resumed jageers, and by enforcing the payment of *towfeer*, or excess of revenue over that assigned as jageer. These were called abwabs, but were as appears partly of a different nature; being not extra exactions, at least in some cases, but the resumption of revenue abstracted without authority. They were called (1), the *keffyet hustabood*, or increase of the assessment upon lands insufficiently assessed, and resumption of revenue assigned for the support of the military establishments, which had been reduced;[4] (2), *keffyet foujdaran*, a similar increase from the military frontier jurisdictions of the foujdars, who were in the habit of levying increased revenue for their own benefit;[5] and (3), *towfeer jageer-daran*, the excess of the actual revenue received by the jageerdars above the amount assigned to them.[6]

[1] Fifth Report, Vol. I, 216, 299.
[2] Ib., 216.
[3] Ayeen Akbery, Vol. I, 386.
[4] Fifth Report, Vol. I, 294 to 296.
[5] Ib., 301 to 307.
[6] Ib., 307 to 309.

This general description of the abwabs will convey a sufficient idea of their nature without descending to details.[1] These with the assul-jumma make up the total jumma. From the gross jumma, as we have seen, various deductions were made under the head of muzkoorat in order to arrive at the net jumma. And the amount assigned as jageer had also to be excluded in arriving at the net jumma.[2] The full particulars of the jumma for each village and pergunnah were contained in a record called a *tuckseem*. This contained complete details of the boundaries, rights to markets and gunges, the rights in the land, and all other matters connected with the revenue. The aggregate of these formed the toomar or rent-roll of the Soubah.[3]

The tuckseem.

It now remains to ascertain the proportion of produce taken by the State as revenue in Mahomedan times. And upon this point there is a good deal of difference of opinion; and the proportion seems to have varied in different parts of the country. I shall give the various opinions.

Proportion of produce taken as revenue.

Sir George Campbell says the State, before British rule, took from one-fourth to half of the gross produce, one-third and two-fifths being the most common proportions.[4] The Fifth Report puts the State proportion at three-fifths in fully settled land, leaving the cultivator two-fifths.[5] Out of the three-fifths taken by the State, the zemindar and

[1] See an abstract of the abwabs, Fifth Report, Vol. I, p. 309, *et seq.* See an instance of a local abwab in the *dehdary* of the Bhaugulpore district, Ib., 216.

[2] Harington's Analysis, Vol. III, 340, 343.

[3] Fifth Report, Vol. I, 173, 181, 360, 361. Harington's Analysis, Vol. III, 233.

[4] Cobden Club Essay, 157.

[5] Fifth Report, Vol. I, 18.

LECTURE V.

village officers had to be paid; that is the deduction had to be made for muzkoorat, including nankar, and amounting theoretically to one-tenth. These deductions, as already pointed out, were to meet the whole cost of collection.[1] Mr. Shore gives two different opinions: his earlier opinion is that Government took one-third,[2] but his later opinion puts the Government share at from one-half to three-fifths.[3] Mr. Elphinstone says one-third is a moderate assessment, and that the full share is one-half.[4] Mr. Grant says the proportion taken was one-fourth, which he considers moderate.[5] It is said that in the havillies, that is the lands under direct Government management, the State share was two-fifths of the gross produce of paddy (or nunjah) lands, which was taken in kind; and out of this share payments were made to village servants, charitable and religious purposes and public works: that a lower rate was charged on dry grain (punjah) and taken in money, but varying with the produce; and that a fixed money rent was taken on lands yielding the best kind of produce and on garden lands, and this rate was lower than that for the punjah lands.[6] In the Madras Presidency, except Malabar and Canara, the Government share is stated to have been from two-fifths to three-fifths of the gross produce of paddy land, this assessment being paid in kind after certain deductions made before the grain was threshed. The assessment for dry grain in the same districts was paid

[1] Fifth Report, Vol. I, 19, 362, 367.
[2] Harington's Analysis, Vol. III, 233 (note).
[3] Fifth Report, Vol. I, 126, 599.
[4] Elphinstone's History of India, 76.
[5] Fifth Report, Vol. I, 274, 373.
[6] Ib., Vol. II, 59

in cash at a fixed rate or varying with the produce.[1] In the Northern Circars the ryot is stated to have retained only one-sixth, or at most one-fifth, under Mahomedan rule:[2] but in Canara half,[3] and in Malabar two-thirds.[4] In Dindigul, after deducting 6¼ per cent. for the village officers, the gross produce was divided equally between the cultivator and the State.[5]

It is evident that no general statement as to the proportion taken by the State can be hazarded; the rate varying from the moderate assessments of Hindoo times to the extreme Mahomedan claim of from one-half to three-fifths. In Behar many villages were assessed at half or even nine-sixteenths of the gross produce, paid in kind on the buttai principle.[6] On the whole, we come to the conclusion that the proportion taken by the Mahomedans was in later times very much greater than the original Hindoo rate, and that it everywhere tended to increase, and in some parts it increased until the cultivators were left with the barest possible subsistence, which the greed of rulers and zemindars was still eager to diminish. Under such circumstances the value of the ryot's holding was scarcely appreciable, and the only valuable right in the land was the right to receive the revenue; a right of which the zemindar, as the result of the struggle between himself and the State, retained the main benefit.

[1] Fifth Report, Vol. II, 571, 699.
[2] Ib., 9.
[3] Ib., 80.
[4] Ib., 83.
[5] Ib., 699. See Harington's Analysis, Vol. III, 324.
[6] Whinfield's Landlord and Tenant, 73.

LECTURE VI.

THE PAYMENT OF REVENUE: ASSIGNMENTS OF REVENUE.

Payment of revenue—Payment originally in kind—Mode of ascertaining share to be paid—Payment in kind fell into disuse—Remedies for non-payment—Application of the revenue—Jageers—Lakhiraj—Milk—Practice of assigning revenue very ancient—Growth of jageers—These grants usually of revenue and not of land—Zemindar's rights in jageer lands—Milk and muddud-mash grants—Altumghas—Jageers—Purposes for which jageers were granted—The jageer now hereditary and alienable—The conditional jageer—The unconditional jageer—Yetool—Powers and liabilities of the jageerdar—Dues to zemindars and the State—The Nizam's and Lord Clive's jageers—Tunkas—The sunnud—Seyurghal grants—Ayma grants—Malgoozary aymas—Enams and mauniums—Chakeran grants—Pykes—Services—Ghatwals—Power to resume grant—Alienations of revenue by zemindars—Allowances in the muzkoorat—Dewusthan—Zemindars made very extensive alienations of revenue—Khewut—Rights in land—Express law—Custom—The Hindoo system one of joint property—Want of market for land and of marketable value—The soil itself not claimed by any one—The sovereign's claim to the soil—The zemindar's claim to the soil—The cultivator's claim to the soil.

Payment of revenue.

WE have now to consider the mode in which the revenue was paid and the means of enforcing payment. This, with some description of the rights arising out of the distribution and application of the revenue, will conclude my account of the Mahomedan period.

Payment originally in kind.

We have seen that Akbar's attempt to substitute a money payment for a payment in kind was not universally successful; and it was particularly in Bengal that it obtained only a partial acceptance. The revenue long continued, and to the present time still continues in many parts, to be paid in kind by the cultivator. But when the zemindar was employed, it was his duty to convert the

share of the State into money: and, when a contract for revenue was made with him, it was made in money.[1] This was, as we have seen, estimated upon an assul or original rate,[2] primarily intended to apply to the cultivators direct, which had been determined in the modes I have before described, modes which come under the general description of nussuk or valuation.[3]

Mode of ascertaining share to be paid.

The ryots, as I have said, long continued to pay in kind. And they continued also, as in Behar in modern times, to pay on the buttai system, rendering half the gross produce in kind. There were several modes in which the division was made, whatever the shares might be in which the produce was divided. In the method called agore or lang buttai, the crops were divided when on the threshing-floor; while in that called khet buttai, a portion of the field was measured off, and its produce allotted as the Government share. Again, when a valuation or estimate of the growing crop was made it was called kunkoot or danabundi. Sometimes this valuation was made by cutting a portion when ripe, threshing and weighing it, and forming an estimate thereupon. These were all ancient methods which have continued to be practised.[4] But the equal division of the actual crop between zemindar and ryot was at one time more common than at present.[5] The practice still prevails in the zemin-

[1] Harington's Analysis, Vol. III, 323.

[2] Fifth Report, Vol. I, 20.

[3] Ayeen Akbery, Vol. I, 381; Vol. II, 9.

[4] Ib., Vol. I, 377 to 379. Whinfield's Landlord and Tenant, 73.

[5] Whinfield's Landlord and Tenant, 73. Harington's Analysis, Vol. III, 324.

LECTURE VI.

dar's khamar lands, that is, lands originally waste and brought into cultivation under his auspices.[1]

Payment in kind fell into disuse.

The method of payment in kind was early considered oppressive to the ryots, as well as prejudicial to Government.[2] It fell gradually into disuse; and it is no doubt now more common in Bengal for the ryot to pay in money, although the other method still survives.[3]

Remedies for non-payment.

When the payment was in kind, the Government retained a lien upon the crop, and the cultivator was not allowed to cut or remove it until the Government claim was satisfied.[4] When a money payment was contracted for, the remedy for non-payment was imprisonment;[5] or, as we have seen in the case of the zemindar, forfeiture or sale.[6] The remedy by sale appears not to have prevailed in some parts of the country; and to have been sparingly practised in all parts. One reason was that land, at least the ryot's interest in it, was scarcely saleable, having hardly any appreciable value. But sale for arrears of revenue is stated to have been in use to some extent in Orissa and all over Bengal; and it is suggested that this practice may have given rise to the power of alienation. The method practised was that the holder of the interest to be sold purported to sell voluntarily in order to enable him to pay

[1] Fifth Report, Vol. I, 140, 164. Harington's Analysis, Vol. II, 65; Vol. III, 422. Whitfield's Landlord and Tenant, 73.

[2] Fifth Report, Vol. II, 25.

[3] Ib., Vol. I, 140. Harington's Analysis, Vol. III, 422. Land Tenure by a Civilian, 79. The Great Rent Case, B. L. R., Supp. Vol., 254.

[4] Thomason's Selections, 128, 184.

[5] Orissa, Vol. II, 237. Evidence of Mr. Alexander before the Select Committee of the House of Commons (1832), 1533. Harington's Analysis, Vol. III, 306.

the arrears of revenue, and the Government recognised the transfer upon payment into the treasury of the amount of arrears. Otherwise, the canoongoe refused to record the transaction, and the Government to give effect to it.[1]

Application of the revenue.

We have now traced the revenue up to the point of its payment into the treasury. That revenue was then applied to the purposes of the State. The class which was to be maintained out of the revenue was called in Mahomedan law *ahl*, or "the people of khiraj."[2] It consisted of the great officers of State, the civil and military establishments, and the officers of Government generally. These might be provided for in two ways; either by paying them in money out of the Exchequer, that is, by applying the khiraj for that purpose after its receipt; or by allowing them to receive a certain portion of the khiraj, either from the Government officers, the zemindars, or the ryots.

Jageers.

When the khiraj was thus allowed to be intercepted before its receipt into the treasury, the right so to intercept it was called a jageer. This is the general term, although as we shall see there were several varieties which bore specific names. We have already met with the term jageer as applied to one great division of the assessed land of the empire: the jageer lands which did not pay revenue into the treasury, or only paid part of it, were those from which the jageerdar himself collected either directly or through the established machinery. We have noticed the origin of these jageers in the necessity for supporting local military forces, and in the policy of allowing them to enforce the collection of the revenue

[1] Orissa, Vol. II, 237. Fifth Report, Vol I, 631.

[2] Baillie's Land Tax, xxiii.

LECTURE VI.

Lakhiraj.

by which they were to be supported. These jageer lands are sometimes called lakhiraj or free from revenue: but this is not, according to the description just given, a strictly correct term. As far as payment into the treasury is concerned, they are lakhiraj to the extent to which they are appropriated in jageers, that is, they are lakhiraj as opposed to khalsa lands. But they do pay revenue; only they pay so much as has been assigned in jageer, not into the treasury, but to the jageerdar. The revenue is alienated, not extinguished.[1] It is important to bear this in mind because lakhiraj land is not, or at any rate was not originally, land with the quality of being free from revenue, but land bound to pay to an assignee of the State; it is not an exemption of the land, but the right of the jageerdar, which is contemplated in the grant.

Milk.

It might happen that the person who was to be provided for out of the revenue was himself in occupation of land yielding revenue; as in the case of the headman, the village officers, the zemindar, and others. In such a case an obvious mode of making the required provision was by remitting the whole or a portion of the revenue due from the land occupied by the person to be provided for; and this was sometimes done.[2] The grantee in such a case would, during the continuance of the grant, enjoy the double right to occupy and to receive the revenue; and the only interest contemplated as remaining in any other person would be the right to receive revenue after the termination of the grant. This therefore came nearer to an absolute right than any of the rights we have at

[1] Baillie's Land Tax, xxvi. Land Tenure by a Civilian, 89.

[2] Baillie's Land Tax, xxiv.

present met with. A grant of this kind was called *millik* or *milk* (property).[1]

Practice of assigning revenue very ancient.

The practice of assigning revenue for the support of the Government establishments arose apparently in very early times: and existed in the case of the headman and for religious purposes even in Hindoo times. Thus we find in the travels of Hiouen Thsang, a Buddhist, who visited India in the seventh century, that the produce of the royal lands, which corresponds to the revenue, and probably is spoken of as land under a misconception, was divided into four portions. The first portion went to defray the expenses of the kingdom, the second to supply jageers for officers of State, the third was given to learned men, and the fourth to Buddhists and Brahmins.[2] In Mahomedan times we find mention of jageers between A.D. 1211 and 1236 in the time of Shums-ood-deen.

Growth of jageers.

The practice of making such grants was discontinued by Ala-ood-deen; but was revived by Sultan Feroze in 1351, who made extensive temporary grants of this sort, called originally *nanka* or bread, and afterwards jageers.[3] These jageers were of a somewhat feudal character: they were generally granted on condition of service; and the original name of them brings to mind the feudal lord, who was so called because he supplied his followers with bread.[4] After Sultan Feroze's time the practice of making such grants still continued; since, although some-

[1] Baillie's Land Tax, xlviii. Land Tenure by a Civilian, 55, 56, 89. Evidence of Mr. Newnham before the Select Committee of the House of Commons (1832), 2754.

[2] Elphinstone's History of India, 298.

[3] Baillie's Land Tax, xliv.

[4] Freeman's Growth of the English Constitution, 47.

LECTURE VI.

what a departure from the principle of centralisation, it was recommended by its great immediate convenience. And by the time of Jaffier Khan a considerable portion of the revenue of Bengal had been thus assigned. Jaffier Khan resumed many of these assignments granting others in Orissa. In this he imitated the policy of Akbar, who directed that the jageers should be frequently changed to prevent the troops establishing themselves in any one place.[1] The creation of the new jageers however did not get rid of this danger, for we find that many of the holders of them afterwards revolted.[2] After Jaffier Khan, Cossim Ali followed, in this as in other respects, the same policy, resuming many jageers and compelling the holders of others to account for the surplus revenue withheld by them.[3]

These grants usually of revenue and not of land.

Grants of revenue or of land free from revenue were made for various purposes, such as past services; for services to be rendered during the term of the grant; as a provision for the great officers of State or needy persons of high rank; for charitable purposes; for the maintenance of temples, mosques, teachers, priests, and for other religious purposes.[4] Such grants did not in general alienate the revenue in perpetuity. The sovereign indeed could not, according to Mahomedan ideas, permanently alienate the revenue:[5] and therefore, when it was intended that the grant should extend beyond the lifetime of the sovereign granting it, the grant generally contained an appeal to his

[1] Stewart's History of Bengal, 107.

[2] Harington's Analysis, Vol. II, 66.

[3] Fifth Report, Vol. I, 294, 296, 306, 307 to 309.

[4] Morley's Digest, Vol. I, 401.

[5] Fifth Report, Vol. II, 14. Baillie's Land Tax, xxiv to xxvi.

successors to continue it.[1] And all alienations of revenue were registered in the *tun-dufter* at Delhi, and were revised at the beginning of a new reign; when the grants were either confirmed or resumed at the will of the new sovereign.[2] These grants ordinarily only transferred the revenue and not the land:[3] although in some cases land appears to have been also granted, as in some milk and muddud-mash grants, as also in some altumgha grants: but in such cases it was probably land at the disposition of the State as being waste or deserted land, or perhaps frontier land from which the holders had been ejected. At any rate we cannot find any instance in which the ryots were ejected in order to put the grantee in possession of the land itself: and if the cultivators remained in possession under the same right as before, they would of course still continue to pay revenue; only to the jageerdar instead of to the State. It is expressly stated that the Emperor purchases land when he requires it for building a mosque;[4] one of the few purposes, it may be observed, for which the land itself would be required. And a grant for purposes of this kind comes under the head of muddud-mash grants; the grantees of which, like the holders of milk, were usually entitled to the land, as well as to the revenue. If the grantee under these grants was already the occupant of the land, the grant

[1] Baillie's Land Tax, li.

[2] Land Tenure by a Civilian, 57, 89.

[3] Harington's Analysis, Vol. III, 329, 369. Steele's Deccan Castes, 206. Land Tenure by a Civilian, 90. Directions for Revenue Officers, 59.

[4] Harington's Analysis, Vol. III, 328. Some of the grants of the Hindoo rulers, which have been discovered, and which were inscribed on copper plates, are however in very absolute terms. See Colebrooke's Essays (London: Trübner and Co., 1873), Vol. III, Nos. xi and xii.

LECTURE VI.

remitted the revenue. On the other hand, it would seem that if the land was in the possession of others, and the possession of it was desired for the purposes of the grant, the land had to be purchased: but in the case of waste or unoccupied land, the sovereign himself would be entitled to dispose of it. Thus the ghatwals, who guarded the frontier passes, seem to have occupied land free of revenue; and such frontier land would probably come within the class of lands of which the sovereign could lawfully dispose. In further illustration of this point, an instance may be given from the south of India: for it is stated that in Canara, when a grant of this kind was made to a pagoda, the soil did not pass, but only the right to receive the revenue; and that when the soil was granted, the previous purchase of it was expressly mentioned in the sunnud.[1]

Zemindar's rights in jageer lands.

Assignments of revenue were sometimes made in respect of lands included in zemindaries: if the revenue continued to be collected by the zemindar, he of course retained the usual emoluments, merely paying to the assignee of the revenue the amount he was bound to pay as revenue, instead of paying it into the khalsa. If there were no zemindars in the assigned district, from which the allotted revenue was to be received, the jageerdar collected the revenue and administered the district through the Government officers, or agents of his own, who would either receive an allowance similar to that taken by the zemindar, or would be paid for their services in money out of the revenue. If however the assignee of the revenue displaced the zemindar, as appears to have been the case in many instances in Behar, the zemindar, whose right had

[1] Fifth Report, Vol. II, 479.

become at this period a proprietary and not merely an official right, was compensated by the usual allowance of malikana made to displaced zemindars.[1]

Milk and mudd-mash grants.

The most absolute grant of this kind was, as I have said, the milk or millik grant, a class which includes some of the muddud-mash grants (prolonging of life).[2] This grant was on condition of performing certain services; or for the support of the grantees without services; or for religious purposes. The grant was in terms implying perpetuity, and mentioning the heirs or children as included among the grantees, but the grant was in practice revocable at the will of the sovereign.[3] There is a conflict as to whether the grant was heritable, notwithstanding that the terms used implied perpetuity and descent. Sir George Campbell says that the right, if not resumed, went to the heirs of the grantor;[4] but it is contended by one writer that the terms of the grant, including the children of the immediate grantee amongst the objects of the grant, must be taken to refer to a joint interest in the children with the parent.[5] As I have mentioned the land was sometimes included in this kind of grant; and in all cases of milk grants the land was either granted, or was originally held by the grantee; and since the land descended in the ordinary course, the right to hold it free of revenue would naturally attend it until the expiration or revocation of the grant: so that practically it was an hereditary grant.[6]

---

[1] Harington's Analysis, Vol. III, 345.

[2] Ayeen Akbery, Vol. I, 281.

[3] Land Tenure by a Civilian, 89. Baillie's Land Tax, xlviii. Campbell's Cobden Club Essay, 153.

[4] Cobden Club Essay, 153. Harington's Analysis, Vol. III, 337, 338, 355.

[5] Baillie's Land Tax, lxiii.

[6] Land Tenure by a Civilian, 55, 56. Baillie's Land Tax, xlviii.

LECTURE VI.

I have referred to the circumstances under which a grant of the land itself could be made, and in further illustration of this I may mention that the sunnud under the Imperial seal, by which the formal grant was made, sometimes expresses that "the land shall not be assessed land, but shall be selected from waste land capable of cultivation and not under assessment."[1] And in the case of some grants of this kind, the land was to be half arable and half waste.[2]

The milk holding is said to have been transferable; but it could not be alienated so as to give an irrevocable right.[3] The grant generally extended only to lands of small extent, seldom including more than a thousand beegahs.[4]

Altumghas.

Similar in some respects to the last mentioned grant was the altumgha grant,[5] which was under the Emperor's red seal, and was a grant of revenue of land under cultivation. This, like the last class, was not strictly perpetual, but is said only to have reverted to the State on failure of heirs, or on forfeiture for misconduct.[6] It was intended to be hereditary; and the sunnud contained generally an appeal by the sovereign to his successors to confirm his grant.[7] It was apparently the only grant in the Mahomedan system which was originally intended to be hereditary.[8] Such grants were rare, and were chiefly found in Behar.

[1] Baillie's Land Tax, xxv, lv. Land Tenure by a Civilian, 55, 56, 89, 90.

[2] Baillie's Land Tax, xlix. Ayeen Akbery, Vol. I, 383.

[3] Land Tenure by a Civilian, 56. Campbell's Cobden Club Essay, 153. Orissa, Vol. II, 238.

[4] Land Tenure by a Civilian, 89.

[5] Colebrooke's Supplement, 238.

[6] Ib.

[7] Baillie's Land Tax, li. Land Tenure by a Civilian, 56.

[8] Fifth Report, Vol. II, 168. Harington's Analysis, Vol. II, 66; Vol. III, 337, 338.

The grant of the Dewanny to the English purports to be an altumgha.

The altumgha conveyed only the right to receive the revenue and the authority necessary for that purpose, but did not transfer any other proprietary right.[1] As before mentioned the grant was practically only resumed on delinquency; and the new grant sometimes mentioned the dismissal of the former holder.[2] There is only one instance known of transfer of either this or the muddud-mash rights in Mahomedan times: but after 1773 such rights have been transferable.[3] The holder of these grants paid malikana to the zemindars under the circumstances to which I have before referred.[4] The zemindar could not resume such grants.[5]

Jageers.

The most general class of grants of revenue was that of jageers. This is the general name for all temporary assignments of revenue only without the land. Such a grant is of course included in those assignments which convey the land. All assignments of revenue were originally called *iktaa* or *akta* (a cutting off). They could not be made to extend beyond the life of the grantee,[6] and might be resumed at the end of any year;[7] and it is a question whether the grant did not cease when

[1] Land Tenure by a Civilian, 90.

[2] Colebrooke's Supplement, 238.

[3] Ib.

[4] Harington's Analysis, Vol. III, 243, 296, 322, 345, 354.

[5] Unide Rajaha Raje Bommarauze Bahadur *v.* Pemmasamy Venkatradry Naidoo, 7 Moore's I. A., 128.

[6] Baillie's Land Tax, xxiv, xxv. Harington's Analysis, Vol. III, 361, 413. Fifth Report, Vol. I, 236; Vol. II, 14, 167. Land Tenure by a Civilian, 89.

[7] Baillie's Land Tax, xxiv. Harington's Analysis, Vol. III, 413, 415. Steele's Deccan Castes, 208.

LECTURE VI.

the grantee became unable to perform the services attached to the grant.[1]

Purposes for which jageers were granted.

The jageer was a grant[2] for the support of troops and of civil establishments, and for charitable or religious purposes.[3] The chief jageers were for the support of troops, and were called foujdaries; these were granted to maintain the frontier armies and garrisons, where probably no revenue could otherwise have been collected. They were more common in Behar than in Bengal, as were the smaller jageers.[4] These large jageers were held by foujdars, who had the military government of the district. They had been abolished or mixed up with the larger zemindaries before the period of British rule.[5] Thus the original form of jageer was that of a grant on condition of military service;[6] and it was this kind of jageer which was enjoyed by some of the ancient Rajahs, who received assignments of the revenue of a part of their former territory, on condition of supplying a certain number of troops.[7] Jageers of the same kind still exist, although the duties are not required; and it has been held that a fouj serinjam, which is a jageer granted upon con-

[1] Baillie's Land Tax, xxiv. Colebrooke's Supplement, 238.

[2] Mohummud Ismail Jemadar *v.* Rajah Balungee Surrun, 3 Sel. Rep., 346.

[3] Fifth Report, Vol. I, 268; Vol. II, 14. Harington's Analysis, Vol. II, 66; Vol. III, 361. Land Tenure by a Civilian, 55, 56, 90. Baillie's Land Tax, xlvi. Evidence of Mr. Elphinstone before the Select Committee of the House of Lords (1830), 2295, 2297. Elphinstone's History of India, 81, 275.

[4] Harington's Analysis, Vol. III, 415.

[5] Baillie's Land Tax, xlvi.

[6] Fifth Report, Vol. II, 167.

[7] Land Tenure by a Civilian, 73.

dition of military service, is not resumable so long as the holder does not refuse to perform the service;[1] but on the other hand it may be resumed and assessed when the services are no longer required or performed.[2]

The jageer now hereditary and alienable.

The jageer was originally not hereditary: but it was frequently renewed in favour of the son of the previous holder.[3] Under British rule however it has become hereditary, and the family share it in the same way as other property. In the Deccan it is not unusual for the eldest son to take the management, or for all to manage by turns.[4] The jageer was not alienable formerly, but now is so.[5]

The conditional jageer.

It was either conditional (*mushroot* or *shurtee*) or unconditional (*guire mushroot* or *bila shurt*). The conditional jageer, like the feudal fief, was granted on condition of service,[6] and originally to enable a munsubdar or commander of a certain number of horse to support the troops which he was bound to maintain. The jageer went with the office.[7]

The unconditional jageer.

The unconditional jageer, on the other hand, was a voluntary grant made out of favour or for past

---

[1] Morley's Digest, 404, pl. 15.

[2] Unide Rajaha Raje Bommarauze Bahadur *v.* Pemmasamy Venkatradry Naidoo, 7 Moore's I. A., 128.

[3] Fifth Report, Vol. II, 14. Harington's Analysis, Vol. III, 361. Land Tenure by a Civilian, 56. Colebrooke's Supplement, 238. Baillie's Land Tax, xlviii, lxi, lxii. Steele's Deccan Castes, 208. Patton's Asiatic Monarchies, 78. Collector of Bareilly *v.* Martindell, 2 Sel. Rep., 188. Evidence of Mr. Elphinstone before the Select Committee of the House of Lords (1830), 2300.

[4] Steele's Deccan Castes, 211, 212, 229, 230.

[5] Land Tenure by a Civilian, 56. Colebrooke's Supplement, 238. Steele's Deccan Castes, 208.

[6] Fifth Report, Vol. II, 159. Harington's Analysis, Vol. II, 66. Colebrooke's Supplement, 237. Baillie's Land Tax, xlvii. Steele's Deccan Castes, 208.

[7] Harington's Analysis, Vol. III, 407 to 410, 413.

LECTURE VI.

services.[1] The services annexed to the conditional jageer were generally specified in the first instance, but sometimes the jageerdar was called upon to hold himself ready to perform such services as should be required of him; and the military jageerdar was bound to attend in person with his troops when directed.[2] This kind of jageer in some cases carried with it the same jurisdiction, rights, and prerogatives as the sovereign himself had.[3] Some unconditional jageers again gave the holder a still more independent position. Thus the killadar or commander of a fort, when he held an unconditional jageer, was independent of all intermediate authority in respect of it, and was only bound to fealty to the sovereign.[4] The two kinds of jageer above described correspond to the fouj serinjam and jat serinjam jageers of the Deccan: the fouj serinjam jageer being held on condition of military service; and the other being a personal grant.[5] Jageers were also known in other parts of Southern India as polliams.[6] The polliam has been held to be hereditary but indivisible,[7] and capable of descending to females.[8]

Yetool.

The jageer is apparently referred to in the Institutes of Timour under the name of *Yetool*. This term includes the jageers below the foujdary, which was the class existing at

[1] Baillie's Land Tax, xlvii. Steele's Deccan Castes, 208.
[2] Harington's Analysis, Vol. III, 414.
[3] Baillie's Land Tax, xlvii.
[4] Fifth Report, Vol. II, 159. Orissa, Vol. II, 218, 219.
[5] Steele's Deccan Castes, 208.
[6] Fifth Report, Vol. II, 88, 89, 90, 697.
[7] Naragunty Lutchmeedavamah *v.* Vengama Naidoo, 9 Moore's I. A., 66.
[8] Collector of Madura *v.* Veeracamoo Ummal, 9 Moore's I. A., 446. Katama Natchier *v.* Rajah of Shivagunga, Ib., 539.

the beginning of the British rule, and which seldom extended beyond a single circar.[1]

Powers and liabilities of the jageerdar.

The amount of revenue assigned in jageer from a particular district might be the full revenue or less. When the full revenue was granted in conditional jageer the whole of the rights of the State passed to the jageerdar, and its authority was vested in him.[2] If however, less than the full revenue of the district was assigned, the jageerdar had no jurisdiction; but the grant contained a request to the proper parties to pay their revenue to him.[3] And whether or not the whole revenue was assigned as a jageer, yet if the amount to be taken was specified, the jageerdar was bound to account for any excess (*towfeer*) which might come to his hands: as also for any surplus above the proper allowance for the number of troops he actually maintained, a deduction being made from his jageer if his effective troops fell short of the required number.[4] The surplus thus to be accounted for was not accounted for to the khalsa but in the jageer or paibakee jurisdiction, in which department escheated jageers were also administered.[5] But since the British rule the jageerdars neither perform service nor account for any excess.[6]

Dues to zemindars and the State.

When a jageer was granted with respect to a district included in a zemindary, the jageerdar, as we have seen,

[1] Baillie's Land Tax, xliv to xlvi. Fifth Report, Vol. II, 167.

[2] Baillie's Land Tax, xlvii. Fifth Report, Vol. I, 485, 486.

[3] Baillie's Land Tax, xlvii. Fifth Report, Vol. I, 486; Vol. II, 159.

[4] Fifth Report, Vol. I, 237, 268. Harington's Analysis, Vol. III, 415. Steele's Deccan Castes, 208.

[5] Harington's Analysis, Vol. III, 415.

[6] Ib., 417.

LECTURE VI.

had to pay malikana to the zemindar.[1] And the hereditary pergunnah officers have been held entitled, under British rule, to receive their fees, whether they perform any service or not, so long as they are still willing to perform the duties of their offices.[2] The jageerdar had also to pay fees to the State, called nuzzurs or presents, on succession, partition and all transfers.[3] This confirms the opinion that the jageer was not originally alienable as of right.

The Nizam's and Lord Clive's jageers.

One district in Southern India was held as a jageer by the Nizam on condition of furnishing a certain number of troops. He held it in his capacity of aumildar.[4] Lord Clive also held the zemindary of the Twenty-four Pergunnahs as a jageer of the bila shurt (unconditional) and *zatee* (personal) kind; the East India Company holding a grant of the zemindary rights.[5]

Tunkas.

A jageer was not generally created by a sunnud, when the jageerdar was not intended to be invested with jurisdiction, but a *khut* or order was addressed to the Government officers, ordering them to pay the revenue granted into the hands of the jageerdar. These orders were called tunkas.[6]

The sunnud.

The regular jageer sunnud consisted of two parts: the munsub, which set forth the rank of the grantee, and specified a suitable number of horse as required to be kept up, both for the support of the dignity and for the

[1] Harington's Analysis, Vol. III, 345, 417. Patton's Asiatic Monarchies, 105. Moohummud Ismail Jemadar *v.* Raja Balungee Surrun, 3 Sel. Rep., 346.

[2] Bama Shunkar *v.* Jamasjee Shaporjee, 2 Moore's I. A., 23.

[3] Steele's Deccan Castes, 208. Land Tenure by a Civilian, 57, 58.

[4] Fifth Report, Vol. II, 154.

[5] Ib., Vol. I, 486; Vol. II, 167. Harington's Analysis, Vol. II, 66.

[6] Steele's Deccan Castes, 208. Galloway's Law and Constitution of India, 868, 7.

service of the State; and the zimn, or details of the assignment, whether extending over a particular district, or allotting a specified amount of revenue in money. This sunnud was issued under the Emperor's seal.

Seyurghal grants.

Another class of the ikta grants was called *seyurghal*. These were grants of revenue to—first, learned men and their scholars; second, those who had withdrawn from worldly affairs; third, the needy in general; and fourth, the poor descendants of great families, who were too proud to follow any occupation.[1] Grants to the needy were also called aymas; and were often obtained by the wealthy under fictitious names.[2] Grants for these purposes sometimes included the land, and were of the milk or muddud-mash kind. When grants of the seyurghal class were made simply by way of assignments of revenue, they were of the nature of unconditional jageers, and only for life originally:[3] and it is obvious that there would be less tendency to allow grants to the classes of persons above specified to become hereditary, although no doubt they often did become so. The mode of assignment was by tunkas, which never included more than three-fourths of the revenue of the district from which the assigned revenue was to be received.[4]

Ayma grants.

One of the classes of grant included in the seyurghal was, as I have mentioned, the ayma grants. Ayma (or aimma, the plural of imam, a leader of the devotions of a private assembly of Mahomedan worshippers,) grants were grants made to imams by the sovereign. When grants of

[1] Baillie's Land Tax, xlviii. Ayeen Akbery, Vol. I, 281, 383.
[2] Colebrooke's Supplement, 238.
[3] Baillie's Land Tax, xlviii.
[4] Ib., xlix. Ayeen Akbery, Vol. I, 283, 284.

LECTURE VI.

the revenue merely they come within the class called seyurghal. But as we have seen they were sometimes grants of land as well as revenue, or remissions of revenue on land already in the grantee's occupation, and then they came under the head of milk or muddud-mash. Again they were sometimes grants of land at a reduced revenue, or a remission of part of the revenue upon land in the possession of the grantee, and then they were called malgoozary aymas or revenue-paying aymas.[1] As we have seen the lands included in grants of this kind were generally waste lands: and it is said that malgoozary aymas were sometimes granted in order to bring waste into cultivation. The lands thus cultivated would become the cultivator's property and descend as such: but the remission of revenue would not necessarily descend with them. Hence we find that these grants were not all hereditary but only some of them.[2] The objects for which ayma grants were made were much more varied than is implied in the term ayma. They included grants to learned men, or for religious or charitable purposes, and some of these were in perpetuity. They were seldom of very great extent.[3]

Malgoozary aymas.

In other parts of India similar grants were known under the name of enams. The name enam seems, like the word jageer, to be a general term including almost all assignments of revenue.[4] In the more restricted sense of the word however it is used to designate the same kind of grant as the ayma, but including as well grants for service.

Enams and mauniums.

[1] Baillie's Land Tax, liii, liv. Harington's Analysis, Vol. II, 65. Land Tenure by a Civilian, 56. Evidence of Mr. Elphinstone before the Select Committee of the House of Lords (1830), 2295, 2297.

[2] Land Tenure by a Civilian, 56.

[3] Fifth Report, Vol. II, 14, 167, 168.

[4] Steele's Deccan Castes, 206.

Thus grants to revenue officers and village servants were called enams in the Northern Circars and the Deccan.[1] They were also called mauniums; and were distinguished as turrabuddy enams or mauniums, when they consisted of land or the revenue of land supposed to be set apart at the original allotment of the village for the village officers, pagodas, &c.; and sunnud enams or mauniums, when granted afterwards as pay to servants, for mosques, &c. These latter required yearly renewal; and the holder in later times acquired by custom a right to such renewal.[2] Enams were granted to mendicants and singers as well as for the other purposes already mentioned.[3] They grew ultimately to be hereditary; reverting to Government only on failure of heirs.[4] The same hereditary character is alleged to belong to the malgoozary aymas; but they were inalienable.[5] Ayma and enam grants conveyed no right to the land, except in the cases I have before mentioned.[6] They were, like other grants of revenue, subject to payment of malikana or some other equivalent allowance to the zemindar. Many holders of ayma grants assigned over to the zemindar a portion of the grant, sufficient to meet this charge.[7]

Chakeran grants.

Of a similar nature to the grants we have already considered, and included in the class of enam or jageer grants,

[1] Steele's Deccan Castes, 206. Fifth Report, Vol. II, 14. Evidence of Mr. Elphinstone before the Select Committee of the House of Lords (1830), 2295, 2297.

[2] Fifth Report, Vol. II, 307.

[3] Ib. 14, 96, 167, 168.

[4] Steele's Deccan Castes, 206, 236.

[5] Evidence of Mr. Elphinstone above cited, 2301, 2302.

[6] Land Tenure by a Civilian, 90.

[7] Harington's Analysis, Vol. III, 296, 322, 345.

LECTURE VI.

are grants of land or revenue for the support of servants of various kinds. These resemble the conditional jageer; the holder being bound to perform certain services as the condition of retaining the privileges granted. Holdings of this kind are frequently called service tenures, or chakeran tenures. We have seen that in Hindoo times the headman, and sometimes other officers of the State and of the village, were remunerated by remissions of revenue on the land held by them; sometimes holding altogether free of revenue, and sometimes at a reduced rate of revenue. They may, although of this we have no certain information, have had also allotments of land granted to them by the village, or of waste land granted by the State. We have seen that the zemindar enjoyed similar privileges under the title of nankar, and it appears that in Bengal this was the ordinary mode of providing for all the revenue servants. There were it is said 150,000 of these employed in the fiscal departments of the empire as zemindars, canoongoes, mokuddims, putwarries, pykes, molungies, and rahberdars. In other provinces they were paid in money, but in Bengal by allotments of land revenue free.[1] Sometimes, as already remarked, their allotments were not entirely free of revenue, but only at a reduced revenue. Besides those above mentioned as thus remunerated, we find chowkeedars, who had also a claim to a share of the village produce when employed by the village,[2] pausbans, gorayets, or pharidars (watchmen), foujdars, digwars (guards), balaghunti (grand round men, going rounds as watchmen),

[1] Fifth Report, Vol. I, 341 ; Vol. II, 12, 13, 89, 90, 95, 155. Harington's Analysis, Vol. II, 65, 235 (n). Whinfield's Landlord and Tenant, 34.

[2] Orissa, Vol. II, 216.

pykes (or revenue police), athprohoris (eight-watch men)[1] killadars (commanders of forts or garrisons), and others.[2]

Pykes.

In the Burdwan zemindary there were in recent times about 2,400 pykes supported in this way, and employed under the orders of tannahdars in police duties: besides 19,000 zemindary pykes for revenue duties.[3] The duties of these holders of chakeran lands were of three classes,—first, personal to the zemindar, as to collect his rents and to guard or escort treasure from the mofussil; second, common to the village community, as to keep watch at night, and to guard the harvests; and third, police duties, as to preserve the peace, and apprehend offenders under the tannahdar's orders, to report on crimes, to convey the public money to the sudder treasury and to serve as guides to travellers.[4] It is obvious that all these duties were duties which in Hindoo times were performed by village servants, or the other servants of Government who were remunerated by revenue-free land.[5] The service lands in Beerbhoom and Hooghly were hereditary but impartible.[6]

Services.

Some of these service tenures had a feudal stamp; such as holding upon the service of bearing the sword of State, carrying the king's shield, umbrella or slippers.[7]

Ghatwals.

Similar to the last class of revenue-free holdings are the ghatwallee tenures (ghatwallah = pass-keeper) granted on

[1] Whinfield's Landlord and Tenant, 34.

[2] Orissa, Vol. II, 216.

[3] Joykissen Mookerjee *v.* Collector of East Burdwan, 10 Moore's I. A., 16, at p. 18.

[4] Ib., 43.

[5] Fifth Report, Vol. II, 12, 13.

[6] Baillie's Land Tax, lxx. Hurlal Singh *v.* Jorawun Singh, 6 Sel. Rep., 169.

[7] Whinfield's Landlord and Tenant, 34.

LECTURE VI.

condition of guarding the passes: which is specified as one of the purposes to which the khiraj may be applied.[1] These tenures are said to have originated in Beerbhoom, two-thirds of which was originally granted by Jaffier Khan, free of revenue, to Assidullah, an Afghan or Patan, and his tribe on condition of his guarding the frontier against the Hindoos of Jharcund.[2] This grant was resumed by Cossim Ali, and the land included in the original grant was assessed.[3]

These tenures were, like the chakeran tenures, sometimes revenue free, and sometimes charged only with a nominal or reduced revenue. But they were all on condition of service.[4] Also like the chakeran tenures of Beerbhoom and Hooghly the ghatwallee tenures in the same districts are impartible, and descend to the oldest or most capable member of the family: but the rest of the family are entitled to maintenance thereout.[5] And generally they are said to be now hereditary.[6]

Power to resume grant.

The question whether these tenures could be resumed has been much discussed. It is said that if the grant was a grant of land free of revenue, and not merely a grant of revenue, it could never be resumed; since it would be what is known in Mahomedan law as *wukf:* and if all the purposes

[1] Baillie's Land Tax, lxv.

[2] Ib. Fifth Report, Vol. I, 262, 294, 295. Rajah Lilanund Singh Bahadoor *v.* Government of Bengal, 6 Moore's I. A., 101, at p. 122.

[3] Fifth Report, Vol. I, 262, 295.

[4] Rajah Lilanund Singh Bahadoor *v.* The Government, 2 B. L. R., A. C., 114, at p. 122.

[5] Baillie's Land Tax, lxx. Hurlal Singh *v.* Jorawun Singh, 6 Sel. Rep., 169.

[6] Rajah Lilanund Singh Bahadoor *v.* The Government, 2 B. L. R., A. C., 114, at p. 122.

for which it was set apart failed, its produce must by Mahomedan law be applied for the benefit of the poor: but if the grant was only of revenue the grantor need not renew the grant on a vacancy; and so might resume.[1] The latter alternative would seem to apply whether the grant of revenue was made by way of remission to those already entitled to the land or by way of assignment. And if the Government granted the land as waste or unoccupied land, it would follow that, although the land could not then be taken back, the remission of revenue might be discontinued, and the land assessed as was done by Cossim Ali. I shall hereafter refer more fully to the cases upon this subject. I may here mention two: in one it was held that in Kurruckpore, which is adjacent to Beerbhoom, the Government having dispensed with the services of the ghatwals, and taken an increased revenue from the zemindar, still the ghatwals could not be dispossessed from their lands by an auction-purchaser from the zemindar.[2] This agrees with what is above suggested, since the Government resumed the revenue, but the ghatwals, it was held, could not be dispossessed, they being apparently in actual occupation of the land. It has further been held that, as the appointment of ghatwals rested with the zemindar, he need not appoint upon a vacancy.[3] In the other case above referred to it was held, that where the tenure is not hereditary, but has been held for a long period on payment of a quit rent and on the performance of certain services, the zemindar having the right to appoint and dismiss the ghatwals, the tenure

[1] Baillie's Land Tax, lxvi, lxvii, lxviii, lxx.

[2] Rajah Lilanund Singh Bahadoor *v.* Thakoor Munorunjun Singh, 13 B. L. R., 124.

[3] Mahdub Hossein *v.* Patasu Kumari, 1 B. L. R., A. C., 120.

LECTURE VI.

ceased when from new arrangements made by Government with respect to the police the services became impracticable and unnecessary.[1] In the case in question the ghatwals were in possession and the zemindar sued for possession.

It will be seen from the foregoing account that assignments of revenue existed to a considerable extent under Mahomedan rule. Land, in respect of which the whole revenue was assigned, and which consequently paid no revenue into the khalsa, was called lakhiraj or bazee zemeen.[2] The assignments we have at present noticed were however only part of the alienations of revenue. We have already seen that certain deductions were allowed in the zemindary accounts with Government for various religious and charitable purposes. Out of these and similar items there grew ultimately very large deductions from the revenue, which were called in Behar *kharidge jumma*.[3]

Alienations of revenue by zemindars.

It is obvious that the State alone could authorize assignments and alienations of the revenue; and, as we have seen, even the sovereign could only do so under certain limitations.[4] Nevertheless, in the decay of Mahomedan rule, many other alienations were made besides those directly sanctioned by the State. But at first these unauthorised alienations were generally submitted to the sovereign for approval, and were then registered in the tun-dufter at Delhi. Thus the great chiefs and dependent princes sometimes made grants of revenue, and they generally sought for

[1] Rajah Neelanund Singh *v.* Nusseeb Singh, 6 W. R., 80. Rajah Lilanund Singh *v.* Kunhya Lall, 17 W. R., 315.

[2] Fifth Report, Vol. I, 36, 341, 343. Harington's Analysis, Vol. II, 65.

[3] Colebrooke's Supplement, 239.

[4] Fifth Report, Vol. II, 168. Land Tenure by a Civilian, 89.

these the confirmation of the State.[1] Again, when the zemindars had grown to be responsible contractors for the revenue, and the contract with them had come to be considered a separate matter from their assessments upon the ryots, they sometimes alienated portions of the revenue as derived from the ryots, but this did not affect their liability to the State; since the State could not be bound by such alienations unless afterwards confirmed. Nevertheless, being good against the zemindar, these assignments of revenue were not interfered with during the period of the zemindar's tenure.[2] The zemindars also as representatives of Government made such alienations, but frequently to an extent far beyond their legitimate authority. Such remissions or assignments of revenue, made by the officers of Government, were called *maafee* in Behar,[3] and the same term was applied to the lands held on service tenures with the benefit of such remissions;[4] and grants for charitable purposes by such officers, including the zemindar in his official capacity, were called *kheyrat*.[5]

Allowances in the muzkoorat.

And it was in this capacity that the small alienations already referred to were allowed to the zemindar in the muzkoorat. These were chiefly for religious or charitable purposes, and many of them had been similarly allowed in Hindoo times.[6] They appeared in the zemindar's accounts

[1] Steele's Deccan Castes, 206.

[2] Land Tenure by a Civilian, 118. Mahomed Akil *v.* Asadunnissa Bibee, 9 W. R., 1; Mukhurbanoo Deo *v.* Kostoora Koonwaree, 5 W. R., 215; Rungolall Deo *v.* Deputy Commissioner of Beerbhoom, Marsh., 117; W. R., F. B., 34, s. c.

[3] Rickards' History of India, Vol. II, 233. Colebrooke's Supplement, 239.

[4] Whinfield's Landlord and Tenant, 35.

[5] Colebrooke's Supplement, 239.

[6] Elphinstone's History of India, 298.

LECTURE VI.

under the general head of *mujaraeen;* or a deduction for lands that had been assigned away as an allowance, and which consequently did not pay revenue.[1] They comprised *birt,* or offerings of a cowrie or so in the rupee of revenue to brahmins and gossains, which were sometimes assigned to be paid out of the revenues of a particular village.[2] These were also called *bermootur,*[3] and in Behar *sershikun.*[4] Other grants of the same kind were *bishnpareet,* to religious persons in the service of Vishnu; *deotur* or *dewutter,* for the support of a temple or idol; *mohuteran,* to religious persons or for religious purposes generally; *bustomitter,* to bustoms or Hindoo religious mendicants; *fakeeran,* to fakeers or Mahomedan religious mendicants. The term bazee zemeen seems to have more specifically applied to grants of the above kinds.[5]

Dewusthan.

Such grants to brahmins and others for officiating in temples, or to those who had dedicated themselves to the Deity, were in some parts of India as in the Deccan called *dewusthan:* and huks or fees, together with fixed payments from the treasury, were annexed to these grants when made by the State.[6] They came under the general head of enam; and the State or the grantor retained a certain control over the endowment. Thus the State appointed a karkun to superintend the expenditure of the revenue on such endowments when large. In other cases, the poojaree or priest superintended; but the moamlutdar (or chief

[1] Baillie's Land Tax, lx.

[2] Fifth Report, Vol. II, 12, 13, 75, 76. Haringtou's Analysis, Vol. II, 65; Vol. III, 343. Orissa, Vol. II, 236.

[3] Baillie's Land Tax, lx.

[4] Colebrooke's Supplement, 239.

[5] Fifth Report, Vol. I, 341 to 343.

[6] Steele's Deccan Castes, 206.

revenue officer of the district) from time to time appointed an officer to examine the accounts, and in case of dispute the revenue was temporarily collected by the State; which also displaced the poojaree when convicted of a serious offence, usually a caste offence. Thus the State asserted its authority over these endowments.[1] Such grants were inalienable.[2] Endowments of this kind appear to have been more common in the South of India than elsewhere: there in some parts the land at one time was almost entirely the property of the pagodas.

Zemindars made very extensive alienations of revenue.

The zemindars assumed in later times the right to make very extensive grants; and without any formal grant large alienations of revenue were made in collusion with the superior officers of Government.[3] The loss to the Government in consequence of the zemindars being allowed at the permanent settlement to resume these grants for their own benefit is said to have been very great; and in Burdwan alone is estimated at three lacs of rupees a year.[4]

Khewut.

When in one village or zemindary there were lakheraj and khalsa lands cultivated by the same cultivators, the revenue share of the khalsa lands sometimes turned out insufficient to meet the Government claim. This was in consequence of the lakheraj lands being devoted to the best crops, in order to benefit the lakherajdar and the cultivators at the expense of the State; the khalsa lands with the inferior crops being left to bear the Government revenue.

---

[1] Steele's Deccan Castes, 206.

[2] Ib., 237.

[3] Fifth Report, Vol. II, 14.

[4] Ib., Vol. I, 36, 341, 342; Vol. II, 14, 75, 76, 168. Land Tenure by a Civilian, 121. Harington's Analysis, Vol. II, 78, 82 (n). Orissa, Vol. I, 37.

LECTURE VI.

In such cases the lakheraj land was compelled to pay *khewut* or contribution; the full Government revenue due from the khalsa lands being exacted from the ryots, who were directed to pay so much less to the lakhirajdar as they had paid in excess to the State. Sometimes the milkees, or owners of lakheraj land, were also cultivators of the khalsa land, and in such a case they of course had to make up the full Government revenue.[1]

Rights in land.

I shall conclude this lecture, and my account of the Hindoo and Mahomedan systems, with a consideration of the result of our enquiries as regards the rights in the land enjoyed under those systems. And in entering upon this task it is necessary to bear in mind that some of the authorities upon whom we are driven to rely occasionally speak of rights in the vague way of which Sir Henry Maine complains in dealing with a similar subject;[2] sometimes using the word as meaning legal rights whether exercised or not; sometimes moral rights; sometimes the right of might; and sometimes customary rights; but wavering, as to custom between what is habitually practised, and what the writers think might have been claimed. Bearing this caution in mind, let us endeavour to see what was the express law which was applied to the interests in land, and what was the actual practice which can be considered as indicating the customary law.

Express law.

With regard to express law, we have seen that Hindoo law gives us but slight assistance; and as to Mahomedan law, although it deals with the matter more fully, we cannot

[1] Land Tenure by a Civilian, 58.

[2] See his speech on the Punjab Tenancy Act, Gazette of India, Oct. 16, 1868, p. 19.

be sure that it was ever applied in any complete way to the interests it found existing. As we have seen, it seems to have been applied only in a very modified way, if at all; and therefore cannot be relied upon as the actual law of the matter. If it could however be relied upon to the full extent, it would lead to the same result as the Hindoo law, that a certain property in the land belonged to the ryots, but we should be still left in darkness as to the extent of that proprietary right. The Hindoo law recognises rights in the cultivators and in the sovereign; but does not appear to contemplate any ordinary use of the land except for the purpose of cultivation; and contemplates an obligation to cultivate corresponding to the right to cultivate; in the same way as it contemplates an obligation on the part of the king to protect the cultivator, corresponding with the right to receive revenue from him. There is no trace in express Hindoo law of a right in any one to take the land out of cultivation, and to turn it into a pleasure ground for instance, or to exhaust all the minerals under it. The mention of minerals in connexion with discovered hoards seems to show that they were not contemplated as part of the value of the land itself, or as belonging to the cultivator. They appear to have been looked upon as an accidental acquisition; a casual incident to the possession of land in the benefit of which the king was entitled to share.[1]

In Mahomedan law again we find no greater light thrown upon the question of the extent of the proprietary rights. The sale of land is contemplated, and the pur-

[1] Menu, ch. viii, sl. 39.

LECTURE VI.

chase of land for purposes of trade is spoken of;[1] but no indication is given of the extent of the right which was transferred. We may however infer that it was at least a right to occupy and cultivate.

Custom.

If then express law is silent upon this point we must look to the state of ideas, and to the practice of the various parties embodying these ideas. Such a practice is the foundation of what we know as a custom: as Sir Henry Maine observes[2] "the foundation of a custom is habitual practice, a series of facts, a succession of instances, from whose constant recurrence a rule is inferred." The practice here referred to need not, I conceive, be an undisturbed practice; but it must be one constantly recurring, and if disturbed again resumed as a right. And for this reason it is necessary to take into consideration the ideas of those who reverted to the practice when disturbed. If we find that some cultivators were considered to have a right to go on cultivating so long as they paid the revenue, and that in practice they did continue permanent, and that when disturbed by the hand of power it was thought an unwarrantable act, we may, I think, fairly infer with respect to such cultivators that habitual practice and constant recurrence required by Sir Henry Maine's criterion as the foundation of a custom. And there can be little doubt that as regards the interests in land there was scarcely any other law but custom. Possibly the Hindoo had not even reached the stage at which he would draw any very clear distinction between express law and custom, or even between law and moral precepts:

[1] Baillie's Land Tax, xiii.

[2] Speech before cited, p. 20.

for we find, in Menu at least, mere moral precepts mixed up with what we should consider definite law, without any apparent consciousness of a distinction between them. And to this day one of the greatest difficulties in the administration of the Hindoo law is that of judicially discriminating between the two, so as to avoid giving legal effect to a moral precept on the one hand, and on the other hand, refusing to give effect to what, although to our minds a mere matter of morality, was intended to be enforced as law. But whether the Hindoos had, before Mahomedan times, got beyond this stage or not, it may I think be affirmed that they had not arrived at the further stage of considering everthing legal which was not prohibited by express law. Again the period for the growth of customs was not closed, and hence we must not expect to find a custom so full grown as our English customs. And the main law on the present point must be deduced from such customs as existed, customs in process of growth. As Sir George Campbell says custom was and is "the only ever surviving law of the East."[1] Acts which are now prohibited by law were then prohibited by custom; in the same way as some acts are now prohibited by public opinion. Such acts as were against custom were, when possible, resisted; and were condemned as violations of right, and not merely as an unjust use of undoubted rights. It is almost impossible for us at this late period to discover whether any particular act was condemned as a clear violation of right, or merely as a wrong and unjust act done in exercise of a right. And therefore we can get little assistance except from the actual

[1] Great Rent Case, B. L. R., Supp. Vol., 246, see p. 255.

LECTURE VI.

practice, and from general considerations as to the state of opinions.

The Hindoo system one of joint property.

Now in the first place we notice that the Hindoo system hardly contemplates exclusive individual rights at all. All property in ordinary cases was the property of several and not of one alone. The moveable property as well as the land of the family belonged to the family jointly. The land moreover at one time was still less a subject of exclusive ownership; for it probably was still the joint property of the village community at a time when the families composing that community possessed moveables which were not village property. And at this stage no family, much less any individual, could dispose of any land: as M. de Laveleye remarks of the Slave family communities no one could dispose of the family land because no one was proprietor:[1] so that practically land could not be transferred. The power of transfer shows the extent of individual right, although it does not show, what it has in some cases been relied upon to show the extent of the right transferred. And when the family, and later the individual, could not transfer land without the consent of the village, not only had the recognition of individual rights not been reached, but transfer of land can scarcely have been contemplated. By the time of Menu's compilation however, the next stage had apparently been reached; for the cultivator, not the village, is spoken of as the owner of the land, and as rendering a share to the king as such. And we also have mention of the sale of land and metals.[2] But we know from the same work that the theory of joint

[1] Revue des deux Mondes, tome 101, p. 46.

[2] Menu, ch. viii, sl. 222.

family property was still in vigour; so that the stage of individual property had not been reached, as indeed it has not been up to the present day. No individual could therefore in practice transfer any land.

Want of market for land and of marketable value.

But there was another reason why land was scarcely ever transferred, besides the difficulty of transfer or even the conservative habits of the people, and that was its want of marketable value, and the want of a market. Probably the cultivator may not have been reduced to so bare a subsistence in Hindoo times, when the king sometimes took only the tenth, as he was in Mahomedan times when the State sometimes took three-fifths. But we must remember that out of its three-fifths the State paid many dues formerly paid by the ryots, and that, as was urged by some of the advocates of State rights, the land by various means had been brought to a state of greater productiveness, while the currency in which the State share was paid had depreciated. However, even if the ryot was left with an appreciable margin of profit, it was the result of his own labour; and when the country was in all probability sparsely inhabited, and much of it waste, land would be had for the asking. So that not only had land little or no marketable value, but there was no market for it.[1] No doubt there were struggles to keep lands already occupied: we have seen how tenacious the ryots were in this respect. Nevertheless the competition was not for land but for tenants.[2]

Considering then the difficulties in the way of transfer,

[1] Fifth Report, Vol. II, 83, 120, 571.

[2] B. L. R., Sup. Vol., 253, 279, 295, 296. Campbell's Cobden Club Essay, 164. Directions for Revenue Officers, 41. See an article on Rustic Bengal in the Calcutta Review, by J. B. P., Oct. 1874.

LECTURE VI.

The soil itself not claimed by any one.

and especially of transfer by individuals; the want of a market and of competition, and the absence of marketable value, sale of land would hardly be thought of; and unless some exceptional circumstances disclosed a value in the land beyond its value for purposes of cultivation, no question would be likely to arise between the parties claiming interests in the land as to anything beyond the right to cultivate, and to occupy for that purpose. As we have seen the most obvious value of the soil beyond its value for purposes of cultivation, namely its capacity of yielding minerals, is treated as quite an accidental matter. And when we find that the occupant was bound by custom as well as by law to cultivate, and to cultivate in the customary manner,[1] we are forced to conclude that the only purpose for which the soil could have been considered of value was for the purpose of cultivation. Whatever further capacity the soil may have had was not sufficiently brought home to the minds of the parties interested in it to induce any one to claim it; much less to give rise to that continuous and deliberate assertion of a claim which would have sufficed to constitute a customary right to the soil itself. And we do not find that the question was ever raised, or that any deliberate or continuous claim to the ownership of the soil itself was ever put forward in Hindoo times. The cultivator, when an original settler, or the descendant of an original settler or rather of the founder of the village, claimed and exercised with sufficient continuity a right to permanent occupation; and, we may conclude, had a good customary right to such

[1] Directions for Revenue Officers, 274.

occupation; which was moreover recognised to some extent by express law. The king claimed and received his share of the produce as prescribed by law. There was thus a sort of joint proprietary right to the produce in the king and the ryot. But beyond the produce no value in the land, and consequently no rights in the land, appear to have been contemplated in Hindoo times. The conclusion would seem to be that, in Hindoo times, the right to the soil itself was unappropriated; unless it could be considered as having been disposed of by implication of law, although not by express law. But there is no principle upon which we could assign this right to either of the parties interested in the soil as against the other. The rights of each being strictly limited, neither can be considered to carry with it by implication a large right of this kind, not contemplated by either. It seems to follow then that this right was not disposed of either by law or custom, either in theory or practice, and therefore remained at the disposal of the community for its own benefit as a community. The only question therefore in Hindoo times was what proportion of the produce each of the parties, the king and the cultivator, was entitled to.[1] The following passage in illustration of this view may be quoted:[2]—

"Property in land seems to consist in the exclusive use and absolute disposal of the powers of the soil in perpetuity: together with the right to alter or destroy the soil itself where such an operation is possible. These privileges combined form the abstract idea of property which does

[1] Great Rent Case, B. L. R., Supp. Vol., 209. Elphinstone's History of India, p. 80.

[2] Elphinstone's History of India, pp. 79, 80.

LECTURE VI.

not represent any substance distinct from these elements. Where *they* are found united *there* is property and nowhere else. Now the king possesses the exclusive right to a proportion only of the produce. This right is permanent, and the king can dispose of it at his pleasure, but he cannot interfere with the soil or its produce beyond this limit. If he requires the land for buildings, roads, or other public purposes, he takes it as a Magistrate, and ought to give compensation to his fellow shareholders; as he can on emergency seize carts, boats, &c., and can demolish houses in besieged towns, although in those cases he has no pretensions whatever to property. As much of the produce as comes into the hands of the landholder, after the king's proportion is provided, is his; and his power to dispose of his right to it for all future years is unrestrained. The tenant has what remains of the produce after the king's proportion and the landlord's rent is paid; and this he enjoys in perpetuity; but the right is confined to himself and his heir, and cannot be otherwise disposed of. Neither the landholder nor the tenant can destroy or even suspend the use of the powers of the soil: a tenant forfeits his land when he fails to provide a crop, from which the other sharers may take their proportions; and a landholder guilty of the same default would be temporarily superseded by a tenant of the community or the king, and after a certain long period, would be deprived of his right altogether. From all this it is apparent that where there are village communities and permanent tenants there is no perfect property in any of the sharers. Where there are neither communities nor permanent tenants the king doubtless is the full and complete proprietor; all subsequent rights are derived from his grant or lease."

Whether, if Hindoo society had been left to itself, the idea of ownership, such as we find it in England, would have developed itself, cannot now be decided. But it is open to great doubt, considering the trammels which the Hindoo ideas of joint property imposed upon all alienation; and it is only out of the free exercise of the power of alienation that the idea could under ordinary circumstances arise. In Europe we find the holding of lands by religious bodies gave the first impulse to ideas of exclusive property;[1] and the progress of Roman civilization developed the idea of individual right amongst the family communities in Poland, Bohemia, and other parts in the same way as Mahomedan and English ideas appear to have done in India.[2] And having regard to the comparatively slight progress made by Hindoo ideas towards individuality, even with the aid of the leaven from without, we may well doubt whether the idea of individual property and the practice of transfer would have developed sufficiently to induce that search after undisclosed value in the soil which would have led to its appropriation by either of the parties. India has not at present disclosed any minerals of great value in its ordinary soil; and indeed, up to the present day, the value of land seems as of old to consist almost entirely in its productive power.

Such being the state of the proprietary rights in Hindoo times, we have next to consider the effect of Mahomedan rule. The Hindoos seem to have borrowed little from their conquerors, either in the way of ideas or institutions. The Mahomedan was much more familiar with individual property; he was much more modern than the Hindoo. He

[1] M. de Laveleye's Essay, Revue des deux Mondes, tome 100, p. 528.

[2] Ib., tome 101, p. 42.

LECTURE VI.

had no joint family; he had a centralised system of Government, and was averse to anything hereditary in the State. But although a more progressive, the Mahomedans were a less settled race and nation than the Hindoos: and we cannot suppose that they brought with them from the deserts of Arabia or Tartary any more advanced ideas as to the value of land than the Hindoos already possessed. In fact, in all matters relating to the land, the Hindoo system seems to have remained substantially untouched by the Mahomedans; although the indirect effects of their rule were very important. And we do not find any more than in Hindoo times any assertion of a right to anything more than was contemplated in those times; the right to occupy and cultivate, and retain a share of the produce; and the right to receive the remainder of the produce as sovereign.

The conclusion that there was no proprietor of the actual soil, except the general community, may seem singular, but in truth it is the most natural of all ideas upon the subject.[1] Menu treats waste land, for instance, as nobody's property until brought into cultivation:[2] the Mahomedan view being still stronger, and treating it as not existing, and as brought into life by cultivation:[3] And, in any case, the extreme difficulty which was experienced at the time of the permanent settlement in deciding to whom the right in the soil belonged,—a question discussed, although not necessarily decided, in coming to the conclusions arrived at,—seems to confirm the view that it was really undisposed

[1] Mill's Political Economy, People's Ed., 140. Directions for Revenue Officers, 7.

[2] Menu, ch. ix, sl. 44.

[3] Baillie's Land Tax, 42. Land Tenure by a Civilian, 89. Directions for Revenue Officers, 48.

of; or at least strongly tends to show that, whoever might possess the right, there had scarcely been any instance of the exercise of it.

The conclusion, then, to which the facts at present before us lead is that the right to the soil itself was undisposed of under the Hindoo and Mahomedan systems; and therefore it seems must have resided in the general community, and the State as its representative. But at the time of the permanent settlement and afterwards three claimants for this right were put forward: the sovereign, the zemindar, and afterwards the cultivators, either individually or as the village communities. The right was claimed for the sovereign because there was practically no limit to his power to take the profits.[1] But some of those who consider the sovereign as proprietor, really look upon him as representing the general community, and as thus entitled to what is otherwise undisposed of; although with some inconsistency they seem to treat this right as part of the sovereign's specific share. Those who hold this view allow definite rights in the land to the village community or the individual ryot.[2] Others again cut down the sovereign's right, while still considering him full proprietor, to a right to receive the rent; probably including in this right the English right of proprietorship; so that, while recognising no private proprietor, they consider the sovereign's receipt of rent

The sovereign's claim to the soil.

[1] Fifth Report, Vol. II, 231. Harington's Analysis, Vol. III, 328. Rickards' History of India, Vol. II, 224. Directions for Revenue Officers, 3. Evidence of Mr. Fortescue before the Select Committee of the House of Lords (1830), 511. Evidence of Lieut.-Col. Barnewall before the Select Committee of the House of Commons (1832), 1753 to 1756, 1758.

[2] Orissa, Vol. II, 214, 227. Patton's Asiatic Monarchies, 73, 175.

LECTURE VI.

either as carrying with it the right to the soil or as evidence of such a right.[1] With regard to the claim on behalf of the sovereign, on the ground that he can take all the profit of the cultivator, if he pleases, two answers may be made. The first is, that although he may do so by might, he cannot do so by right. We have seen that there are limits to his taking the produce, both in express law and custom. The second answer is, that whatever his rights may have been, he never claimed any right to the soil itself as part of his share, nor ever exercised a right to anything beyond the natural or accidental produce of the soil.

The zemindar's claim to the soil.

As to the zemindar, we have seen that he derived his right from the sovereign on the one hand and the cultivator on the other.[2] But it is said a zemindary is a hereditary[3] and alienable[4] proprietary right in land.[5] Such a right does not however carry with it as a matter of course all the rights not possessed by anybody else: or the rights of an English landlord. The khoodkasht's right was hereditary, as were even offices in the Hindoo system; it was also a proprietary right; and the alienability of a right, even if it were not, as in the present case, of modern growth, does not determine anything as to the extent of the right, but only as to the power over that right enjoyed by the possessor. And the account which I have given of the zemindar tends I think to show that he was in no

[1] Patton's Asiatic Monarchies, 106, 110 note g., 128.
[2] Elphinstone's History of India, 79.
[3] Rouse's Dissertations, 20. Harington's Analysis, Vol. III, 354.
[4] Harington's Analysis, Vol. III, 354.
[5] Fifth Report, Vol. II, 702 to 704. See Rickards' History of India, Vol. II, 236.

sense the absolute proprietor so as to be the proprietor of the soil itself.[1]

The cultivator's claim to the soil.

On behalf of the cultivator is alleged one of the strongest grounds—actual possession of the soil; from which, in the case of a khoodkasht, he cannot be ousted;[2] and the khoodkasht's right is hereditary,[3] and a proprietary right.[4] The permanent possession of the soil, if accompanied with the assertion or exercise of an absolute right to it, might create, and at any rate would be strong evidence of, such a right; but we have seen how far this is from having been the case: and the mere fact that a proprietary right is permanent and hereditary does not give us any clue to the extent of that right. If indeed it were absolutely necessary to import English ideas into the matter, and to conclude that one of these claimants must be held to possess this right, and that the right could not remain in the community undisposed of, like the right to light and air and *ferœ naturæ*, the cultivator would seem to have as good a right as any of the competitors; but there does not seem to be any necessity for introducing such considerations; and even if we did introduce them, it is doubtful whether the question could be decided in the absence of all claim to or exercise of such rights. That the proprietor, whoever

[1] See Great Rent Case, B. L. R., Supp. Vol., 246. Directions for Revenue Officers, 4 to 7, 48.

[2] Fifth Report, Vol. II, 77, 78, 303, 479, 703. Evidence of Mr. Warden before the Select Committee of the House of Lords (1830), 1961, 1964. Evidence of Mr. Sullivan before the Select Committee of the House of Commons (1832), 19, 20. Evidence of Mr. Holt Mackenzie before the same Committee, 2574, 2575. Rickards' History of India, Vol. II, 269, 270.

[3] Fifth Report, Vol. II, 81, 120, 303, 305, 440, 479.

[4] Ib., 120, 303. Evidence of Mr. Fortescue before the Select Committee of the House of Commons (1832), 2239, 2240.

LECTURE VI.

he may have been, had not the full English proprietary right is shown, amongst other evidence, by the fact that the English rules as to things attached to the soil do not apply in India. Thus things annexed to the land do not in India necessarily pass with the land, but remain the property of him who put them there;[1] as with the tree on the waste,[2] huts,[3] and the like.

[1] Campbell's Cobden Club Essay, 164, 211.

[2] Evidence of Mr. Newnham before the Select Committee of the House of Commons (1832), 2756.

[3] In the matter of Thakoor Chunder Paramanick, B. L. R., Supp. Vol. 594; 6 W. R., 228 s. c. Beni Madhub Banerjee *v.* Jai Krishna Mookerjee, 7 B. L. R., 152. Durgaprasad Misser *v.* Brindabun Sookul., Ib., 159. Doyalchund Laha *v.* Bhoyrubnath Khettry, Coryton's Rep., 117. Sowdaminee Debee *v.* Suroop Chunder Roy, 15 W. R., 363. Parbutty Bewah *v.* Woomatara Dabee, 14 B. L. R., 201.

LECTURE VII.

THE ENGLISH REVENUE SYSTEM UP TO THE PERMANENT SETTLEMENT.

Early connexion of the English with Bengal—Acquisition of the Twenty-four Pergunnahs—Acquisition of Calcutta—Acquisition of Burdwan, Midnapore, and Chittagong—Accession to the Dewanny—Fiscal machinery—Instructions to the Supervisors—Khamar lands—The zemindars—Protection for the ryots—The hustabood—Direct management of the revenue by the English—Revenue farmed for five years—Abwabs and cesses prohibited—Revenue administered from the Presidency—Review of revenue administration—Preparations for a permanent revenue system—Enquiries set on foot—Annual settlements—A permanent plan again contemplated—Settlement for 1188—Register of revenue-free land—Rules for resumption—Settlements for 1191, 1192 and 1193—Centralisation—Instructions for decennial settlement—Settlement for 1194—Regulations for the conduct of the Collectors—Regulations of 25th April 1787—Legislation of 1790—Summary—Power of alienation restricted—Proprietary rights—The fiscal machinery.

Early connexion of the English with Bengal.

WE have now reached the period of British rule. The connexion of the English with Bengal appears to have begun in 1640, when the trade with Bengal was first opened under the protection of the Emperor Shah Jehan, who granted the English considerable privileges. In 1698 they were allowed by Azeem-oo-Shan, the grandson of Aurungzebe, and then Soubahdar of Bengal, Behar, and Orissa, to purchase the talookdary right in Calcutta and the adjacent villages of Sootanootty and Govindpore subject to a revenue of Rs. 1,195.

In 1707 Calcutta was declared to be a Presidency, accountable only to the Directors in England.[1]

For a long time the English continued to trade without acquiring any further territorial rights; but in 1757 considerable progress was made in the acquisition of rights

[1] Harington's Analysis, Vol. I, 2.

LECTURE VII.

in the land. In February 1757 they had been allowed to fortify Calcutta, and to place themselves in an almost independent position; and after the battle of Plassey, which was fought on the 23rd of June of that year, they obtained from Meer Jaffier, whom they had raised to the position of Nawab Nazim, the grant of the zemindary of the Twenty-four Pergunnahs in the neighbourhood of Calcutta.

Acquisition of the Twenty-four Pergunnahs.

It is of course not my intention to trace the progress of English conquest, but it will throw some light upon our present subject to notice the main steps in the acquisition of the Twenty-four Pergunnahs and of Calcutta. The first grant of the Twenty-four Pergunnahs by Meer Jaffier was made by a perwanneh or order, directed to the officials of every kind within the pergunnahs and also to the ryots, announcing the formation of the pergunnahs into a zemindary in favor of the East India Company, and commanding obedience to the Company as zemindar.[1] This being only a preliminary step to the formation of the zemindary, it was followed in 1758 by a formal dewanny sunnud under the seal and signature of the Provincial Dewan Meer Mahomed Sadoc. This contained the usual representation that the inhabitants were not satisfied to pay their rents to the new zemindar, until they could be assured by a sunnud of the authority of the Company to exercise the functions of zemindar. The sunnud then followed the usual form with which we are already acquainted, and contained particulars of the lands included in the sunnud, and of the jumma to be paid for them, which amounted to Sicca Rs. 2,22,958.[2]

[1] See the perwanneh in Aitchison's Treaties, Vol. 1, 15.

[2] See the sunnud in Aitchison's Treaties, Vol. I, 17 to 24.

This grant appears to have completed the formation of the zemindary, which it seems had been previously administered in the usual way by chowdhries, talookdars, mokuddims, &c.; a great deal of the revenue having moreover been assigned or remitted, since a considerable portion of the zemindary was described as bazee zemeen.[1] The next step was to obtain from the Emperor a confirmation of the acts of his deputies Meer Jaffier and Mahomed Sadoc. Accordingly in 1765 a firman was obtained from the Emperor confirming the Company in the zemindary as an altumgha. At the same time a similar grant was made with respect to the chucklahs of Burdwan, Midnapore, and Chittagong, the revenue of which had been in 1760 assigned by Cossim Khan to the English for the maintenance of their troops.[2] But in the meanwhile the State had granted to Lord Clive in jageer the revenue payable by the Company as zemindar of the Twenty-four Pergunnahs. This was done on the 13th of July 1759 by a new kind of jageer sunnud from the Emperor and Meer Jaffier, granting to Lord Clive all the royalties, rents, and dues payable by the Company.[3] Thus Lord Clive represented the State in its relation to the East India Company as zemindar. His sunnud appears to have been of a special kind, consisting of two documents—a patent from the Emperor for the munsub, corresponding to the first part of an ordinary jageer sunnud, which granted a certain dignity and title, and a perwanneh from Meer Jaffier directing the East India Company as zemindar to pay their revenue to Lord Clive as jageerdar. On the

[1] Fifth Report, Vol. I, 484.

[2] Harington's Analysis, Vol. I, 5. Fifth Report, Vol. I, 487.

[3] See the sunnuds in Aitchison's Treaties, Vol. I (Appendix).

LECTURE VII.

23rd June 1765 the jageer was renewed to Lord Clive for a period of ten years as an unconditional jageer.[1] A jageer of this kind it will be remembered did not pass sovereign powers, but only the right to revenue. After the expiry of the term of ten years the Company was to succeed Lord Clive in perpetuity; so that after that period the jageer and zemindary rights would be combined, and the result would be that the zemindary would be held free of revenue. This grant to Lord Clive with succession to the Company was made by a perwanneh from the Soubahdar of Bengal. Lastly, on the 12th August 1765, the grant was completed by the Emperor's firman, which at the same time confirmed the Company in the zemindary as above-mentioned.[2]

Acquisition of Calcutta.

We have seen that the Company had been allowed to acquire the talook of Calcutta and some neighbouring villages. In 1717 the revenue of the talook was fixed, and the Company confirmed in the talook by a firman from the Emperor Farokshir: and in 1758 the port and city of Calcutta were made lakhiraj, or free of revenue, in the hands of the Company; the remission of revenue being made by an instrument under the dewanny authority, which specified the public grounds on which the revenue was remitted. The Company at the same time were required to compensate and indemnify all other persons interested in the revenue.[3] The Company had thus acquired by the year 1765 all the rights in the revenue of the Twenty-four

[1] See the sunnud and firman in Aitchison's Treaties, Vol. I (Appendix).

[2] Harington's Analysis, Vol. I, 5. Fifth Report, Vol. I, 487.

[3] Harington's Analysis, Vol. I, 3. Fifth Report, Vol. I, 488. See the sunnuds in Aitchison's Treaties, Vol. I, 25.

Pergunnahs and of Calcutta and its villages; and was in the same relation with the cultivators as the State was when, instead of employing any intermediate agency, it collected its revenue direct, or as it is called khas. Consequently, the acquisition of the dewanny, which took place at the same time, caused no alteration in their position, except the addition of the sovereign powers delegated to the dewan. We find it stated that the principles of the native system were maintained in a greater degree in these districts than anywhere else under English rule:[1] and this is accounted for by the easy transition to complete sovereignty which took place.

Acquisition of Burdwan, Midnapore, and Chittagong.

I have mentioned the acquisition of the revenues of the chucklahs of Burdwan, Midnapore, and Chittagong. I may as well give briefly the details. In 1760 the English had resolved to displace Meer Jaffier from the position in which they had placed him; and by a treaty of the 27th September of that year, it was agreed between the Company and Meer Mahomed Cossim Khan that the latter should succeed to the Soubahdary of Bengal, Behar, and Orissa, and that the Company's forces should hold themselves ready to assist the new Soubahdar in all his affairs, and that in return the chucklahs of Burdwan, Midnapore, and Chittagong should be assigned to the Company to defray all charges of the Company and its forces, including provisions for the field. Cossim Khan after his elevation carried out this treaty, and by his sunnuds granted the revenues of these districts to the Company; specifying as the condition of the grant that the Company was to maintain troops thereout for the protection of the State. By these sunnuds

[1] Fifth Report, Vol. I, 489.

LECTURE VII.

the landholders, tenants, and public officers were as usual required to pay the stated revenues to the Company instead of to the treasury, and to submit to the authority of the Company, which thus held a conditional jageer of these districts. These grants were confirmed on the 10th July 1763 by Meer Jaffier when he in turn was restored,[1] and his acts were further confirmed by the Emperor in 1765.

Accession to the Dewanny.

The above grants to the East India Company were completed on the 12th August 1765 by the grant of the dewanny of Bengal, Behar, and Orissa. This was made by Shah Alum, the Emperor of Delhi, as a free gift and altumgha under the red seal; and it amounted to a perpetual grant of the office of dewan, which gave the Company the entire management of the revenues of the districts included in it. The grant was upon condition of paying twenty-six lacs of rupees a year into the royal treasury, and of providing for the expenses of the Nizamut.[2] We have seen that this grant was simultaneous with the firman confirming the Company in the full right to the revenue of the Twenty-four Pergunnahs.

Fiscal machinery.

The English, having thus acquired the dewanny, continued at first to employ native agency and took no direct part themselves in the collection of the revenue. Mahomed Reza Khan and his two assistants, Dolubram and Juggut Seat, managed all revenue collections up to 1769. But in that year the Company took the first step towards bringing the collections under their own control by appointing supervisors to superintend the native officers in collecting

[1] Harington's Analysis, Vol. I, 45. See the treaties and sunnuds in Aitchison's Treaties, Vol. I, 46 to 55.

[2] Fifth Report, Vol. I, 2. Harington's Analysis, Vol. I, 5, 6. See the treaty and firmans in Aitchison's Treaties, Vol. I, 56 to 66.

the revenue and administering justice.[1] They were appointed by a resolution of the Select Committee at the Presidency passed on the 16th August 1769 in accordance with orders from the Court of Directors in England. The Directors remark that the direct administration of the revenue by the English has when adopted proved beneficial both to the country and to the revenue: that they do not intend to interfere with the rents and profits of the zemindar, much less to add to the rents of the ryots, but to relieve both from oppression; and that they intend to establish committees for the management of the revenue at Moorshedabad and Patna, with Mahomed Reza Khan and Shitab Roy, or two other principal persons, as naibs of the respective provinces. And while they declare that they have "no view to prejudice the rights of the zemindars, who hold certain districts by inheritance," they direct that, when any of these die without heirs, the lands are to be let for a term of years, upon such conditions as may encourage cultivation. The same course is to be followed with regard to waste land. Lastly, the Directors object to the union of the judicial and revenue jurisdiction in the same persons.[2]

Instructions to the supervisors.

In the instructions to the supervisors they were directed to enquire into the following matters:—They were to enquire into the history of the provinces, not however going back to records of earlier date than the time of Shujaa Khan (1725 to 1739), the successor of Jaffier Khan, "as, at that era of good order and good government, no alterations had taken place in the ancient divisions of the

[1] Fifth Report, Vol. I, 3. Harington's Analysis, Vol. II, 7. Colebrooke's Supplement, 174.

[2] Auber's India, Vol. I, 275 to 279.

LECTURE VII.

country, and the confusion which is now apparent has been posterior to those times."[1] They were to compile a complete hustabood or rent-roll, to ascertain the ancient boundaries of the land and the quantity held by the zemindars without paying revenue; to enquire into the abuses in the bestowal and sale of talooks, and in grants for charitable purposes; to examine into the titles of the holders of jageers; to ascertain the extent, production, and value of the land held khas or under direct Government superintendence for want of farmers; and to ascertain the same particulars as to comar (or khamar) lands, which are described as lands cultivated by contract; as to ryotty lands, which are tenanted and cultivated by the natives on the spot; and as to waste lands, distinguishing those which have become so from decrease of population from those covered with jungle.[2] The Committee announce that all lands illegally held free of revenue will be resumed: that the nankar or nejaut (neej-jote) will be restricted to its proper amount; and nuzzerana or sedee to a reasonable contribution; that excessive fines and demands are to be cut down, and batta or exchange on the money payment of revenue to be abolished.[3] The supervisors are to scrutinise strictly the titles to talooks, and such as have not been confirmed by the Nawab are to be resumed.[4] The same rule is laid down as to jageers. The Committee consider the talooks to be lightly assessed, and the increase of them which has been allowed to be highly impolitic and injurious; and they complain that the ryots are drawn away to the talooks from other

[1] Colebrooke's Supplement, 178.
[2] Ib., 175, 179.
[3] Ib., 182, 183.
[4] Ib., 182.

lands, and that the talookdars have encroached upon the neighbouring lands, and hold much more than they are entitled to.[1] With regard to charitable and religious endowments, they are to be reduced to their original amount, or, in case they have become perverted or decayed, to be altogether resumed.[2] The supervisors are to give notice that the revenue of the khas lands will be farmed for periods of three, four, or five years at an annually increasing rent.[3] The Committee remark that the khamar lands have no native tenants, but that the zemindar cultivates them by contract, and makes advances to the cultivator with whom he contracts, receiving in return one-half or two-thirds of the produce, together with his advances and interest thereon.[4] This substantially agrees with what we have already noticed. The Committee however consider this a mischievous anomaly, and desire to induce cultivators to settle upon the khamar lands, and to change them into ryotty lands.[5] This contemplates what may seem at first sight an encroachment upon the zemindar's rights as already described, the zemindar being solely entitled in later times to bring khamar land into cultivation and to receive the revenue, since there were no other vested interests in such lands. It must be remembered however that this was originally the right of the State, and that the zemindar only assumed this right as the agent of the State, and was bound to account for the revenue derived from such lands; although when he was allowed to cultivate

Khamar lands.

[1] Colebrooke's Supplement, 182.

[2] Ib., 183.

[3] Ib.

[4] Ib.

[5] Ib., 184.

LECTURE VII.

such lands himself, he was of course entitled to the cultivator's share in the produce. It was therefore only a step towards reducing the zemindars to their original position; and as they must in most cases have amply repaid themselves for their exertions in bringing the waste lands into cultivation by the profit derived during the time they had already held them, the measure was probably not an unjust one. The Committee consider the State at liberty to interfere with the disposal of the khamar lands by the zemindar, plainly showing that they did not consider even the khamar lands to be the absolute property of the zemindar. I may remark, before leaving this point, that the lands of which the zemindar appropriated the revenue under this title were the waste lands brought into cultivation by him during the term of his engagement for the revenue; and that he claimed the revenue of such lands on the ground that, as he had agreed to render a certain revenue during his term, any profit to be derived from an increase in the area of cultivation during that term properly belonged to him. Thus such lands were properly khamar only during the zemindar's term; and after that had expired, the lands were strictly liable to assessment in the same way as other lands. It is probable however that the designation continued to adhere in many cases to the land, as it was the obvious interest of the zemindar that it should, and as we find was the case in other instances, such as in land being called khoodkasht, &c.[1] In this way probably, or almost certainly, a great deal of land would come to be included in the khamar land which, with respect to the

[1] See 'Rustic Bengal' by J. B. P. in the *Calcutta Review* for October 1874.

assessment then subsisting, ought to have been subject to the ordinary assessment.

The zemindars.

For the purposes already mentioned, the supervisors were directed to hold local investigations; and in order to prevent collusion between the zemindars and collectors, they were authorised to threaten the zemindars with the loss of their zemindaries, and the collectors with the loss of their employment:[1] thus treating the zemindars as officers of the Government rather than as absolute proprietors of the land.

The Committee remark upon the prevailing grievances to be remedied: these are, first, the inequality of assessment, owing to the number of talooks and the quantity of land paying no revenue; this is to be corrected by a strict scrutiny into the cesses and taxes, and the classes upon which they fall; second, the variety of exactions "which the collectors, from the aumil and zemindar to the lowest pyke," impose; and third, the multiplication of superfluous agents and inferior collectors.[2]

With regard to the exactions of the zemindars they observe that "the truth cannot be doubted that the poor and industrious tenant is taxed by his zemindar or collector for every extravagance that avarice, ambition, pride, vanity or intemperance may lead him into, over and above what is generally deemed the established rent of his lands. If he is to be married, a child born, honors conferred, luxury indulged, and nuzzeranas or fines exacted, even for his own misconduct, all must be paid by the ryot. And what

[1] Colebrooke's Supplement, 179.
[2] Ib., 175, 176.

LECTURE VII.

heightens the distressful scene, the more opulent, who can better obtain redress for imposition, escape, while the weaker are obliged to submit."[1]

Protection for the ryots.

In order to protect the ryots the amount which the zemindars can legally claim is to be fixed,[2] and pottahs specifying this amount are to be granted.[3] The Committee observe that the supervisors are "to fix the amount of what the zemindar receives from the ryot as his income or emolument wherein they generally exceed the bounds of moderation, taking advantage of the personal attachment of their people and of the inefficacy of the present restrictions upon them; hence the presence of the aumil more frequently produces a scene of collusion than a wariness of conduct. When the sum of the produce of the lands and of each demand on the tenant is thus ascertained with certainty, the proportion of what remains to him for the support of his family and encouragement of his industry will clearly appear and lead us to the reality of his condition. Amongst the chief effects which are hoped for from your residence in that province, and which ought to employ and never wander from your attention, are to convince the ryot that you will stand between him and the hand of oppression; that you will be his refuge and the redresser of his wrongs; that the calamities he has already suffered have sprung from an intermediate cause, and were neither known nor permitted by us; that honest and direct applications to you will never fail producing speedy and equitable decisions; that after supplying the legal due of Government, he may be secure in the enjoyment of the remainder; and finally to teach him

[1] Colebrooke's Supplement, 185.
[2] Ib., 176.
[3] Ib., 178.

a veneration and affection for the humane maxims of our Government."[1] LECTURE VII.

The hustabood or rent-roll, which was to be drawn up after all the prescribed enquiries had been made, was to show the quantity, productions, and rent of all cultivated lands under Government; the quantity, productions, and value of all jageers, talooks, charitable and religious donations, &c., with observations thereon.[2] And this was to be followed by yearly accounts showing the state of the revenue for the year.[3] The hustabood.

I have given the instructions of the Committee in some detail, because they are interesting as showing the views of those who were first directly concerned with the revenue on behalf of the English. As we have seen they were anxious to relieve the ryots; and while professing to leave the zemindar's rights untouched, claimed to bring him back to his original position in some respects, and evidently did not consider him the absolute proprietor of the soil.

In 1770 Bengal suffered from a famine which is said to have destroyed a third of its inhabitants.[4] There was great confusion in revenue affairs; but the amount of revenue was kept up notwithstanding the famine: this was however only accomplished by the free exaction of najay from the cultivators, that is, by making the actual cultivators pay the whole revenue, including that due from those who had died or absconded.[5] In this year the two Revenue Councils Direct management of the revenue by the English.

[1] Colebrooke's Supplement, 176.
[2] Ib., 186.
[3] Ib.
[4] Harington's Analysis, Vol. II, 6.
[5] Ib., 7.

LECTURE VII.

at Patna and Moorshedabad which the Court of Directors had intimated their intention of establishing were appointed, but they seem not to have answered the purpose for which they were instituted.[1] On the 28th August 1771 the Court of Directors announced their determination "to stand forth as dewan, and by the agency of the Company's servants to take upon themselves the entire care and management of the revenues." This involved displacing Mahomed Reza Khan and the native establishment under him, which was done on the 11th May 1772 by proclamation under the orders of the Directors. This proclamation announced that the charge of the office of dewan would be assumed for the present by the Revenue Councils at Moorshedabad and Patna: it also contained a summary of the branches of administration which appertained to the dewanny.[2] The first step after assuming direct charge of the dewanny was to make arrangements with respect to the revenue. This was done by Regulations passed on the 14th May 1772, providing for letting the revenue to farm for five years; and also providing for the administration of justice in the provinces, and the regulation and conduct of affairs at the Presidency.[3] It was provided by these Regulations that the revenue should be farmed for five years from the 1st Bysack 1179 (10th April 1772):[4] the farms to consist of entire pergunnahs, provided they did not yield more than a lac of rupees a year as revenue.[5] The settlement

Revenue farmed for five years.

[1] Harington's Analysis, 6.

[2] Ib., 11, 12. Colebrooke's Supplement, 189, 190.

[3] Fifth Report, Vol. I, 4. Harington's Analysis, Vol. II, 12. Colebrooke's Supplement, 190, 191.

[4] Art. 1.

[5] Art. 2.

in the mofussil was to be made by a Committee of the Board composed of Mr. Warren Hastings as President, and four other members going circuit for that purpose.[1] The collecting officers were to be called Collectors instead of supervisors.[2] With the Collector was to be associated a fixed dewan to keep separate accounts of the collections according to the established forms.[3] No sepoys, peons, or other persons with authority were to be sent into the lands belonging to the farmers, except when indispensable for the farmer's assistance, and in that case only under a warrant.[4] The farmer was prohibited from receiving on any pretence larger rents from the ryots than the amount stipulated for in the pottahs, and on a conviction for doing so the farmer was to be compelled to repay the ryot the sum extorted, and to pay a penalty of equal amount to the Government; upon repetition of the offence, or in a notorious case, his lease was to be annulled.[5] Similarly no demand was to be made upon the farmers beyond the agreed dowl or rent-roll delivered to them with their lease.[6] The imposition of mathoots, or assessments upon the ryots under the names of mangun, baurie gundee, sood, or any other abwab or tax, was prohibited. Abwabs of late establishment were to be carefully scrutinised, and, if found oppressive and pernicious, to be abolished by the Committee.[7] Similarly all nuzzurs and salamees, which are described as being usually presented at the first interview

Abwabs and cesses prohibited.

[1] Art. 3.
[2] Art. 6.
[3] Art. 7.
[4] Art. 9.
[5] Art. 10.
[6] Art. 11.
[7] Art. 12.

LECTURE VII.

as marks of subjection and respect, were to be abolished.[1] It was provided that no servant of the Collector, and no European, should rent or farm lands; and that no such servant should be accepted as security for any farmer.[2] The Collector was directed to try to stop usurious lending to the ryots: and neither he nor his servants were to be allowed to lend money to any person within his district. The zemindars, talookdars, shicdars (shaikdars), and other officers of Government were also forbidden to lend money to the ryots; but the farmer might afford the usual and necessary aids of tuccabee (or tuccavee) at an interest of two per cent. a month payable in money.[3] To prevent oppression by the zemindars, all zemindary chowkies were abolished; and it was provided that none should be kept but such as depended directly upon Government under the puchuttera, bukshbunder, and shahbunder.[4] Lastly, the Collectors were directed to prepare a rent-roll of each farm, arranged in pergunnahs, with full accounts of all charges, &c., and of the highest rent ever realised.[5] Here we find the zemindars as such entirely displaced. The President and Council were however anxious that the farms should be let to the zemindars and talookdars; and the instructions from home were that they should not, "by any sudden change, alter the constitution, nor deprive the zemindars, &c., of their ancient privileges and immunities:" but as the zemindars would not agree to the terms proposed, the farms were let by auction to the highest bidders, sufficient security being required. Before

[1] Art. 13.
[2] Art. 17.
[3] Art. 18.
[4] Art. 21.
[5] Art. 23.

letting them in this way, a new hustabood was made out, excluding the arbitrary duties theretofore levied by the zemindars on all goods and necessaries of life passing through the interior by water. The bazee-jumma, or fines for petty crimes and misdemeanours, and the haldaree, or tax on marriage, were also excluded. The collection of these exactions from the ryots was forbidden.[1] The attempt to suppress illegal exactions, which had been a main object of the British Government from the first, was never very successful;[2] and, as we have seen, many of these exactions continue even down to the present day. The total abolition of the haldaree or marriage tax was carried into effect by the Council as far as the Government was concerned on the 21st August 1772, upon the proposal of the Committee of Circuit in a letter dated 15th August 1772.[3]

Revenue administered from the Presidency.

On the 28th July 1772, the Committee of Circuit, with a view to the more direct control over revenue matters, proposed the abolition of the Board of Revenue at Moorshedabad, and the transfer of its functions to the President and Council at Calcutta. It was suggested that one effect of this change might be expected to be the development of Calcutta, and the diminution of the importance of Moorshedabad.[4] A plan was accordingly drawn up on 20th August 1772, and approved on 29th August. The plan included the appointment of Rajah Rajbullub as Royroyan, to superintend the provincial dewans. It contained full directions as to the management of the various offices. The head canoongoes only were continued, and the rest were dismissed: the

[1] Harington's Analysis, Vol. II, 16. Fifth Report, Vol. I, 5.
[2] Fifth Report, Vol. I, 12.
[3] Harington's Analysis, Vol. II, 11.
[4] Ib., 21 to 25.

LECTURE VII.

Committee observing "that their utility is almost totally suppressed." Those retained were paid salaries, and their ancient dues were appropriated by Government.[1]

It may be useful to insert here an extract from a review of the administration of the revenue since the acquisition of the dewanny, contained in a letter from the President in Council to the Court of Directors, and dated 3rd November 1772:—

Review of revenue administration.

"Though seven years had elapsed since the Company became possessed of the dewanny, yet no regular process had ever been formed for conducting the business of the revenue. Every zemindary and every talook was left to its own particular customs. These indeed were not inviolably adhered to, the novelty of the business to those who were appointed to superintend it, the chicanery of the people whom they were obliged to employ as their agents, the accidental exigencies of each district, and not unfrequently the just discernment of the Collector, occasioned many changes. Every change added to the confusion which involved the whole, and few were either authorised or known by the presiding members of the Government. The articles which composed the revenue, the form of keeping accounts, the computation of time, even the technical terms, which ever form the greatest part of the obscurity of every science, differed as much as the soil and productions of the province. This confusion had its origin in the nature of the former Government. The nazims exacted what they could from the zemindars and great farmers of the revenue, whom they left at liberty to

[1] Harington's Analysis, Vol. II, 25 to 29. Colebrooke's Supplement, 194 to 200.

plunder all below, reserving to themselves the prerogative of plundering them in their turn when they were supposed to have enriched themselves with the spoils of the country. The mutteseddees, who stood between the nazims and the zemindars, or between them and the people, had each their respective shares of the public wealth. These profits were considered as illegal embezzlements, and therefore were taken with every caution which could insure secrecy; and being consequently fixed by no rules depended on the temper, abilities, or power of each individual for the amount. It therefore became a duty to every man to take the most effectual measures to conceal the value of his property, and elude every enquiry into his conduct, while the zemindars and other landholders, who had the advantage of long possession, availed themselves of it, by complex divisions of the lands and intricate modes of collection, to perplex the officers of Government, and confine the knowledge of the rents to themselves. It will be easily imagined that much of the current wealth stopped in its way to the public treasury.

"To the original defects in the constitution of these provinces were added the unequal and unsettled government of them. Since they became our property, a part of the lands which were before in our possession, such as Burdwan, Midnapore, and Chittagong, continued subject to the authority of their chiefs, who were immediately accountable to the Presidency. The Twenty-four Pergunnahs granted by the treaty of Plassey to the Company were theirs on a different tenure, being their immediate property, by the exclusion of the zemindars or hereditary proprietors; their rents were received by agents appointed to each pergunnah, and remitted to the Collector, who

LECTURE VII.

resided in Calcutta; the rest of the province was for some time entrusted to the joint charge of the naib dewan and resident at the durbar, and afterwards to the Council of Revenue at Moorshedabad, and to the supervisors who were accountable to that Council. The administration itself was totally excluded from a concern in this branch of the revenue. The internal arrangement of each district varied no less than that of the whole province. The lands subject to the same Collectors, and intermixed with each other were some held by farm; some superintended by shicdars, or agents on the part of the Collector; and some left to the zemindars or talookdars themselves under various degrees of control. The first were racked without mercy, because the leases were but of a year's standing, and the farmer had no interest or check to restrain him from exacting more than the land could bear; the second were equally drained and the rents embezzled, as it was not possible for the Collector, with the greatest degree of attention on his part, to detect or prevent it; the latter, it may be supposed, were not exempted from the general corruption; if they were, the other lands which lay near them would suffer by the migration of their inhabitants, who would naturally seek refuge from oppression in a milder and more equitable government."[1]

Preparations for a permanent revenue system.

A fresh adjustment of the revenue machinery was made on the 23rd November 1773, and this was adopted as preliminary to a permanent system of management. The scheme provided for a Committee of Revenue at the Presidency: the Collectorships were to continue, but in native hands, superintended by a dewan or aumil; or when the district had been let entire to a zemindar or his responsible farmer,

[1] Harington's Analysis, Vol. II, 8.

he was to have the control. Six Provincial Councils were to superintend and control the whole. The European Collectors were to be recalled. Rules were laid down as to sending peons or military officers into the districts; as to officers of Government or Europeans having any interest in the revenue or holding land; and as to the enquiries to be instituted with respect to the revenue. These differed little from the rules of the 10th April 1772 before noticed.[1] After this plan came into operation, the scheme of 1772 was dropped.[2] In pursuance of the new plan many of the European Collectors were replaced by native aumils.[3]

Enquiries set on foot.

In 1776 the five years' farming settlement being about to expire, the Governor-General, in a Minute dated 1st November, proposed that, before new arrangements were made, special officers should be deputed to make enquiries into "the real value of the lands;" and to make such investigations as might be useful "to secure to the ryots the perpetual and undisturbed possession of their lands, and to guard them against arbitrary exactions;" which he considered could not be secured "by proclamations and edicts, nor by indulgences to the zemindars and farmers." The Governor-General remarks that the endeavour to compel the zemindars to give the ryots pottahs had failed under both the present and the last administration; and that "notwithstanding the solemn engagement of the zemindars, and the peremptory injunctions of Government, not a pottah has yet been granted, nor will be granted" of a tenure other than the customary ones unless further measures

[1] Harington's Analysis, Vol. II, 29 to 33. Colebrooke's Supplement, 200 to 206. Fifth Report, Vol. I, 6.

[2] Harington's Analysis, Vol. II, 29.

[3] Ib., 32. Fifth Report, Vol. I, 6.

LECTURE VII.

are taken. He proposes that the nerric-bundy (nirkh), or rates of land in each district should be collected together, with copies of the present pottahs, as a foundation for a better system.[1] A commission was accordingly appointed to make the proposed enquiries. The commission consisted of three members, Mr. Anderson, Mr. Crofts, and Mr. Bogle.[2] These Commissioners presented a report, dated 17th December 1776, recommending that native ameens should be employed to make the local enquiries, and proposing a scheme of instructions for them.[3] They afterwards presented a further report in which they gave a sketch of the revenue system of the Mahomedans, which I have frequently referred to.[4]

Annual settlements.

The farming settlement came to an end in 1777; and the Directors having, on the 24th December 1776 signified their disapprobation of leases either for lives or in perpetuity,[5] it was determined to make a settlement for a year. The plan for the year 1185, which was resolved upon on 16th July 1777, contained the following provisions:[6]—first, lands then in charge of zemindars were to be left under their management for a year, if they agreed to pay the same rent as that of the preceding year, or such other rent as the Provincial Council might think proper; second, no security was to be taken for lands so let, in the case of zemindaries or portions of zemindaries under separate leases or management, but a

[1] Harington's Analysis, Vol. II, 35. Colebrooke's Supplement, 207.
[2] Ib.
[3] Ib. Colebrooke's Supplement, 208.
[4] Harington's Analysis, Vol. II, 58 to 82.
[5] Ib., 172.
[6] Colebrooke's Supplement, 210.

stipulation was to be inserted in the *cabooleuts of such* zemindars that the zemindars should be liable to be dispossessed for default in payment of revenue and their zemindaries sold for arrears; third, zemindaries which belonged to many proprietors in distinct shares were to be let in farm, the farmers exacting the rents due from the zemindars or talookdars; but they were not to dispossess the latter or interfere with their collections, except in case of default, and with the sanction of the Provincial Councils; but if the co-partners could not agree to one of their number taking charge, they should give security; and fourth, with regard to other lands then under the charge of the naib dewans, sezawuls, or etimaumdars, or which the zemindars might refuse to continue to hold upon the prescribed terms, the Provincial Councils were to advertise them to farm for a year upon sufficient security; such farms to be let to the highest bidders, provided they were men of substance and resident in the district, and cabooleuts were to be taken from them.[1] A similar settlement was made in 1778. It was directed that zemindars and farmers who had kept their engagements for the preceding year should have the settlements renewed with them. The zemindaries in arrear were to be sold or let in farm.[2] The zemindars were also to be imprisoned for arrears.[3] In 1779 and 1780 similar settlements were made.[4]

A permanent plan again contemplated.

On the 20th February 1781 a permanent plan was formed for the administration of the revenues of Bengal and Behar. It recites that the system of Provincial Councils

[1] Colebrooke's Supplement, Vol. II, 210. Fifth Report, Vol. I, 7.
[2] Ib., 212. Ib.
[3] Ib., 213.
[4] Ib. Fifth Report, Vol. I, 7.

LECTURE VII.

was a temporary measure, adopted for the purpose of introducing as a permanent plan the system of the 23rd November 1773, which was substantially that all the collections of the provinces should be brought down to the Presidency and there administered. Under this scheme a Committee of four persons, one of whom was Mr. Shore, under the control of the Governor-General, was appointed to administer the revenues. The Provincial Councils were abolished, and their functions transferred to the Committee of Revenue in Calcutta, together with the office of the khalsa. The canoongoes were reinstated. A commission of two per cent. was allowed to the Committee on the revenue realised.[1] On the 2nd March further rules were adopted for the working of the new system. Amongst other provisions interest at one per cent. was to be charged on revenue, remaining in arrears for more than fifteen days.[2]

Settlement for 1188.

On the 29th March 1781 a plan was again drawn up for the settlement of that year (1188). It provided, in accordance with the recommendations of the Committee, that the settlement should in general be with the zemindars, but not to the exclusion of farming and khas collection. In the case of zemindars being under disability, it was considered hard that their lands should be sold for default, while they had no part in the management; it was therefore directed that the principal executive officer should be held responsible for the revenue. If any zemindar evaded signing a cabooleut, a sezawul or a wadadar should be put in charge, or the zemindary should be let in farm. All farming leases were to be for one year.[3] In approving this plan the

[1] Colebrooke's Supplement, 213 to 216. Fifth Report, Vol. I, 7.
[2] Ib., 219.
[3] Ib., 223.

Governor-General in Council expressed a desire that encouragement should be given to the zemindars to enter into settlements for life, and to pay their rents to the khalsa direct; that they should be restored to their ancient jurisdiction, and that the jurisdiction of the foujdary should be abolished. In return for these benefits an increase of revenue was expected. The Governor-General in Council disapproved of the employment of the Collector in making the settlement, and directed that special officers should be deputed for that purpose.[1] The expected increase of revenue was realised to the extent of twenty-six lacs.[2]

Register of revenue-free lands.

On the 31st May 1782 a plan was adopted for the establishment of a bazee-zemeen dufter for Bengal, in which all revenue-free lands were to be registered. We have seen that one of the first objects of the English, when they became interested in the revenue, was to resume all unauthorised alienations thereof. And it is recited in the plan of 31st May 1782 that in April 1772 (1179) all zemindars and farmers were bound by the leases then granted not to make any grants of land without the knowledge and sanction of the Government; but that they had nevertheless continued to do so to an extent which could not be ascertained, to the great loss of the Government, both by alienation of the rents, and also by depreciation of the value of the lands paying revenue, owing to the holders of rent-free lands being able to attract the ryots from the revenue-paying lands by the offer of more favourable terms. It also recites that, besides the zemindars and farmers, the officers of Government and chiefs of provinces had been

[1] Colebrooke's Supplement, 224.

[2] Fifth Report, Vol. I, 8.

LECTURE VII.

in the habit of making similar grants; while the holders of such lands had made encroachments upon the revenue-paying lands, so as sometimes to double their holdings. It notices the grants by the Emperors and nazims with the remark that many of these grants were doubtless conditional or for life, and had reverted to Government; but that in consequence of the Government being ignorant of its title, it had derived no benefit therefrom. In the same manner as the rights of Government had been invaded, the rights of holders of bazee-zemeen by just titles had been also affected; and in order to secure both a register was to be formed of titles to such lands from the grant of the dewanny the 12th August 1765. All bazee-zemeen held before that date was to be continued to the proprietors or possessors, whether they could produce title-deeds or not. All grants by any other authority than that of the Governor and Council of Bengal were to be deemed invalid, unless they had been since confirmed by the same authority. But as Europeans as well as Natives had in many instances acquired small portions of land for building houses, manufactories, and other purposes, these holdings might be subjects of further consideration. It is noticed that "almost every zemindar in the country possesses lands distinct from the jumma, under the various denominations of birt, birmooter, khanabarry, neezjoote, ayma, mudud maush, &c.," the possession of which they endeavour to conceal, and that it is necessary not to alarm them by avowing the intentions of the Government.[1] We have seen that the various denominations of bazee-zemeen here enumerated are of very different kinds; and although in one sense held

Rules for resumption.

[1] Colebrooke's Supplement, 224 to 231.

by the zemindar without paying revenue, yet, except the neej-jote, are alienations of revenue for particular purposes; some of these alienations being probably made under the sanction of the State. These Regulations appear to contemplate them as land held free of revenue by the zemindar. No doubt the zemindars and others had contrived to avail themselves of the modified power to grant alienations of revenue, which had come to be acquiesced in by the State as their right, to make collusive and fraudulent grants, nominally for authorised purposes, but really for their own private benefit; and the existence of such grants, and of the zemindar's neej-jote, seems to have obscured to some extent the real nature of the grants included in the term lakhiraj.

In pursuance of the principles laid down in this plan, a notice was by the plan directed to be issued to certain pergunnahs, requiring "all persons possessing lakhiraj or guire jummai land" to register their title to it within a certain time, failing which their lands were to be resumed. The registration was to include full particulars of the grants. And by the rules for deciding upon the validity of the titles prescribed in the same plan, it was provided, as before laid down, that all grants previous to the grant of the dewanny were to be held good, and all subsequent grants invalid, unless confirmed by the President and Council, or the Governor-General in Council. Possession before the 12th August 1765 was to be of equal validity with a grant or title-deed; but grants before that date must be accompanied with possession for at least one year. The transfer of grants since that date was to be held good, provided the original grants existed, or possession was had, before that period. It was further provided that no one should "succeed to the proprietorship of land under the denomination of lakhiraj without

LECTURE VII.

the knowledge of Government."[1] The register thus provided for would, if formed, have been sufficient to show the state of the grants of revenue which came within its scope: however we find that at the permanent settlement the Government were as unprepared as ever to decide what resumptions should be made. By a further Regulation of the 26th August 1783, it was provided that lands, not exceeding one hundred beegahs, fairly and *bonâ fide* assigned for charitable and religious uses, were to be confirmed to the possessors.[2] Grants by the zemindars of their khamar lands were also to be held good, as well as other grants by zemindars not exceeding fifty beegahs.[3]

Settlements for 1191, 1192, and 1193.

The settlement for 1784 (1191) was by the order of the Directors for one year.[4] By the plan proposed on the 12th April 1784, it was provided that the settlement for 1191 should be made with the zemindars, provided they were not disqualified by incapacity, disability, or debt.[5] When the zemindar was a female or minor, the settlement was to be in the name of the zemindar, but the management and responsibility were to be undertaken by a dewan or fit relative. The same course was to be followed with incapable zemindars; and in case of indebtedness the zemindars were to be prevented preferring their private creditors to the revenue.[6] The farmers who had been punctual in their engagements were to be continued. Although the settlement was, under the orders of the Court of Directors, only for a year, the Board of

[1] Colebrooke's Supplement, 230, 231.
[2] Ib., 485.
[3] Ib., 486, 487.
[4] Ib., 235.
[5] Ib., 234.
[6] Ib., 235.

Revenue proposed, and the Governor-General in Council approved the proposition, that the zemindars should be continued in their leases "so long as they paid the revenue with regularity, and otherwise conducted themselves to the satisfaction of Government." And this proviso was inserted in their amilnamahs.[1] It may be observed that a reaction against the original sweeping dispossession of the zemindars was in progress; and the authorities in India seem to have been in advance of the Home Government in the desire to restore the zemindars. This reaction ultimately produced the Permanent Settlement.

When the plan of a registry of lands held without payment of revenue was drawn up for Bengal, it was stated that there was for Behar a full register of the lands within the scope of that plan already existing. However, on the 29th June 1784, a complete plan was approved of for a registry of jageer and other revenue-free lands in Behar, upon a proposition by Mr. Shore.[2] The jageers in Behar appear to have been chiefly of the unconditional kind.[3]

Centralisation.

The settlement for 1785 (1192) was similar to that of the previousy ear, being made with the zemindars, unless disqualified;[4] and this settlement was renewed for 1786 (1193).[5]

The plan of centralising the administration of the revenue does not appear to have been a successful one. This plan, as we have seen, had been contemplated as early as the 23rd November 1773, when the Provincial Councils were established as a preliminary measure; and it was carried into

[1] Colebrooke's Supplement, 235, 236.
[2] Ib., 236.
[3] Ib.
[4] Ib., 243.
[5] Ib.

LECTURE VII.

effect by the scheme of the 20th February 1781, which created the Committee of Revenue. This Committee reported on the 29th March 1781 that they considered it best "in general to leave the lands with the zemindars, making the settlement with them;" and they pointed out the difficulty of direct management, and recommended that such districts as were then under khas management should be let to farmers.[1] In consequence of these recommendations the new settlements for that year were generally made with the zemindars, and the reaction in favor of the zemindars' rights acquired further strength. Later, in 1782, Mr. Shore exposed the impracticability of the existing system, declaring that although one object of the institution of the Committee of Revenue, of which he was a member, was to bring the revenue without agency to the Presidency, and all local control was removed with respect to the renters who paid at Calcutta, or what was called huzoory, yet that the Committee were necessarily ignorant of the real state of any district; that they were and must be entirely in the hands of their dewan; and that all parties interested combined to deceive them. He asserts that one result of this system was that "the real state of the districts is now less known, and the revenues less understood, than in 1774;" and concludes by saying that "the universal opinion, strengthened by experience, has pronounced the system fundamentally wrong and inapplicable to any good purpose."[2] I have quoted these remarks because, although the revenue machinery does not in all respects strictly concern us, yet these observations show that the effect of the changes in that

[1] Harington's Analysis, Vol. II, 41.
[2] Ib., 41 to 43.

machinery, and of the helpless position of the English administrators, was to throw the whole management into the hands of the zemindars; and thus, as during Mahomedan rule, and for the same reasons, the helplessness of the Government was the opportunity of the zemindar. It is true the Government long struggled against this result; and, on the 7th April 1786, the Board of Revenue directed the appointment of servants of the Company as Collectors throughout the huzoory mehals, who were to realise the revenue, and "to preserve the ryots and other inferior tenants from the oppression and exactions to which they are in this country so peculiarly liable from the superior landholders and renters."[1] The Collectors were directed to obtain, amongst other particulars, all possible information as to what land was held free of revenue.[2] The native provincial dewans were abolished;[3] thus completing the reversal of the policy of the 14th May 1772 and 23rd November 1773. At the same time "the ancient constitutional check of the canoongoes' department" was revived and the two head canoongoes were to reside at the khalsa in the Presidency.[4] With respect to the revival of this office, the Governor-General in Council, on the 19th July 1786, expresses the opinion that, in order to remedy the confusion that had grown up, the officers of the canoongoes' department must be placed "upon their ancient footing, altogether independent of the zemindars;" and he

[1] Colebrooke's Supplement, 243. See the details of Collectorships, ib., 246, 247.

[2] Ib., 250.

[3] Ib., 245.

[4] Ib., 246.

LECTURE VII.

appoints Mr. Grant sheristadar, as a step towards the restoration of the old system.[1]

On the 12th June 1786 the Committee of Revenue was abolished, and a Board of Revenue substituted under orders from the Directors, dated 21st September 1785.[2]

Instructions for Decennial Settlement.

Lord Cornwallis arrived on the 12th September 1786.[3] In 1784 the statute 24 Geo. III, c. 25, for the better regulation and management of the affairs of the East India Company and of the British possessions in India, had directed, by s. 39, that orders should be given "for settling and establishing, upon principles of moderation and justice, according to the laws and constitution of India, the permanent rules by which the tributes, rents, and services of the rajahs, zemindars, polygars, talookdars, and other native landholders, should be in future rendered and paid;" and Lord Cornwallis brought with him a letter dated 12th April 1786, of the following purport:—With a view to carry into effect the intention of the Legislature, who further directed an inquiry into, and eventual redress of, the grievances alleged to have been sustained by many of the native landholders within the British territories in India, stated to have been unjustly deprived of, or compelled to abandon and relinquish, their respective lands, jurisdictions, rights, and privileges, the Court of Directors issued orders for a full investigation of the truth and extent of such grievances; and also for ascertaining, as correctly as the nature of the subject would admit, "what were the real jurisdictions, rights, and

[1] Colebrooke's Supplement, 251 to 253.
[2] Ib., 247. Harington's Analysis, Vol. II, 48. Fifth Report, Vol. I, 15.
[3] Fifth Report, Vol. I, 14.

privileges of zemindars, talookdars, and jageerdars under the constitution and customs of the Mahomedan or Hindoo government, and what were the tributes, rents, and services which they were bound to render or perform to the sovereign power; and in like manner those from the talookdars to their immediate liege lord, the zemindar; and by what rule or standard they were or ought severally to be regulated." The Court at the same time were of opinion that the spirit of the Act would be best observed by fixing a permanent revenue on a review of the assessment and actual collections of former years; and by forming a settlement, in every practicable instance, with the landholders; establishing at the same time such rules as might be requisite for maintaining the rights of all descriptions of persons under the established usages of the country, and the clause in the Act of Parliament above referred to, which the Governor-General in Council was desired to consider with minute and scrupulous attention, "taking especial care that all the measures adopted in the administration of the revenues be consonant to the sense and spirit thereof." Presuming therefore that the assets of the land must be sufficiently known without any new scrutinies under the various attempts made to ascertain them since the year 1765, and wishing to fix a moderate assessment upon the estates of the several landholders, such as the latter might pay without having a plea for harassing their tenants, the Court of Directors gave instructions for the formation of a settlement to be regulated by these principles on a revision of the jumma and collections of past years; and to be concluded for a period of ten years. In fixing this specific period the Court expressed their apprehension that "the frequency of change had

LECTURE VII.

created such distrust in the minds of the people as to render the idea of some definite term more pleasing to them than a dubious perpetuity;" but they, at the same time, directed that the whole arrangement, when completed, should be reported to them, with every necessary document and illustration, to enable them "to form a conclusive and satisfactory opinion, so as to preclude the necessity of further reference, or future change."[1]

In accordance with these directions enquiries were set on foot under orders contained in a letter from the Governor-General in Council to the Board of Revenue, dated 5th February 1787.[2] The letter refers to the 39th section of 24 Geo. III, c. 25, as designed to introduce permanent rules upon principles of moderation and justice, according to which the tributes, rents, and services of rajahs, zemindars, polygars, and talookdars might be rendered; and with this view, and in conformity with the orders from home, the Governor-General in Council declares his intention, as soon as sufficient information has been obtained, "to settle a permanent revenue with each zemindar for a long term of years." But he considers that this cannot be done before the next settlement, "particularly as, after the conclusion of such a settlement, it is determined to leave the landholder in the uninterrupted management of his district, without renewing inquiries into the value and produce of his lands." The Board were therefore to keep this object constantly in view; and for that purpose, according to the letter of the 12th April 1786, to "ascertain, as correctly as the nature of the subject will admit, what were the real jurisdictions, rights,

[1] Harington's Analysis, Vol. II, 173, 174.
[2] Colebrooke's Supplement, 346.

and privileges of zemindars, talookdars, and jagheerdars under the constitution and customs of the Mahomedan or Hindoo government; and what were the tributes, rents, and services which they were bound to render or perform to the sovereign power; and in like manner those from the talookdars to their immediate liege lord, the zemindar; and by what rule or standard they were or ought severally to be regulated."

Settlement for 1194.

It was proposed to form Collectorships throughout the country; and when that scheme should be carried into effect, the Governor-General directed that the Collectors should make the settlement for 1194 (1787) for one year, and with the zemindars wherever practicable; exceptions being allowed in case of "incapacity from age, sex, or lunacy, contumacy or notorious profligacy of character;" in which cases, when safe, "a discreet and reputable relation by way of guardian or dewan" was to be preferred to a farmer or Government officer. The letter notices that further regulations would be necessary to protect the ryots as well as the zemindars. It states that the Court of Directors disapprove of "minute examinations or new local investigations into the actual value of the lands." But a complete account of each zemindary, and of the revenues at the time of the English accession, was directed to be drawn up.[1]

Regulations for the conduct of the Collectors.

The enquiries thus ordered were of a very comprehensive description, and they were the basis of the Permanent Settlement.[2] In the meanwhile annual settlements were continued.[3] The proposed Collectorships were formed, on the 21st March 1787, in accordance with a scheme framed

[1] Colebrooke's Supplement, 346 to 351.
[2] Harington's Analysis, Vol. II, 48, 175.
[3] Fifth Report, Vol. I, 15.

LECTURE VII.

by the Board of Revenue dated the 13th March.[1] And on the 8th June 1787 some Regulations were passed for the conduct of the Collectors. These Regulations, after pointing out that the union of the powers of Magistrate and Collector imposes a corresponding responsibility, declare that the Collector ought, in order to the due discharge of his duty, to compile a distinct account of the different pergunnahs under his charge, including "the real and comparative state of the cultivation and population in it, the rates and rules of assessment, an account of the conduct of the farmer or zemindar towards his under-tenants, the number of talookdars, the nature of the produce and peculiar usages in it, and the increase and decrease of the population." The Regulations go on to provide for the separate execution of the duties of Judge or Magistrate and Collector, and for complaints by the ryots against farmers being heard by the Collector.[2] The Regulations then provide for cases of contumacy by zemindars: where zemindars or landholders are proved on oath to have resisted any written process, they are to be called upon to appear, and in default their lands are to be confiscated. Farmers are to be apprehended under similar circumstances.[3] And in case of default by a farmer or zemindar in payment of revenue the Collector may imprison him, and is bound to do so if one-third of the kist of any month is not discharged by the 15th of the ensuing month.[4] In such a case the dewan, peshkar, or

[1] Colebrooke's Supplement, 351 to 354. Harington's Analysis, Vol. II, 52.

[2] Colebrooke's Supplement, 253 to 266. Fifth Report, Vol. I, 15. Harington's Analysis, Vol. II, 53.

[3] Colebrooke's Supplement, 256, Art. 12.

[4] Art. 23.

principal servant of the zemindar or farmer is to be appointed to collect the revenue.[1] No Collector or person in his employ is to hold directly or indirectly any farm of the revenue, or to be concerned in the revenue within his jurisdiction, either as farmer, security, or otherwise;[2] or to lend money to any farmer or person responsible for the revenue.[3] The Collector is to try to ascertain the rules and rates of assessment upon the ryots, and to endeavour to fix upon some mode of regulating them upon general, fair, and ascertained principles.[4] The Regulations notice that, in spite of the orders of Government of 1772 prohibiting exactions, various taxes have since been imposed: these are to be strictly prohibited, and a penalty of double the amount enforced.[5] The abolition of the sayer is also to be enforced.[6] No alienations by zemindars or others are to be allowed without express sanction of the Board of Revenue. No European is to hold any farm or be accepted as security for any renter.[7] All future alienations of revenue are to be immediately resumed by the Collector.[8] No Collector is to sell the lands of a zemindar or other proprietor for arrears without the express sanction of the Board of Revenue.[9] Zemindars conniving at robberies and murders are to be punished, and none of their family to be allowed to succeed.[10] Tuccavee is not to be advanced by the Collector without the express sanction of the Board of Revenue.[11]

On the 23rd April further Regulations were passed for registering jageers, altumgha, and muddud-mash lands

Regulations of 25th April 1787.

[1] Art. 24.
[2] Art. 28.
[3] Art 29.
[4] Art. 35.
[5] Art. 50.
[6] Art. 51.
[7] Art. 54.
[8] Art. 55.
[9] Art. 56.
[10] Arts. 69, 70.
[11] Art. 79.

LECTURE VII.

in Behar.[1] On the 25th April Regulations were passed for the management of the Board of Revenue.[2] These give an appeal from the Collectors to the Board, and thence to the Governor-General in Council.[3] They lay down the same general rule for settlement with the "zemindar, talookdar, or other landholder" as in former Regulations,[4] with a preference to a respectable relation or principal servant when the landholder is disqualified otherwise than by misconduct: but if no such person can be found, and it therefore becomes necessary to farm the revenue, provision must be made for the "dispossessed landholders by allotting them a proportion of the produce of the lands, where they do not possess neej-joot, comar, or other rent-free land, or lands under-rated, sufficient to furnish a maintenance."[5] In settlements with zemindars, talookdars, and other landholders, their lands are to be deemed sufficient security in general; but in all cases of farm a malzamin or surety is indispensable.[6] The sale of lands by the Board for arrears is only to be allowed under the special sanction of the Governor-General in Council.[7] The Board may authorise a zemindar, &c., to mortgage or sell the whole or part of his land, directing the transaction to be registered by the sudder canoongoe. Such transactions are however to be discouraged, and it must be made clear that they are voluntarily entered into by the proprietor; and

[1] Colebrooke's Supplement, 487 to 490.
[2] Ib., 266. Fifth Report, Vol. I, 16.
[3] Colebrooke's Supplement, 269 to 280.
[4] Art. 15.
[5] Art. 16.
[6] Ib.
[7] Art. 31.

the Board is to see that the Government revenue is not endangered.[1] The Board may make advances of tuccavee to the renters or cultivators when absolutely necessary, and where the settlement is annual, reporting the matter to the Governor-General in Council.[2] Prohibitions are renewed against money dealings by the Board with revenue payers, against giving farms to Europeans, or accepting them as security, against granting or confirming grants of or allowing succession to either malgoozarry or revenue-free lands.[3] The Board is to resume "all lands alienated from the general assessment since the 8th June 1787."[4] In the Regulations passed on the 8th August 1788, for malcomnah (malikana) lands in Behar, it is provided that the settlement is to include such lands, and that zemindars who have not the management of their zemindaries are to have ten per cent. on the net jumma as malikana.[5]

Legislation of 1790.

We now come to the year 1790, when the first rules for the Decennial Settlement were passed; those for Bengal being dated 10th February 1790.[6] In the results of the legislation this year there are two points which may be noticed here, but the rest will be more conveniently considered in dealing with the Regulations more immediately connected with the Decennial and Permanent Settlements. The points referred to are, first, that authority is given to the Collectors on the 29th April to proceed against talookdars and other inferior renters paying revenue to the zemindars,

[1] Art. 41.
[2] Art. 43
[3] Art. 45.
[4] Art. 52.
[5] Colebrooke's Supplement, 490, 491.
[6] Ib., 285, 308. Fifth Report, Vol. I, 21, 25.

LECTURE VII.

in the same manner as is prescribed by the Regulations for proceeding against defaulting renters paying revenue immediately to Government;[1] and second, on the 29th June, it is directed that land in Calcutta, which had always been managed as a zemindary in the hands of the Government, is to be considered as pledged for the revenue, and liable to be sold for arrears in the hands of a purchaser from the defaulter.[2] As we shall see these provisions were afterwards largely developed and applied generally.

Summary.

I shall now briefly summarise the results of the Regulations and directions during the period we have been considering; and which I have given in some detail, as being absolutely necessary for the due appreciation of the effect of the Regulations we are about to consider, under which the settlement became permanent in favour of the zemindars.

Power of alienation restricted.

In the first place we see that free alienation was not allowed. If the zemindars had attained to this privilege under the Mahomedan rule, they were deprived of it again until the Permanent Settlement. That under the Mahomedan rule they had a modified power of alienation seems probable. But even this power was at first cut down; and when restored was made subject to the control of the authorities. On the other hand sale for arrears was introduced as an ordinary remedy, in addition to eviction, imprisonment, and attachment of the land and goods. And this remedy was, by the Regulations last noticed, extended to the recovery of arrears from talookdars and under-renters paying revenue to the zemindars; in which categories, however, the ordinary ryots do not seem to be included,

[1] Colebrooke's Supplement, 492.

[2] Ib.

since the power to proceed in this manner is given to the Collector.

Proprietary rights.

With regard to proprietary rights, the zemindars were at first entirely dispossessed and treated as mere officers of Government: gradually, however, a larger right came to be recognised in them, and finally they were considered as something like proprietors of the land, and as entitled to the payments made by the ryots: but the right thus recognised was one which was to a great extent dependent upon their good behaviour, and the most stringent rules were laid down for the protection of the ryots, who are also recognised as having rights in the land, not inferior in validity, if subordinate in degree, to those of the zemindars.

The fiscal machinery.

With regard to the revenue machinery, the fluctuating principles adopted show probably the difficulty of fixing upon any effective scheme, rather than vacillation on the part of the authorities. These changes, however, no doubt tended to obscure the rights of the parties interested in the land and the revenue, and were thus favourable in the end to the zemindars. The endeavour by the Government to obtain increased centralisation failed, both in respect of the attempted management of the revenues from the Presidency, and also in respect of the efforts by Government to escape from dependence upon the zemindars. These attempts failed, for the same reason as in Mahomedan times: the zemindars were in both cases too strong for the Government.

LECTURE VIII.

THE DECENNIAL AND PERMANENT SETTLEMENTS.

The Decennial Settlement preparatory to a Permanent Settlement—Views of Mr. Grant and Mr. Shore—Discussion between Lord Cornwallis and Mr. Shore—The talookdars—Proprietary rights—Result of the discussion—Zemindars forbidden to collect the sayer—Recovery of rent and revenue—Lakhiraj Regulations—Disqualified landholders—Decennial Settlement Regulations—Mokurreree leases—Istemrardars—Settlement of the land of disqualified proprietors—Settlement with mortgagees and others—Pensions to be paid by Government—Nankar, khamar, and neej-jote—Settlement of rent—Engagements with the under-renters—The landholders—Remedies for recovery of rent—The Permanent Settlement—Introduction of a general code of law—Proclamation of the Permanent Settlement—Assessment on lands farmed or held khas when sold or divided—Further provisions—Object and effect of the Permanent Settlement—Rights of the zemindars—The zemindars not made absolute proprietors—The aurungs of Beerbhoom—Extension of cultivation.

The Decennial Settlement preparatory to a Permanent Settlement.

WE have now reached the most important epoch in the history of the Land Tenures of Bengal, the period at which the zemindars were secured in the permanent enjoyment of their position by the Decennial and Permanent Settlements. The Decennial Settlement was from the first intended to be preparatory to a Permanent Settlement; and when the Regulations of 1789 for the Decennial Settlement of Bengal were promulgated, Lord Cornwallis was authorised to declare that, subject to the approval of the Directors in England, the "jumma would remain fixed for ever." We have already seen that the object of the Directors was to give value to the rights then possessed by the zemindars by adding the security, which had hitherto been wanting, of a fixed assessment, at any rate for a term of ten years. The rights of the zemindars had already

increased considerably in value notwithstanding the frequent changes in revenue affairs: this increased value was, as Sir Henry Maine observes, "the fruit of the British peace." The Directors desired to complete the work by putting an end to the precariousness of the zemindar's tenure; being satisfied that all the good results which they had in view, and which included the creation of a class of more permanent landholders, would follow from the renunciation by the State of the right to constant revisions of the jumma. It does not appear that they intended to part with any other right which belonged to the State, either as one of the sharers in the produce of the land, or in its wider capacity as representing the general community, except the right to raise the jumma. And at the Decennial Settlement it is highly improbable that they could have intended to grant to the zemindars proprietary rights in the soil different from those supposed to be already possessed by them, since the actual settlement was only for ten years. They would hardly have created landholders holding by a fee-simple tenure, but with the inconsistent limitation that it should determine at the end of ten years. Probably they thought that the rights of the zemindars were already of such a character that, if anything more than a permanent jumma was necessary to turn their tenure into freehold, it would follow from the permanency of the settlement. The only question, as we shall see, which called for immediate decision was as to the proper person to be settled with, either permanently or for a term; and although in seeking for such a person they naturally considered that if they could find a freeholder they need seek no further, and although they fancied they had found some resemblance to a freeholder in the zemindar, they

LECTURE VIII.

were still only inquiring into the proprietary rights of the zemindars with a view to the settlement of the revenue upon fixed principles. They had comparatively little difficulty in deciding that the zemindars in Bengal—there was more doubt as to Behar—were the proper persons to be settled with: but it cannot be said that the search for an absolute proprietary right in the zemindar, or in any one else, was equally successful. They considered the zemindar the nearest approach to what they were seeking; and they considered that for this and other reasons he was the proper person to be settled with. That this conclusion was practically a correct one follows from the views I have endeavoured to explain as to the zemindar's position in later times.

Views of Mr. Grant and Mr. Shore.

I have already referred to the enquiries which were instituted with an immediate view to the Decennial Settlement. There had, however, been two important contributions to the discussion of the subject made by Mr. Grant at an earlier date: these were his Political Survey of the Northern Circars, dated the 20th December 1784, and his Analysis of the Finances, of the 27th April 1786. These dissertations enforced in the most emphatic way the official position of the zemindar and the paramount right of the State to the absolute property in the land. But before the production of the second of these treatises the reaction in favour of the rights of the zemindar had reached such a height that a settlement, and even a permanent settlement, with the zemindars was almost a foregone conclusion. Enquiries were, however, directed, and on the 2nd April 1788 Mr. Shore produced an elaborate minute[1] on the subject,

[1] Harington's Analysis, Vol. III, 228.

giving a sketch of the Mahomedan system, from which he deduces "that the rents belong to the sovereign, and the land to the zemindar,[1] in opposition to the opinion of Mr. Grant, and to an opinion of the Board of Revenue, given in 1786, that a zemindary was "a conditional office, annually renewable and revocable on defalcation."[2] Again on the 18th June 1789 Mr. Shore recorded the minute[3] which was the basis to a great extent of the Permanent Settlement. From this minute he deduced a number of propositions which formed the first sketch of the Decennial Settlement Regulation,[4] and were substantially embodied in that Settlement. As to the interest which Mr. Shore proposed to leave in the zemindars, however absolute in quality, it was small in extent, being only ten per cent. of the net jumma; and this share was to include the revenue of their nankar or other rent-free lands.[5] And when the zemindar was dispossessed he was to receive only five per cent. as a provision.[6] Mr. Shore also proposed that when zemindars made undue exactions from the talookdars, the talooks should be separated, and made independent of the zemindar.[7]

Discussion between Lord Cornwallis and Mr. Shore.

In a further minute, dated 18th September 1789, relating mainly to Behar, Mr. Shore opposes perpetuity of settlement;[8] and Lord Cornwallis, in a minute of the same date,[9] answers Mr. Shore's minute. He considers Mr. Shore has

[1] Harington's Analysis, Vol. III, 245.
[2] Ib., 229.
[3] Fifth Report, Vol. I, 101.
[4] Ib., 202.
[5] Ib., 204.
[6] Ib., 205.
[7] Ib.
[8] Ib., 555.
[9] Ib., 590.

LECTURE VIII.

"most successfully argued in favour of the rights of the zemindars to the property of the soil;" and he is of opinion that, in order to give value to these rights, they must be made permanent.[1] He says:—

"Although, however, I am not only of opinion that the zemindars have the best right, but from being persuaded that nothing could be so ruinous to the public interest as that the land should be retained as the property of Government, I am also convinced that failing the claim of right of the zemindars, it would be necessary for the public good to grant a right of property in the soil to them or to persons of other descriptions. I think it unnecessary to enter into any discussion of the grounds upon which their right appears to be founded. It is the most effectual mode for promoting the general improvement of the country, which I look upon as the important object for our present consideration.

"I may safely assert that one-third of the Company's territory in Hindostan is now a jungle inhabited only by wild beasts. Will a ten years' lease induce any proprietor to clear away that jungle and encourage the ryots to come and cultivate his lands, when at the end of that lease he must either submit to be taxed *ad libitum* for the newly cultivated lands, or lose all hopes of deriving any benefit from his labour, for which perhaps by that time he will hardly be repaid?"

He further says:—"It is immaterial to Government what individual possesses the land, provided he cultivates it, protects the ryots, and pays the public revenue,"[2] and adds:[3]

[1] Fifth Report, Vol. I, 591

[2] Ib.

[3] Ib., 592.

"I understand the word 'permanency' to extend to the jumma only, and not to the details of the settlement, for many regulations will certainly be hereafter necessary for the further security of the ryots in particular, and even of those talookdars who, to my concern, must still remain in some degree of dependence on the zemindars; but these can only be made by Government occasionally, as abuses occur; and I will venture to assert that either now or ten years hence, or at any given period, it is impossible for human wisdom and foresight to form any plan that will not require such attention and regulation. I cannot, however, admit that such regulations can in any degree affect the rights which it is now proposed to confirm to the zemindars; for I never will allow that in any country Government can be said to invade the rights of a subject when they only require, for the benefit of the State, that he shall accept of a reasonable equivalent for the surrender of a real or supposed right which in his hands is detrimental to the general interest of the public; or when they prevent his committing cruel oppressions upon his neighbours or upon his own dependants."

Mr. Shore replies in another minute of the same date, in which he supports his former view, that ten years will in the estimation of the natives be equivalent to a perpetuity,[1] and states that although he does not know whether one-third of the land is still jungle, yet since 1770 cultivation has greatly increased. He recommends grants of waste free of revenue for five years upon a talookdarry tenure; such grants to come into the general assessment at the end of ten years.[2] He supports his view in favour of a ten years'

[1] Fifth Report, Vol. I, 594, 595.

[2] Ib., 596.

LECTURE VIII.

settlement as in conformity with the opinion of the Court of Directors that "a definite term would be more pleasing to the natives than a dubious perpetuity."[1] He admits that far greater abuses prevail in the detail of the collections in Bengal than in Behar.[2] On the same day that these minutes were recorded the rules for the Decennial Settlement of Behar were promulgated. On the 8th December 1789 Mr. Shore wrote a further minute upon the general subject of permanency of settlement.[3] He remarks that, with respect to the relations between the zemindars and their tenants, the interference of the Government is absolutely necessary. "This interference," he says,[4] "though so much modified, is in fact an invasion of proprietary right and an assumption of the character of landlord which belongs to the zemindar; for it is equally a contradiction in terms to say that the property in the soil is vested in the zemindar and that we have a right to regulate the terms by which he is to let his lands to the ryots, as it is to connect that avowal with discretionary and arbitrary claims. If the land is the zemindar's, it will only be partially his property whilst we prescribe the quantum which he is to collect, or the mode by which the adjustment of it is to take place between the parties concerned." And again,[5] "much time will, I fear, elapse before we can establish a system perfectly consistent in all its parts, and before we can reduce the compound relation of a zemindar to Government and of a ryot to a zemindar to the simple

[1] Fifth Report, Vol. I, 596.
[2] Ib., 597.
[3] Ib., 598.
Ib., 599.
[4] Ib., 601.

principles of landlord and tenant. But substance is more important than forms. If the propositions of the Collectors for correcting the prevailing abuses be examined, they will be found defective; and the regulations which our experience has enabled us to establish will, when considered, appear indefinite, where they ought to have the utmost precision. Orders which should be positive are tempered by cautious conditions, nor am I ashamed to distrust my own knowledge, since I have frequent proofs that new enquiries lead to new information. Notwithstanding repeated prohibitions against the introduction of new taxes, we still find that many have been established of late years. The idea of the imposition of taxes by a landlord upon his tenant implies an inconsistency; and the prohibition in spirit is an encroachment upon proprietary right, for it is saying to the landlord you shall not raise the rents of your estate. But without expatiating on this part of the argument, I shall only here observe that, with an exception of an arbitrary limitation in favour of the khode and khaust ryots, the regulations for the new settlement virtually confirm all these taxes, without our possessing any records of them, and without knowing how far they are burthensome or otherwise. In some cases a knowledge of those impositions has been followed by the abolition of them, in others it may be equally necessary; wherever it takes place there is a risk that the assessment will suffer a proportionate diminution. At present they are in many places so numerous and complicated that after having obtained an enumeration of the whole, the amount of the ausil with the proportionate rates of the several abwabs, it requires an accountant of some ability to calculate what a ryot is to pay, and the calculation may

LECTURE VIII.

be presumed beyond the ability of most tenants. The pottah rarely expresses the sum total of the rents, and it is difficult to determine what is extortion."

He speaks of the persons settled with as "those whom we acknowledge to be the proprietors of the soil;"[1] and is therefore of opinion that Government ought not to authorise their permanent dispossession on account of their refusing to agree to the settlement.[2]

In answer to this minute, Lord Cornwallis,[3] on the 3rd February 1790, refers to the alleged incapacity of the zemindars, which is relied upon by Mr. Shore as an objection to a permanent settlement with them. Lord Cornwallis considers that this arose from the state of tutelage in which they were kept, being forbidden to borrow money or dispose of their lands without the knowledge of Government.[4] With reference to the inconsistency alleged by Mr. Shore, in refusing to allow the zemindars to raise the rent of the ryots by imposing fresh taxes, he remarks that such impositions violate the rights of the ryots, since every beegah of land possessed by the ryots "must have been cultivated under an express or implied agreement that a certain sum should be paid for each beegah of produce."[5] The right of occupancy by the ryots he also considers not to be inconsistent with the rights of the zemindars: he says[6] "neither is the privilege which the ryots in many parts of Bengal enjoy of holding possession of the spots

[1] Fifth Report, Vol. I, 606.
[2] Ib., 606, 607.
[3] Ib., 609.
[4] Ib., 612.
[5] Ib., 615.
[6] Ib.

of land which they cultivate so long as they pay the revenue assessed upon them by any means incompatible with the proprietary rights of the zemindars. Whoever cultivates the lands, the zemindars can receive no more than the established rent, which in most places is fully equal to what the cultivator can afford to pay. To permit him to dispossess one cultivator for the sole purpose of giving the land to another would be vesting him with a power to commit a wanton act of oppression from which he could derive no benefit. The practice that prevailed under the Moghul Government of uniting many districts into one zemindary, and thereby subjecting a large body of people to the control of one principal zemindar, rendered some restriction of this nature absolutely necessary. The zemindar, however, may sell the land, and the cultivators must pay the rent to the purchaser."

The talookdars.

He considers that the talookdars have in general the same right in the soil as the zemindars, being merely smaller proprietors paying their revenue through the larger proprietors, the zemindars. He was accordingly desirous "that all proprietors of land, whether zemindars, talookdars, or chowdries, should pay their revenue direct."[1] With regard to proprietary rights he says:[2]—"the question that has been so much agitated in this country, whether the zemindars and talookdars are the actual proprietors of the soil or only officers of Government, has always appeared to me to be very uninteresting to them, whilst their claim to a certain percentage upon the rents of their lands has been admitted, and the right of Government to fix the

Proprietary rights.

[1] Fifth Report, Vol. I, 617.
[2] Ib., 620.

LECTURE VIII.

amount of those rents at its own discretion has never been denied or disputed. Under the former practice of annual settlement, zemindars who have either refused to agree to pay the rents that have been required, or who have been thought unworthy of being entrusted with the management, have, since our acquisition of the Dewanny, been dispossessed in numberless instances, and their land held khas or let to a farmer; and when it is recollected that pecuniary allowances have not always been given to dispossessed zemindars in Bengal, I conceive that a more nugatory or delusive species of property could hardly exist. On the other hand, the grant of these lands at a fixed assessment will stamp a value upon them hitherto unknown, and by the facility which it will create of raising money upon them either by mortgage or sale will provide a certain fund for the liquidation of public or private demands, or prove an incitement to exertion and industry by securing the fruits of those qualities in the tenure to the proprietors' own benefit." But he adds—"I admit the proprietary rights of the zemindars."[1]

Result of the discussion.

These extracts show in what light the zemindars were regarded before the Decennial Settlement, and that the question was considered mainly with reference to the matter then in hand—a more or less permanent settlement for the revenue. The conclusion arrived at was that the zemindars in Bengal were the proper persons to be settled with, inasmuch as they had long enjoyed the right to such settlement; and had acquired, if they did not originally possess, a proprietary right in the land, the extent of which it was unnecessary to discuss further than to ascertain that it

[1] Fifth Report, Vol. I, 622.

justified a permanent settlement with them as the nearest approach to an English holder in fee simple, and as the most likely class to develop into the English landlord.

This view appears to me to be confirmed by the final expression of opinion of the Court of Directors in their letter, dated 19th September 1792, upon the question of making the settlement perpetual. They say:[1]—"In former despatches we have, on different occasions, conveyed to you our sentiments on that point; though we have also stated that we felt the materials before us to be insufficient for forming a decisive opinion. On the fullest consideration, we are inclined to think that, whatever doubts may exist with respect to their original character, whether as proprietors of land or collectors of revenue, or with respect to the changes which may in process of time have taken place in their situation, there can at least be little difference of opinion as to the actual condition of the zemindars under the Moghul Government. Custom generally gave them a certain species of hereditary occupancy; but the sovereign nowhere appears to have bound himself by any law or compact not to deprive them of it: and the rents to be paid by them remained always to be fixed by his arbitrary will and pleasure, which were constantly exercised upon this object. If considered therefore as a right of property it was very imperfect and very precarious; having not at all, or but in a very small degree, those qualities that confer independence and value upon the landed property of Europe. Though such be our ultimate view of this question, our originating a system of fixed equitable taxation will sufficiently show that our intention has

[1] Harington's Analysis, Vol. III, 359.

LECTURE VIII.

not been to act upon the high tone of Asiatic despotism. We are, on the contrary, for establishing real permanent valuable landed rights in our provinces, and for conferring such rights upon the zemindars; but it is just that the nature of this concession should be known, and that our subjects should see they receive from the enlightened principles of a British Government what they never enjoyed under the happiest of their own."

Zemindars forbidden to collect the sayer.

The rules for the Decennial Settlement of Bengal were first promulgated on the 10th February 1790. These were afterwards amended, and I shall refer to the final Regulations in their proper order. In the meanwhile, on the 11th June 1790, the zemindars were forbidden to collect the sayer or inland duties.[1] This was not to affect the right of the zemindars or others to the monthly or annual rents paid for ground, or buildings erected thereon, nor to the phulkur, bunkur, and julkur, or "rents paid for orchards, pasture grounds, and fisheries," such rents being properly the private right of the proprietors.[2] Moreover compensation was provided for. With regard to ground on which bazars and hauts were built, and to which reference is made in the Sayer Regulations, a declaration was issued by the Board of Revenue on the 6th August that the proprietary right therein would remain vested in the landholders, but the public were to have the use of such ground.[3] With regard to the recovery of rent from the ryots, the Board of Revenue, on the 30th July, directed that the landholder should not attach the ryot's crop when he had given security which had been accepted by the landholder, unless the security

Recovery of rent and revenue.

[1] Colebrooke's Supplement, 286 to 290.
[2] Ib., 287.
[3] Ib., 495.

had absconded and other good security had not been tendered.[1] And with regard to the recovery of revenue from the zemindars, it was directed, on the 20th August, that the lands of defaulting landholders should be attached at the same time as the order for sale was issued, and should be held by the Collector until the purchaser should apply for possession. The defaulter was to pay the charges, which were to be deducted from the sale proceeds, and if those proceeds were insufficient, the purchaser was to pay the balance.[2] Upon the sale of a sufficient portion of land to pay the arrears of revenue, defaulting landholders were directed (8th September) to be released from confinement.[3] And permission was given (8th October) to defaulters to buy in their land when sold for arrears, giving security for the price if required.[4]

Lakhiraj Regulations.

On the 1st December 1790 Lakhiraj Regulations were passed. By these Regulations[5] it is provided that all grants of rent-free land made before the 12th August 1765 (the date of the accession to the Dewanny) shall be deemed valid, provided the grantee actually and *bonâ fide* obtained possession before that date, and the grant was not subsequently resumed. If either of these provisoes is negatived by proof, the grant shall not be deemed valid.[6] Grants since the 12th August 1765, made or confirmed by the Government, shall be held valid; but all others shall be held invalid. This is not to affect grants by the Provincial

[1] Colebrooke's Supplement, 494.
[2] Ib., 495.
[3] Ib.
[4] Ib., 496.
[5] Ib., 292.
[6] Art. 1.

LECTURE VIII.

Council before 1178 under Sa. Rs. 100 of annual rent, nor grants before 1178 not exceeding ten beegahs, *bonâ fide* appropriated to endowments on temples, the maintenance of Brahmins, or other religious or charitable purposes.[1] Possession before the 12th August 1765, and continued to the date of the Regulations, is to be of equal validity with any grant.[2] These provisions as to possession are more stringent than those previously in force. It is provided that the proprietary rights in lands alienated before the date of the Regulations are to be decided by the Courts. "These Regulations with regard to all such lands respect only the public revenue thereof." Until dispossessed under a decree, "the grantees or present possessors are to be considered as the proprietors of the lands, with the same right of property therein as is possessed by the other landholders in the district paying revenue to Government," and are to be settled with for revenue.[3] The revenue to be assessed on resumed villages or portions of villages is to belong to the Government when more than Sa. Rs. 100,[4] or to the "person responsible to Government for the revenue of such village, whether he be zemindar or farmer," when less than Sa. Rs. 100.[5] The revenue is to be assessed at one-half the net produce if the grant was before 1178, or according to the rules for the Decennial Settlement if after that date.[6] A purchaser of a village or villages, either by public or private sale after the date of these Regulations, shall be entitled "to the property in the soil and the Government's share of the produce" of all portions of such villages as may have been alienated since the date of these Regulations

[1] Art. 2.
[2] Art. 3.
[3] Art. 4.
[4] Art. 5.
[5] Art. 6.
[6] Art. 7.

and before his purchase, and shall not be liable to any increase of assessment on account of such lands or the produce thereof during his lease.[1] In like manner farmers of the lands of excluded zemindars shall be entitled to the produce of all portions of villages alienated after these Regulations, without liability to any increase of assessment on that account during their leases.[2] The Collector's assistants are directed to prosecute the resumption of lands under these Regulations, and they are to receive a commission of twenty-five per cent. on the first year's jumma.[3] Landholders and farmers "entitled to the property in the soil, or to the whole or part of the produce," may sue to resume before the Collector. Resuming without a decree of the Collector renders them liable in damages.[4] These Regulations are not to affect grants by the Superintendent of the bazee zemeen in Bengal, nor the Regulations for "jaghire, altumghaw, and muddudmaush lands" in Behar.[5] We shall hereafter notice the more complete Regulations with reference to revenue-free grants which were passed at the time of the Permanent Settlement.

Disqualifie landholder

The next Regulation which demands notice, as throwing light upon the mode in which the zemindars and others were dealt with, is that relating to disqualified landholders and their estates passed on the 15th July 1791.[6] This Regulation recites that, by the rules for the Decennial Settlement of Bengal, Behar, and Orissa, females, minors, idiots,

---

[1] Art. 8.
[2] Art. 9.
[3] Art. 10.
[4] Art. 11.
[5] Art. 14.
[6] Colebrooke's Supplement, 298 to 307.

LECTURE VIII.

lunatics, contumacious persons, and notoriously profligate persons who are entire proprietors of estates paying revenue direct to Government, are declared incapable of having any concern in the management of their estates; and that this exception includes all such entire proprietors as are or may be rendered incapable of managing their estates by natural defects or infirmities of whatever nature. The estates of such persons were to be managed in trust for the proprietors; but many instances of abuse of this trust having occurred, the Board of Revenue had been constituted a Court of Wards to superintend the managers of such estates, under the following rules and limitations. This superintendence is to extend to the classes above-mentioned, but not to proprietors of estates not paying revenue direct, nor to those joint with other qualified proprietors: in the latter case, the proprietors must elect a manager, those who cannot vote themselves being allowed to vote through their guardians.[1] The offices of manager and of guardian are to be considered distinct.[2] The manager is to be called a surbarakar. In appointing him a preference is to be given to the heirs or near relations or creditable servants of the proprietor. The husband may be appointed manager of the wife's separate property. Females, not being minors or otherwise disqualified, may recommend a manager.[3] The disqualified landholder is to receive for his support ten per cent. on the revenue, the Collector having the power to increase or decrease this proportion.[4] Minority for both Hindoos and Mahomedans is limited to the expiration of the fifteenth year.[5]

[1] Arts. 1, 2.
[2] Arts. 5, 6.
[3] Art. 7.
[4] Arts. 10, 11.
[5] Art. 26.

From these Regulations I pass to the amended code for the Decennial Settlement, remarking in passing that on the 12th August 1791 it was laid down that no naib, gomastah, or other agent or servant of any zemindar, talookdar, or farmer should be confined for arrears of rent or revenue, unless he was personally responsible for such arrears.[1]

Decennial Settlement Regulations.

The amended Regulations for the Decennial Settlement were passed on the 23rd November 1791.[2] It is recited that the original rules for the Decennial Settlement of Behar, Orissa, and Bengal, passed on the 18th September 1789, the 25th November 1789, and the 10th February 1790, respectively, have been considerably amended. The Regulations go on to provide for a settlement for ten years from the Fusly, Villayty, and Bengal year 1197, for the three provinces respectively.[3] And it is to be notified that the assessment will be continued, "and remain unalterable for ever," if the Court of Directors approve of such continuance.[4] The settlement, under certain restrictions and exceptions afterwards specified, is to "be concluded with the actual proprietors of the soil, of whatever denomination, whether zemindars, chowdries, or talookdars."[5] The talookdars who are to be considered actual proprietors are, first, those who purchased their lands or obtained them by gift from the zemindar to whom they now pay their rents or from his ancestors, subject to the payment of the established dues of Government; and who received bills of sale or deeds of gift for such lands from the zemindar, or sunnuds from the khalsa, making over

[1] Colebrooke's Supplement, 307.
[2] Ib., 308 to 328.
[3] Art. 1.
[4] Art. 2.
[5] Art. 3.

LECTURE VIII.

to them his proprietary rights therein: second, those whose talooks were formed before the zemindar to whom they now pay rents, or his ancestors, succeeded to the zemindary: third, those whose lands were never the property of the zemindar to whom they now pay rents, or of his ancestors: fourth, those who held their talooks under a special grant from Government: and fifth, those who have succeeded to talooks of the above kinds by right of purchase, gift or inheritance from the former proprietors.[1] Those proprietors of talooks who then paid the public revenue through a zemindar, and whose title-deeds contained a clause stipulating for such payment, were to continue so to pay, unless the zemindar exacted more than he had a right to do or was guilty of oppression, on proof of which the talook should be separated.[2] Jungleboory talooks are not to be separated. They are described as held in perpetuity, with the right of disposal thereof by gift or sale; and as being exempt from rent for a certain period, on condition of clearing away the jungle and bringing the land into cultivation. At the end of the period during which they are exempt from rent they are subject to the assul jumma, with all increases, abwabs, and mahtoots imposed on the pergunnah generally; but this liability only extends to such land as the grantee brings into a state of cultivation. He is also liable to make over a certain specified portion of all complimentary presents and fees which he may receive from his under-tenants, exclusive of the fixed rent. It is recited that the pottahs granting these talooks specify the boundaries of the grant, but not the quantity of land, until it is brought into cultivation and

[1] Art. 4. [2] Art. 5.

ascertained.[1] It is further recited that the same rules as apply to talooks have been extended to "ayma lands liable to the payment of a fixed quit-rent, denominated malguzaree aymas; and agreeably to the above distinctions it has been ordered that such malguzaree ayma tenures as are held under grants of the Mussulman Government previous to the Company's accession to the Dewanny, or which have been since granted by the zemindars for a consideration received by them, shall be separated from the zemindar to whom they now pay their malguzaree" in analogy to the separation of talooks; but "that malguzaree ayma tenures which may appear to have been granted for the purpose of bringing waste into cultivation shall continue annexed to the zemindaries" in analogy to jungleboory talooks.[2] In the separation of talooks, the Collectors are only to consider whether the tenure is such as to entitle the holder to separation, and not to enquire into the title; each talookdar being considered as rightful possessor of his talook till a better title is established against him by due course of law.[3] But the Collector's decision as to the right of separation does not prevent the talookdar's establishing a right to separation against the zemindar; and similarly the zemindar may sue the talookdar for restoration of the talook to the zemindary.[4] Talookdars who are ordered to be separated are not to be permitted to pay their revenue through the zemindars.[5] We have seen that Lord Cornwallis originally considered that talookdars in general were entitled to separation; and that as regards proprietary right he considered there was no difference between them and the

[1] Art. 7. [2] Art. 8. [3] Arts. 9, 10. [4] Art. 11. [5] Art. 12.

LECTURE VIII.

zemindars. The present Regulations define proprietary right in a talookdar, but this of course does not create a new right.[1]

Mokurreree leases.

Mokurreree leases, or leases at a fixed jumma to persons "not the proprietors of the lands included in such leases," if granted or confirmed by Government, or obtained before the accession to the Dewanny, are to be continued during the lives of the lessees, subject to an abatement of the fixed jumma for the resumption or abolition of the sayer: on the death of the present holders, the settlement is to be made with "the proprietors of the soil agreeably to the general Regulations."[2] On the other hand, mokurreree grants to the proprietors of the soil, made or confirmed by Government, are to be continued subject only to the like abatement of jumma.[3] Both classes are to be subject to the future orders of the Court of Directors. Mokurrereedars holding lands of which they are not the proprietors, under grants made since the accession to the Dewanny, and not sanctioned by Government, are to be dispossessed, and the settlement made with the proprietors of the soil under the general Regulations. If, however, the mokurrereedars have held for more than twelve years, they are to receive during their lives the difference between their jumma and the new jumma and sayer.[4]

Istemrardars.

Istemrardars, or those having permanent leases who have not got possession to the exclusion or without the consent of the proprietors, as the mokurrereedars last mentioned are supposed to have done, but hold of the proprietors on

---

[1] See Oolagappa Chetty *v.* Arbuthnot, 14 B. L. R., 115.

[2] Art. 15. This rule was originally made on the 16th July 1790; Harington's Analysis, Vol. II, 239 (note).

[3] Art. 16.

[4] Art. 17.

pottah or lease, are to be considered as a species of pottah talookdars, and the settlement is to be made with them.[1]

Settlement of the lands of disqualified proprietors.

The exceptions to the general order for settlement with the actual proprietors of the soil are in the case of females, minors, idiots, lunatics, or others incapable of managing their lands through natural defects or infirmities of whatever nature, as well as those deemed unfit through notorious profligacy or contumacy: provided none of these are partners with other qualified persons, in which case they or their guardians may join in electing a manager.[2] The lands of such disqualified proprietors are to be managed for their benefit by persons appointed to the trust by Government.[3] Another exception is in case the landholder is in arrear and unable to pay, in which case his land is to be let in farm or held khas for three years.[4] When there are more proprietors than one of an undivided estate, and they are not all disqualified, they must elect a surbarakar to manage the lands: the disqualified proprietors who have guardians voting through their guardians.[5] If they do not elect, the Collector is to appoint with the approbation of the Board of Revenue.[6] The majority may bind the minority as to the jumma, but dissatisfied sharers may have their shares separated at their own expense.[7]

Settlement with mortgagees and others.

When there is separate possession and management of the shares, each share is to be settled for separately with the person in possession.[8] When a mortgagee is in possession of land, he is to be settled with, the mortgagor being entitled to succeed to his engagements on regaining possession.[9] If

[1] Art. 18.
[2] Art. 19.
[3] Art. 20.
[4] Art. 21.
[5] Art. 22.
[6] Art. 23.
[7] Art. 24.
[8] Art. 25.
[9] Art. 26.

LECTURE VIII.

the proprietor of any land cannot be ascertained, the land is to be held khas, and after six months' notice let in farm for ten years, with a preference to the nearest zemindar.[1] When the property in the land is disputed, the settlement is to be with the proprietor in possession, subject to all claims upon the estate, and to the liability to transfer it to the true owner.[2] If none of the claimants has previously obtained possession, a manager is to be appointed by the claimants, and if they cannot agree the land is to be held khas.[3]

Pensions to be paid by Government.

With regard to the jumma, it is provided that the allowances of the cazees and canoongoes theretofore paid by the landholders, and any public pensions paid through them, are to be paid by the Government, and the amount added to the jumma.[4] The assessment is to exclude the sayer, but not the bazar, gunge, and haut collections in Calcutta, or those provided for by the Regulations of the 11th June 1790;[5] also to exclude all lakhiraj, whether authorized or not.[6]

Nankar, khamar, and neej-jote.

As to malikana lands in Behar, and nankar, khamar, neej-jote, and other private lands of the zemindars and talookdars in Bengal and Midnapore,—first, malikana lands held by zemindars out of possession are to be re-annexed and settled for;[7] second, nankar and the like lands are to be also re-annexed and settled for, with an option to the zemindars to retain them as before upon proof of their holding before August 1765, and subsequent uninterrupted possession.[8] The same rules apply to the consolidation of the malgoozary and private lands in

[1] Art. 27.
[2] Art. 28.
[3] Art. 29.
[4] Art. 31.
[5] Art. 32.
[6] Art. 33.
[7] Art. 34.
[8] Art. 35.

dependent talooks.[1] Chakeran lands are also to be re-annexed.[2] In case the landholder declines the settlement at the proposed jumma, his lands are to be let in farm or held khas,[3] the landholders receiving malikana,—"an allowance in consideration of their proprietary rights" at the rate of ten per cent. on the net jumma, out of which they are to provide for their families.[4]

Settlement of rent.

With regard to the distribution of the jumma among the ryots, it is provided that the zemindars, talookdars, and others assessed in the first year by Government are equally and impartially to distribute the total assessment on the several villages contained in their zemindaries, talooks, or other lands, according to the rent received from them, and to render a full record of such distribution.[5] If any village is omitted, it is to be forfeited to Government; and if wilful partiality is proved, the landholder is to be fined.[6] These provisions are not intended to prevent the landholder from getting larger rents than such apportioned assessment, nor to oblige him to render accounts of the actual assessment, but only to supply a standard for fixing the revenue in case of transfer.[7] As to talooks, the zemindars settled with are to enter into engagements with the talookdars continued under them for the same period as their own engagements, provided the talookdars will agree to such rent as the zemindars may be entitled to demand. And a full record of engagements made with the talookdars is to be delivered to the Collector.[8] With regard to the istemrardars mentioned in Article 17, who have held their land at a fixed rent for more than twelve years, they are not to be liable to any increase

[1] Art. 36.
[2] Art. 37.
[3] Art. 39.
[4] Art. 40.
[5] Art. 43.
[6] Art. 44.
[7] Art. 45.
[8] Art. 50.

LECTURE VIII.

of assessment either by the Government or the zemindar. If they have held for a less period the zemindar cannot enhance if precluded by his deed; but if the land is let in farm or held khas Government may enhance.[1] For the protection of the talookdars it is provided that the zemindar shall not demand any increase from the talookdar dependent on him, although himself subject to an increase of jumma, except upon proof to the Collector that he is entitled to demand such increase by the special custom of the district, or by the conditions of the talookdar's tenure, or by reason that the talookdar, by receiving abatement from his jumma, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.[2] If the zemindar is proved to have exacted more than he has a right to demand from the talookdar, he is to be subject to a penalty of double the amount exacted, payable to the party injured.[3]

Engagements with the under-renters.

"The zemindar is to let the remaining lands of his zemindary under the prescribed restrictions, in what manner he may think proper:" but every engagement with the under-renters must be specific as to the amount of rent and conditions of it; and all sums received beyond the amount specified are to be considered as extorted, and to be repaid with a penalty of double the amount.[4] The prescribed restrictions are:—(1) that no person contracting with a zemindar or talookdar, or employed by him in the management of the collections, shall be authorized to take charge thereof without an amilnama, or written commission signed by the zemindar or talookdar:[5] (2) the landholders are

[1] Art. 51. [2] Art. 53. [3] Art. 54. [4] Art. 55. [5] Art. 56.

to revise the abwabs in concert with the ryots, and to consolidate them with the assul, the consolidation to be complete by 1198:[1] (3) no new abwab or mathoot is to be imposed under penalty of three times the amount.[2] Where the custom prevails of varying the pottah according to the kind of crop produced,—a custom which is expected to decay,—and while the parties prefer it, the engagements shall specify the quantity of land, the species of produce, the rate of rent and its amount, the term of the lease, and a stipulation for a new lease in case a different crop is grown, and a new lease is accordingly to be executed:[3] (4) the rents, by whatever rule or custom they may be regulated, shall be specifically stated in the pottah, which in every possible case, shall contain the exact sum to be paid by the tenants;[4] when only the rate can be specified, as in cases where the rents are adjusted upon a measurement of the lands after cultivation, or on a survey of the crop, or when they are payable in kind, the rate and terms of payment and proportion of the crop to be delivered, with every condition, shall be clearly specified:[5] (5) every zemindar and talookdar shall prepare a suitable form of pottah and submit it to the Collector, who, after approval thereof, shall notify to the ryots that such pottahs may be obtained, and no other form of pottah shall be allowed:[6] (6) a ryot whose rent has been ascertained and settled is entitled to a pottah, and if refused the landholder will be fined; landholders and renters are required to prepare and tender pottahs for the adjusted rent:[7] (7) all existing leases are to hold good, unless granted by collusion

[1] Art. 57.
[2] Art. 58.
[3] Art. 59.
[4] Art. 60.
[5] Ib.
[6] Art. 61.
[7] Art. 62.

or without authority:[1] (8) no landholders or farmers shall cancel the pottahs of the khoodkasht ryots, except on proof of their being obtained by collusion; or that the rents of the last three years were below the rates of the pergunnah nirkbundy; or that they have collusively obtained deductions from their rents; or upon a general measurement of the pergunnah for the purpose of equalising and correcting the assessment:[2] (9) the landholders and renters are allowed to the end of 1198 to prepare and deliver pottahs; after that period no engagements for rents, contrary to those ordered, are to be valid; and if any claim be made by landholders, farmers or ryots, or engagements in which the assul, abwab, &c., are not consolidated, they are to be non-suited with costs:[3] (10) a putwarry shall be established for every village by the proprietor under penalty of fine; the putwarry is to record the accounts of the ryots:[4] (11) receipts for rent are to be given to the ryots under penalty of double the amount:[5] (12) if any village or district should be affected by inundation or other calamity, causing the ryots to desert, the rents of the absconding ryots shall not be demanded from those remaining;[6] this makes the collection of najay illegal: (13) the landholders and renters are to adjust the instalments of the rents payable, according to the time of reaping and selling the produce, and the Collectors are to enforce this provision:[7] (14) when security is given by the ryots and accepted by the landholders or farmers, it shall not be lawful to attach the crop, unless the security has absconded, and no good security is tendered in substitution;[8] we have met with this

[1] Art. 63.
[2] Art. 64.
[3] Art. 65.
[4] Art. 66.
[5] Art. 67.
[6] Art. 68.
[7] Art. 69.
[8] Art. 70.

provision before in the directions by the Board of Revenue of the 30th July 1790; it was afterwards rescinded by the Regulations of the 20th July 1792, Regulation VIII of 1793, s. 67, cl. 3, and Regulation XVII of 1793:—(15) the landholders are still to be responsible for the peace of their districts as heretofore,[1] but they are not to take cognizance of causes coming within the jurisdiction of the Courts of Dewanny or Foujdarry Adawlut.[2] The remaining restrictions are those set forth in the prescribed cabooleuts.[3]

The landholders.

After the conclusion of the settlement the landholders are to be at liberty to borrow money on the credit of their lands, and also to sell and otherwise dispose of their lands under certain restrictions to be thereafter established.[4] The Regulations then provide that their spirit shall be followed when their terms are not strictly applicable to the circumstances of any district;[5] and conclude with directing that, if the settlement cannot be concluded during the current year, it should be for one year only.[6] Special orders are added for the various districts. Among those relating to Bengal are the following:[7]—(1) hustaboods and measurements are prohibited:[8] (2) any occasional diminution of jumma is to be restored by a russud or progressive increase extending over not more than three years:[9] (3) the landholders are intended to pay the expenses

[1] Art. 72.
[2] Art. 73.
[3] Art. 74.
[4] Art. 75.
[5] Art. 76.
[6] Art. 77.
[7] Colebrooke's Supplement, 323.
[8] Art. 2.
[9] Art. 4.

LECTURE VIII.

incidental to the receipt of rents, but not to the collection of the revenue:[1] (4) separate allowances to the landholders' families are to cease:[2] (5) any existing zemindary charges which may be continued are to be paid by the Collectors:[3] in fixing the jumma that of the preceding year is to be the basis;[4] but when this rule is inapplicable, the landholder is to have a share equal to ten per cent. of the produce, including the produce of his nankar and other private lands.[5] This, however, is not to apply to lands paying revenue direct to Government which have been held at a fixed jumma for twelve years: such jumma is to be continued, subject to deduction for the sayer.[6]

Remedies for recovery of rent.

The above Regulations show the principles of the Decennial Settlement, the effect of which upon the proprietary rights in the land will be referred to hereafter. They were supplemented by further Regulations giving the landholders and farmers power to distrain and sell the personal property of the under-farmers, ryots, and dependent talookdars, instead of imprisoning them.[7] These Regulations were passed on the 20th July 1792. They recite that in consequence of the existing Regulations not defining the nature and extent of the coercion which landholders and farmers of land may legally exercise over their under-farmers, ryots, and dependent talookdars to enforce payment of arrears of rent or revenue, many landholders and farmers, availing themselves of former usage, have recourse to most oppressive

[1] Art. 5.
[2] Art. 6.
[3] Art. 7.
[4] Art. 1.
[5] Art. 8.
[6] Art. 9.
[7] Colebrooke's Supplement, 335.

means for realising arrears, and often use the same severities for purposes of extortion; whilst others, being in doubt, are deterred from using any compulsion, and consequently are defrauded of the arrears due. To remedy these evils without recourse to law is the object of the Regulations; which provide that zemindars, independent talookdars, and other actual proprietors of land, and farmers of land who hold their farms immediately of Government, are empowered without sending notice to the Collector, to distrain "the crops and products of the earth of every description, the grain, cattle, and all other personal property belonging to their under-renters and ryots, and the talookdars paying revenue through them, for arrears of rent or revenue, and to cause the same to be sold for the discharge of such arrears." The same powers are vested in the dependent talookdars with respect to their under-farmers and ryots; and in under-farmers, holding from actual proprietors or dependent talookdars or from Government direct, to enable them to recover arrears of rent from their ryots, under-farmers, or dependent talookdars.[1] Provision is made for the exemption of weavers and others employed in respect of the Company's investments, and of the tools of tradesmen and labourers.[2] Ploughs and implements of husbandry, cattle actually trained to the plough, and seed grain are exempt if any other property is available.[3] Default shall not be considered to have been committed until after demand both from the person liable and his security, if forthcoming.[4] Severe penalties are prescribed for unlawful and oppressive distraint. On the other hand, resistance by the defaulter is to be punished

[1] Art. 1.
[2] Art. 2.
[3] Art. 3.
[4] Art. 4.

LECTURE VIII.

with imprisonment.[1] And with respect to imprisonment for arrears it is provided that any landholder or farmer who shall confine any ryot, &c., or inflict corporal punishment for arrears, shall lose the arrears, and be liable to prosecution for assault or false imprisonment.[2] These Regulations first established the process of distress and sale as the primary mode of recovering arrears: hitherto the method usually resorted to had been imprisonment of the defaulter.

The Permanent Settlement.

The Decennial Settlement was completed or in progress in the greater part of Bengal before August 1791.[3] The Permanent or Perpetual Settlement confirmed the Decennial Settlement in perpetuity. I have already quoted the orders of the Court of Directors, contained in their letter of the 19th September 1792, approving of this step, and the proclamation of the permanency of the settlement was made on the 22nd March 1793. One of the results of this settlement was a present increase of revenue to a larger amount than had been expected.[4]

Introduction of a general code of law.

The proclamation which announced the permanency of the settlement was afterwards embodied in Regulation I of 1793, and as part of the legislation which consolidated the Perpetual Settlement I shall refer to it. It will be observed that up to 1793 no general code of law had been enacted for India. We have seen that rules and orders were passed from time to time, but no systematic code was framed.[5] In 1793, however, the present Bengal Regulations were

[1] Art. 18.
[2] Art. 27.
[3] Harington's Analysis, Vol. II, 258.
[4] Ib.
[5] Ib., Vol. I, 1.

commenced by forty-eight Regulations all passed on the same day. Amongst these was one containing some rules for the construction of Regulations. This Regulation (XLI of 1793) provides, in conformity with English maxims, (1) that one part of a Regulation is to be construed by another, so that the whole may stand;[1] (2) that if a Regulation differs from a former Regulation the new Regulation virtually repeals the old one as far as such difference extends, provided the new Regulation is couched in negative terms, or by its matter necessarily implies a negative;[2] and (3) that the rescission of a Regulation which rescinds another revives the original Regulation.[3]

Proclamation of the Permanent Settlement.

Regulation I of 1793 consists of the proclamation of Lord Cornwallis of the 22nd March 1793, and is made law from that date. That proclamation is addressed to the "zemindars, independent talookdars, and other actual proprietors of land paying revenue to Government in the provinces of Bengal, Behar, and Orissa." It recites that in the original Regulations for the Decennial Settlement it was notified to the proprietors of land, with or on behalf of whom a settlement might be concluded, that the jumma would remain fixed for ever after the expiration of the term of ten years if the Directors approved.[4] The Governor-General in Council then notifies to "all zemindars, independent talookdars, and other actual proprietors of land paying revenue to Government" that he has been authorized by the Directors to declare the jumma which has been or may be assessed upon their lands under the Decennial Settlement fixed for ever,[5] and declares accordingly that "they and their heirs

[1] S. 19.
[2] S. 20.
[3] S. 21.
[4] S. 2.
[5] S. 3.

LECTURE VIII.

and lawful successors will be allowed to hold their estates at such assessment for ever."[1] Those whose lands are held khas in consequence of their refusing to pay the assessment required of them will be restored to the management of their lands upon their agreeing to the assessment provided for by the Regulations, which will remain fixed for ever. Those whose lands have been let in farm will be restored on the same terms on the expiration of the period for which the lands have been farmed.[2] In case of the proprietary right in lands that are or may become the property of Government being transferred to individuals, such individuals, their heirs, and lawful successors shall hold for ever at the assessment at which the land may be transferred.[3] The Regulation then refers to the former system of increasing the revenue from time to time, and states that with a view to such increase, frequent investigations as to the produce were made, and the proprietors were excluded and the lands let in farm, or officers of the Government were appointed to collect the assessment from the ryots. These usages and measures being considered detrimental to the prosperity of the country, the assessment has been made fixed and irrevocable, and will not be liable to alteration by future administrations. The Governor-General in Council consequently exhorts the proprietors of land to 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." They ought now, he urges, more than ever, punctually to pay the revenue, and to conduct themselves with good faith and moderation towards their ryots and dependent talookdars.

[1] S. 4. [2] S. 5. [3] S. 6.

In future no claims or applications for suspensions or remissions on account of drought, inundation, or other calamity of season will be attended to; but in case of failure to pay the assessment, a sale of the whole or a sufficient portion of the defaulter's lands "will positively and invariably take place." The proclamation, in order to prevent misconstruction, then declares that—(1) it being the duty of the ruling power to protect all classes of people, particularly the helpless, the Governor-General in Council reserves the right to make such Regulations as may be necessary for the protection and welfare of the dependent talookdars, ryots, and other cultivators of the soil: (2) since the proprietors of land were compensated for the loss of revenue in consequence of the abolition of the sayer, the right to re-establish it is reserved to Government, without giving the landholders a right to claim any remission, or any share in the proceeds: (3) the right to assess lands alienated and paying no public revenue which have been or may be proved to be held under illegal or invalid titles, and the amount of such assessment is to belong to Government alone: (4) the jumma now declared fixed is entirely unconnected with, and exclusive of, any allowances made in the adjustment of their jumma; as well as of the produce of any lands which they may have been permitted to appropriate for keeping up the police establishments. The Governor-General in Council reserves the right to resume such allowances or produce, which will, however, when resumed, be specially appropriated to the purpose of keeping up the police, and will not be collected as part of the jumma, but separately: (5) the lands of proprietors disqualified under the Regulations of the 15th July 1791 are not to be liable to sale for arrears under the Regulations for the Decennial

LECTURE VIII.

Settlement: provided such arrears accrue during the time they are dispossessed under the Regulations of the 15th July 1791. When any such landholders are permitted to retain or resume the management, their lands will be answerable for the revenue from the time they get the management.[1] The proclamation notifies, in order to remove any doubt, that zemindars, independent talookdars, and other actual proprietors of land are privileged to transfer their proprietary rights by sale, gift, or otherwise, as they think fit, according to law, without the sanction of the Government.[2] The principles upon which the jumma is to be assessed or apportioned in case of a transfer in lots or of joint property being divided are laid down.[3] All private transfers and divisions must be notified to the Collector in order that the jumma may be apportioned, and the shares with their jumma registered, and separate engagements executed by the proprietors, who will thenceforth be considered "as actual proprietors of land." If such notification is not made, the whole estate will be held liable as if no transfer or division had taken place. If the lands are disposed of as a dependent talook, the dependent talookdar's jumma will not be registered in the Government records; nor will the rights or claims of Government against such lands, in common with the remainder of the estate, for the whole revenue be affected by such transfer. The principle for apportioning or assessing the jumma upon divided estates is that, on sale of the whole estate in lots for arrears, the assessment on the lot will be to its produce as the whole revenue is to the whole produce, the latter being ascertained as prescribed. This is substantially the rule laid

[1] S. 7. [2] S. 8. [3] S. 9.

down in the other cases of a sale of a portion for arrears in one lot, of a private transfer in portions, and of a division of lands held jointly.[1]

Assessment on lands farmed or held khas when sold or divided.

With regard to lands held khas or let in farm, when sold publicly for arrears, or sold privately, or divided, it is provided—(1) that lands held khas on account of the proprietors not agreeing to the assessment proposed, and which are sold publicly in pursuance of a decree, shall be disposed of at such assessment as the Governor-General in Council may think equitable. If the lands at the time of sale are held in farm and are put up in lots, the purchaser shall hold under the conditions that he shall receive during the remainder of the farming lease whatever the proprietor would have been entitled to, and shall engage to pay such assessment at the end of the lease as the Government may think equitable. Such sum to be so received by the purchaser, and the jumma to be paid by him after the expiration of the lease, shall be specified at the time of sale, and the jumma so fixed shall be perpetual: (2) if the lands are sold privately, the purchaser shall be entitled to receive from Government if the lands were held khas, or from the farmer if let in farm, the malikana to which the proprietor was entitled, and the purchaser will stand in the same position as under section 5: (3) in the case of a division of joint lands, held khas or let in farm, the proprietors will stand in the same position as under section 5.[2]

Further provisions.

This Regulation was supplemented by the re-enactment, in Regulation VIII of 1793, of the Regulations for the

[1] Ss. 10 & 11 are repealed by Act IV of 1846, s. 1.

[2] S. 11.

LECTURE VIII.

Decennial Settlement as part of the permanent law. This Regulation also adapted the new system to the transfer of jurisdiction in revenue matters to the Civil Courts, which was effected by Regulations II and III of 1793. In re-enacting these Regulations, the term "revenue" is substituted for "rent;" and from this time the terms are generally used with different meanings; "revenue" being used to designate the sums paid by the zemindars, &c., to Government, and "rent" the sums paid by the ryots, &c., to the zemindars. The change in the term serves to mark the more absolute right conferred upon the zemindars by the permanency of the settlement, which left them less in the position of tenants paying a rent which could be raised by the landlord, and more in the position of proprietors paying revenue for their property. The following amendments in the Regulations deserve notice:—(1) the penalties against exaction and oppression by the zemindar with respect to the talookdars in Article 5 of the Regulation of 1791 are not re-enacted. The penalty for exaction or oppression was the separation of the talook from the zemindary; this was allowed to drop.[1] (2) With respect to talookdars, it was further enacted in the new Regulations that those whose talooks were held under writings or sunnuds from the zemindars or other actual proprietors, which did not expressly transfer the property in the soil, but only entitled the talookdar to possession so long as he paid the rent and performed the conditions therein, were considered as leaseholders only, not actual proprietors of the soil, and consequently not entitled to be rendered independent of the zemindar or other actual proprietor of land, from whom

[1] S. 6.

they derived their tenures, provided they then paid the rent assessed upon their talooks to him.[1] (3) With regard to malikana lands in Behar, after referring to the Regulations of the 8th August 1788 as invalidating grants of such lands, the Regulation excepts from the provision for resumption lands of this class held under grants made or confirmed by the Government for the time being, and which had been sold or mortgaged and given in possession to the mortgagee.[2] (4) The malikana payable by the farmers is to be paid monthly and to be recoverable like arrears of revenue.[3] (5) The provisions for the distribution by the zemindars of the assessment upon the villages, and for a full record thereof, were not re-enacted.[4] (6) The zemindars are not required to give the ryots notice that they could get the authorized pottahs.[5] (7) The prohibition against attaching the crops of ryots who had given security is not re-enacted, and the landholders were not to be responsible for the peace of their districts. These matters are provided for by Regulations XVII and XXII of 1793.[6] (8) The restrictions on the actual proprietors and farmers holding immediately of Government, as set forth in their cabooleuts, and not rescinded, are still in force.[7] The principal stipulations then inserted in the cabooleuts were—(i) that no remission was to be made for calamities ; (ii) no part of the lands was to be appropriated to religious or charitable purposes

[1] Reg. VIII of 1793, s. 7.

[2] S. 38.

[3] Ss. 45 to 47.

[4] Ss. 43 to 45, Regulations of 23rd November, 1791. Harington's Analysis, Vol. II, 256.

[5] S. 58.

[6] S. 67.

[7] Ib.

LECTURE VIII.

so as to be exempt from revenue, and no lands actually exempt were to be assessed without sanction; and if assessed with such sanction, additional revenue was to be paid for them; (iii) embankments were to be kept up by the zemindar, and information given of escheats, under penalties; (iv) no exactions or oppressive practices were to be allowed towards the ryots, who were not on any account to be dispossessed whilst their tenure subsisted and they performed the conditions of it.[1] With regard to farmers when in arrear, the lease might be revoked or sold. The farmer was not to transfer without consent of Government, nor to sell or destroy any trees, or otherwise injure the rights and interests of the proprietor of the land; and he was to surrender the land on the expiration of his lease in as good a condition as he received it; and when the farmer died during the subsistence of the lease, its continuance was optional.[2] The changes made in the Decennial Settlement Regulations are mainly in favour of the zemindars.

The remainder of the legislation which formed part of the Permanent Settlement will be noticed under separate heads. One of these Regulations may be here noticed—Regulation XLVIII of 1793,—which provides for the formation of a Quinquennial Register of revenue-paying estates in Bengal, Behar, and Orissa. This provides for a full record of present and future proprietors, the amount of jumma, &c.; but, like other Regulations of the same kind, seems to have been very imperfectly carried out, and was partially repealed by Regulation VIII of 1800, sections 11, 12, and 15. I may also again call attention in passing to the provisions of Regulation I of 1793, for the division of joint estates, as

[1] Harington's Analysis, Vol. II, 251 to 255.

[2] Ib., 255.

the first regular provisions on the subject.[1] These were supplemented by Regulation XXV of 1793, which provides that the shares should be rendered as compact as possible; that the proprietors should allow access to their accounts of the gross collections for the purpose of apportioning the jumma; and that estates then held separately, but which originally formed part of one zemindary, talook, or chowdrai, should be allowed to be reunited and held jointly.[2] It also provides for the separation of one or more shares from the rest of a joint estate.[3]

Object and effect of the Permanent Settlement.

Such of the effects of the Permanent Settlement as come within the scope of our present subject will be referred to when I come to treat of the separate heads under which I propose to bring down the account of the law to the present time; but a few remarks as to the object of the settlement, and its effect upon proprietary rights, may be conveniently introduced here. In the first place we may remark that the introduction of a more formal system of law left little room for the further development of customary rights: substantially the period during which rights depended mainly upon custom was closed, and the rights of the parties were thenceforth fixed by positive law. And the Permanent Settlement, while giving the zemindar a perpetual right, was to a certain extent adverse to the existence of such rights in any other person. We have seen that the provisions as to mokurreree and istemrari tenures tended in this direction.[4]

[1] See the evidence of Mr. Holt Mackenzie before the Select Committee of the House of Commons (1832), 2648.

[2] S. 1.

[3] S. 2. This Regulation was rescinded by Reg. XIX of 1814, s. 2.

[4] Baboo Dhunput Singh *v.* Goorman Singh, 11 Moore's I. A., 433, at p. 464.

LECTURE VIII.

Rights of the zemindars.

As to the rights of the zemindars after the Permanent Settlement, I have already ventured to suggest that it was not intended to alter their position except by the recognition of the zemindars as entitled to be settled with, and by the relinquishment by the State of its right to alter the assessment. But an opinion long prevailed that the Government had given the zemindar the property in the soil, and had rendered the ryot absolutely dependent upon him, except in so far as the ryot was protected by express legislation.[1] On the other hand, some considered that the Permanent Settlement was not intended to convey such property in the soil or to interfere with subordinate rights.[2] And in the Great Rent Case, which was decided in 1865, the majority of the Judges appear to have held the view that the right of the zemindar was not an absolute right to the soil as against the subordinate holders; but that in that direction the rights of the zemindar were limited by the rights of those subordinate holders. Mr. Justice Trevor says that the object of the Permanent Settlement was "to fix the Government demand, to fix the demand which the zemindar should make on his tenants, and to guarantee to the zemindar the profits arising from his bringing waste lands into cultivation, and inducing the ryots to cultivate the more valuable articles of produce;"[3] and further on he remarks—"that though recognised as actual proprietors of the soil, that is, owners of their estates, still zemindars

[1] Evidence of Mr. Sullivan before the Select Committee of the House of Commons (1832), 100, 101.

[2] Evidence of Mr. Fortescue before the same, 2290, 2303, 2316. See Madras Regulation IV of 1822.

[3] The Great Rent Case, B. L. R., Supp. Vol., 202, at p. 213. See Rajah Lelanund Singh Bahadoor *v.* The Bengal Government, 6 Moore's I. A., 114.

and others entitled to a settlement were not recognized as being possessed of an absolute estate in their several zemindaries; that there are other parties below them with rights and interests in the land requiring protection, just in the same way as the Government above them was declared to have a right and interest in it which it took care to protect by law; that the zemindar enjoys his estate subject to, and limited by, those rights and interests; and that the notion of an absolute estate in land is as alien from the Regulation law as it is from the old Hindoo and Mahomedan law of the country."[1]

Mr. Justice Macpherson also remarks:—"As regards the legislation from 1793 down to Act X, it, in my opinion, shows clearly that the zemindar never was, and never was intended to be, the absolute proprietor of the soil. He never was proprietor in the English sense of the term, or in the sense that he could do with it as he pleased; for certain classes of ryots have at all times had rights quite inconsistent with absolute ownership, having rights which entitled them to remain in occupation so long as they paid their rents."[2] And again—"it appears to me then from these various enactments, and independently altogether of any history save such as they themselves relate, that zemindars never at any time were the absolute proprietors of their estates, but that they at all times have held subject to the rights of various classes of ryots whom the zemindar had no power to eject so long as the proper rents were paid by them. The rent payable by some of these ryots was fixed and unalterable. The rent

[1] The Great Rent Case, B. L. R., Supp. Vol., 214.
[2] Ib., 230.

LECTURE VIII.

payable by others was subject to increase under certain conditions. Rents prior to the settlement were fixed according to the produce of the land, so much of each beegah going to the Government as landlord, and so much to the ryot. The same principle prevailed after the settlement, save that the position of the zemindar as landholder between the Government and the actual cultivator was distinctly recognized, and he was declared to be the proprietor of the land in a certain restricted sense."[1] Mr. Justice Seton-Karr remarks—"Neither by Hindoo, by Mahomedan, or by Regulation law was any absolute right of property in land vested in the zemindar to the exclusion of all other rights; nor was any absolute estate, as we understand the same in England, created in favour of that class of persons. The ryot has by custom, as well as by law, what we may term a beneficial interest in the soil." And again—"The Decennial Settlement, while enhancing the status and fixing the rights of the zemindars, did not intend to alter, and did not alter the common law of the country with regard to ryoty tenures: khudkasht ryots, whose tenures commenced at or subsequently to the Decennial Settlement, were still entitled to hold such tenures either at the pergunnah rates, or, what is the same thing, at rates payable for lands of a similar description in the neighbourhood."[2] Mr. Justice Campbell treats it as "clearly established that, by the terms of the Permanent Settlement, the zemindars were not made absolute and sole owners of the soil, but that there were only transferred to them all the rights of Government, *viz.*, the right to a certain

[1] The Great Rent Case, B. L. R., Supp. Vol., 234.
[2] Ib., 278.

proportion of the produce of every beegah held by the ryots, together with the right to profit by future increase of cultivation, and the cultivation of more valuable articles of produce; it being further established that the khud-kasht or resident ryots retained a right of occupancy in the soil subject only to the right of the zemindars to the certain proportion of the produce represented by the per-gunnah or district rates."[1] Mr. Justice Norman remarks—"These provisions appear to me to show that although the zemindars were by the Regulations constituted owners of the land, such ownership was not absolute. The Regulations which created a right of property in the zemindars do not recognize any absolute right in them to fix the rents of the land at their own discretion."[2] Sir Barnes Peacock did not agree with the actual decision in this case, and seems to consider a greater right to belong to the zemindar. And a recent writer already referred to appears to consider that the zemindars have acquired larger rights than I have attributed to them. He says[3]—"A very important change was brought about by the legislation of 1793. The legislature then, for the first time, declared that the property in the soil was vested in the zemindars, and that they might alien or burden that property at their pleasure without the previously obtained sanction of Government; and the moment this declaration was made, obviously all subordinate tenures and holdings of whatever sort became also personal proprietary rights in the land of greater or lesser degree, possessing each within itself also in greater or lesser degree powers of multiplication. When

[1] The Great Rent Case, B. L. R., Supp. Vol., 251.

[2] Ib., 303.

[3] "Rustic Bengal" in the *Calcutta Review* for 1874.

LECTURE VIII.

the zemindar's right had become in a certain sense an absolute right to the soil—not exclusive, because the legislature at the same time recognized rights on the side of the ryot—with complete powers of alienation, the rights of all subordinate holders were necessarily derivative therefrom; and the ascertainment, definition, and enforcement of them immediately fell within the province of the public courts of justice. Sir H. Maine writes:[1]—'If I had to state what for the moment is the greatest change which has come over the people of India, and the change which has added most seriously to the difficulty of governing them, I should say it was the growth on all sides of the sense of individual legal rights, of a right not vested in the total group, but in a particular member of it aggrieved, who has become conscious that he may call in the arm of the State to force his neighbours to obey the ascertained rule.' This change was deliberately and designedly made by the legislature, as regards the zemindar; but no one at the time perceived, and few persons since have recognized, that it also involved a like change with regard to every one, from zemindar to ryot, who had practically in any degree a beneficial interest in the land system."

And the cases now seem to have decided that a settlement with a person under the Bengal system does not establish in the person settled with a right to the land if he did not already possess it; but that a settlement is an arrangememt made by that person with the Government with respect to the revenue only.[2] This indeed appears

[1] Village Communities, 73.

[2] Juggutmohinee Dossee v. Sokheemonee Dossee, 17 W. R., 41, at p. 44; 10 B. L. R., 19, at p. 33, s. c.; 14 Moore's I. A., 289, at p. 305, s. c.

from the Regulations themselves, which while directing, in the Regulations for the Decennial Settlement,[1] that the settlement should be with the "actual proprietors," recognises that the actual possessor, and the person therefore actually settled with, may not be the proprietor, and that consequently the fact of settlement with a person under the Regulations does not conclude the question of proprietorship as between that person and the true proprietor.[2] Thus, both as regards the rights of the ryots, and as regards the claims of other persons to be settled with, the rights of the actual possessor are subject to question, and are not concluded or rendered absolute by the fact of settlement. Now the Regulations for the Decennial Settlement prescribe that the settlement is to be made "with the actual proprietors of the soil of whatever denomination, whether zemindars, talookdars, or chowdries;" and probably this enumeration may be considered as recognizing that zemindars, talookdars, and chowdries are "actual proprietors of the soil;" and the preamble of Regulation II of 1793 recites that "the property in the soil has been declared to be vested in the landholders, which was never before formally declared." This declaration is stated to have been made as a part of the provisions for permanency of holding; the revenue being also fixed with the same view. But these expressions do not define the extent of the rights of the landholders or zemindars; and as we have already come to the conclusion that in a certain sense and for the purposes of settlement, which was the matter then in hand, they had acquired certain restricted proprietary rights in the revenue which

[1] Regns. of 23rd Nov. 1791, cl. 3, and Regn. VIII of 1793, s. 4.

[2] Ib., cl. 28, and Ib., ss. 29, 30.

LECTURE VIII.

might fairly be considered rights in the produce of the soil and in the soil itself, it seems unnecessary to infer that any greater right was intended to be given them by a mere enumeration and description of the classes to be settled with and by the recital of such settlement. Moreover we have seen that, for the reasons dwelt upon in the Great Rent Case, the proprietary right contemplated was not, what possibly the words used might by themselves be thought *primâ facie* to imply, an absolute exclusive right in fee simple: for the ryots are recognized as having proprietary rights as well, that is to say, rights which they did not derive from the zemindars. It is remarked by Sir Henry Maine that the distinction between proprietary rights and rights which are not proprietary is that the latter have their origin in a contract of some kind with the holder of the former. We have seen that Lord Cornwallis was under the impression that the rights of the ryots might be treated as derived in this way: but the Regulations themselves save the rights of the ryots as they actually existed; and it is now the opinion of most authorities on the subject that the actual rights of the ryots were proprietary rights.[1] They were not derived from or carved out of an original theoretically complete proprietary right in the zemindar, in the way that all interests in land in England are theoretically derived from or carved out of the fee simple. As therefore the term "actual proprietors" does not mean what might be supposed *primâ facie*, but something less, and considering the way in which it is used in a mere enumeration of the persons to be settled with, and unaccompanied

[1] In a work by Mr. Carnegy (London: Trübner & Co., 1875) on "Land Tenures in Upper India," the rights of the ryots are, however, altogether denied.

by any declaration in the Regulations or proceedings relative to the Decennial Settlement of an intention to confer any proprietary right upon the zemindars which they did not otherwise possess, save the exemption from alterations in the assessment, it seems to me, with the utmost submission to the authorities which have been referred to, that there is no necessity for enlarging the meaning of the term beyond the actual proprietary right which did exist, especially when, as we have seen, the terms used do not mean that every person actually settled with is an actual proprietor in any sense except that of being actual possessor. It is further to be observed that in the proclamation of the Permanent Settlement, at a time when the rights of the "actual proprietors" were put as high as they could be put, the language used is somewhat different. The enumeration omits chowdries and inverts the order of the sentence, which runs "all zemindars, independent talookdars, and other actual proprietors;" thus abstaining from any definition of the rights of the zemindars, &c., and reducing, according to the ordinary rules of construction, the other "actual proprietors" to persons in a similar position to that of the zemindars, whatever that was.[1]

The zemindars not made absolute proprietors.

The result seems to me to be that even if the zemindars were thought to be absolute proprietors, they are not declared to be so, but the contrary; and that the term "actual proprietors of the soil" does not mean absolute proprietors of the soil as against the ryots; and that consequently, as the Government do not declare any intention of giving up to the zemindars anything but the right to alter the assessment, there is nothing to show that the terms used are

[1] See Oolagappa Chetty *v.* Arbuthnot, 14 B. L. R., 115.

LECTURE VIII.

meant to render the zemindars absolute proprietors as regards the Government, except in the matter of permanency of revenue. They were to take the Government share of the produce as their own, yielding a fixed assessment to the Government in exchange; but, as I venture to submit, no other alteration was made in their position by the Permanent Settlement. Of course a great practical change was made; because the rights of the zemindars were recognized and secured, while those of the ryots were left to take care of themselves: moreover, the zemindar having acquired the Government right in the revenue in perpetuity, was in an advantageous position for absorbing all other rights. Perhaps the questions now discussed may be long before they acquire any practical importance. I have pointed out that for a long time land had practically no commercial value in India: the value which it has now acquired has been due, as Sir Henry Maine observes, to "the peace which the British have kept, and the moderation of their fiscal demands,"[1] and, it may perhaps be added, to the ideas of competition which have been introduced, mainly from the West. And by the time that the soil itself acquires a value distinct from the right to occupy and cultivate it, long user and prescription may have confirmed the right to it in some one or more of the parties. It is not necessary to pursue the consideration of that subject, but it seems essential to endeavour to ascertain what was the real effect of the Permanent Settlement.

The aurungs of Beerbhoom.

In illustration of the view I have taken, I may refer to a case which was decided in 1811 with reference to certain

[1] Village Communities, 180.

aurungs, or iron manufactories, in Beerbhoom. The suit was one to recover the possession of those manufactories, and also to recover the proprietary dues levied on the iron ores there manufactured. It appeared on the first hearing that the aurungs were situated in pergunnah Mullarpore in the zemindary of Beerbhoom; that the sums derived by the former zemindar of Beerbhoom from the iron ore had always been collected separately, and kept distinct from the collections for the land, and formed a distinct branch of the zemindar's revenue under the name of the *loha mehal;* on account of which he had also paid a separate jumma, the accounts of this jumma being kept distinct in the Collector's books. The zemindary of Beerbhoom came afterwards under the management of Government, and the loha mehal was then farmed separately. The late zemindar had sold to the defendant the zemindary, specifying in the instrument the mehals sold and the rights conveyed, but not mentioning the loha mehal; and the Government had conveyed the loha mehal to the plaintiff at a specified jumma. The question was decided in the first instance in favour of the plaintiff. A further enquiry was then directed as to the nature of the plaintiff's rights, when it appeared that the ore was purchased by dealers from the persons who dug or collected it, but it did not appear who those persons were. The ore was then sold to the manufacturers, who paid certain dues at the aurungs on the quantity manufactured. Dues were also levied on the ore when dug, and these dues were paid to the holder of the loha mehal; and the zemindar as such had no right to interfere with the working or manufacture. The Court, upon the whole of the facts, declared the plaintiff entitled

LECTURE VIII.

to the exclusive right to receive the dues paid at the aurungs as well as on the ore dug; as also to require the ore to be manufactured at his aurungs. It was further declared that the defendants were not entitled to establish aurungs or to interfere with the digging or manufacture of the ore; but, on the other hand, that the plaintiff could not establish new aurungs without the license of the possessor of the land: but that he might open new mines, making full compensation for the injury to the surface. It was further declared that these rights could only be exercised in the customary way.[1] This case shows that in practice the right to the soil itself is found separated from the right to the cultivation. The separation in this case does not seem to have originated with the zemindar, but to have been all along insisted upon by the Government: and the Permanent Settlement does not seem to have been considered to entitle the zemindar to the minerals as part of the soil for which he was settled with as actual proprietor. It is true the settlement for the minerals had been made with the zemindar, the convenience of such a course being obvious; but the separate assessment and separate conveyance of the loha mehal were considered sufficient to show that the loha mehal was held in a different right from the zemindary.

Extension of cultivation.

The Permanent Settlement led to a great extension of cultivation;[2] the waste which is said to have been one-third or one-half being much reduced: the cultivation of waste land was one of the objects of the Settlement.[3]

---

[1] Gooroopershad Bose *v.* Bisnoochurn Heyra, 1 Sel. Rep., 337.

[2] Robinson's Land Revenue, p. 29.

[3] Rajah Lelanund Sing Bahadoor *v.* The Bengal Government, 6 Moore's I. A., 114.

LECTURE IX.

CHANGES IN THE POSITION OF THE ZEMINDAR, INTERMEDIATE TENURE-HOLDER AND RYOT.

The zemindars freed from Government interference—Changes in the zemindar's position—The sayer collections taken away—Regulation IX of 1825, s. 9—Resumption—Remission of revenue—Accounts—Contumacy—Preserving the peace—Exactions and oppression—Cesses—Proportion taken by the State—Disqualified proprietors—Julkur, bunkur, phulkur—General effect of the Permanent Settlement upon the zemindar's position—Position of the zemindar's tenants—Pottahs—Cabooleuts—Dependent talookdars—Separation of independent talooks—Assessment of talooks excluded from the Permanent Settlement—Enhancement—Enhancement by auction-purchasers—Putteedars—Intermediate permanent tenures—Khoodkasht ryots—Mokurreree tenures—Istemrari and mouroosee tenures—Statutory mokurreree tenures of ryots—Mokurreree intermediate tenures—Mokurreree istemrari—Such tenures proved by long possession—Right of occupancy—Acquisition of the right.

The zemindars freed from Government interference.

WE have seen that the policy of the Permanent Settlement was to secure to the zemindars and other proprietors settled with the enjoyment and free disposition of their holdings under certain restrictions. The interference of Government with the zemindars was reduced as much as possible, and on the other hand the State resumed the functions which it had hitherto performed through the zemindar, with the exception of those functions which were originally performed by the zemindar as an officer of the State in connexion with the assessment and realisation of the revenue paid by the cultivators. These were considered, as no doubt they had to a great extent come to be, part of the proprietary right of the zemindar. He was therefore permitted to assess the under-tenants, as we may now call them, within his zemindary without interference by the Government in its executive capacity. Even the record of

LECTURE IX.

such assessments, which was required by the Regulations of the 23rd November 1791[1] to be furnished by the zemindars, was dispensed with; the Regulations for the Permanent Settlement, although re-enacting the Decennial Settlement rules, having omitted this provision.[2] In fact the ancient system of minute scrutiny and supervision was almost entirely abandoned, in the expectation that the zemindar, being free from Government interference, would look to the improvement of his zemindary as a source of profit rather than to exactions from the ryots. The abandonment of the old system was not however without its disadvantages; and in particular it was no easy matter to determine questions as to the resumption of alienated revenue, or the compensation to be awarded for the abolition of the sayer. Other questions which would have presented equal difficulties, such as allowances for bad seasons, floods, and other calamities, were settled by the abolition of such remissions.[3]

Changes in the zemindar's position.

I shall first notice some of the changes made up to this time in the zemindar's position. One of the most important of these was the prohibition against collecting either the bazee jumma or the sayer.[4] The bazee jumma thus abolished was supposed at the time to consist merely of fines and forfeitures, but it was afterwards found that it included many taxes of an unexceptionable nature.[5] The sayer chelunta was first abolished,[6] and the customs generally put upon a different footing, the collection being still

[1] Arts. 43, 44.
[2] Reg. VIII of 1793.
[3] See Harington's Analysis, Vol. II, 74 to 79, 80 to 82.
[4] Ib., 19, 76.
[5] Ib., 77.
[6] Ib., 77, 226 to 232.

The sayer collections taken away.

left with the zemindars.[1] But by the Regulations of the 11th June 1790 the right of the zemindar to collect the sayer was taken away, compensation being given for the loss of the right to collect these duties.[2] The revenue derived from these collections was consequently excluded in assessing the jumma at the time of the Decennial and Permanent Settlements.[3] The Regulations upon this subject, with the practical rules for estimating and paying the compensation to be given, were afterwards collected in Regulation XXVII of 1793. This Regulation recites that the imposition and collection of internal duties being the immemorial privilege of Government, it had consequently been a well known law that no one could establish a gunge, haut or bazar without the authority of Government. This privilege had however been exercised by the landholders under certain restrictions: but those restrictions had proved insufficient to prevent abuses, and the Regulations of the 11th June 1790 were consequently passed. The consequences of this measure were expected to be the abolition of many vexatious duties on exports and imports, and the suppression of many petty monopolies and exclusive privileges which had been secretly continued to the great prejudice of the lower orders. It was also hoped that benefit to trade and ease to the inhabitants would result therefrom. A further but minor object was to give an opportunity of augmenting the revenue hereafter. It was then recited, as in the previous Regulations, that what was really rent for ground or buildings was not intended to be included in the resumption of sayer; nor

[1] Colebrooke's Supplement, 286.

[2] Ib.

[3] Regulations of 23rd November, 1791, art. 32. Colebrooke's Supplement, 308. Regulation I, 1793, s. 8, cl. 2.

LECTURE IX.

phulkur, bunkur, and juikur. With regard to liability and compensation, it was enacted (1) that collection of the sayer without the sanction of Government being illegal, all such collections since the acquisition of the Dewanny should be accounted for: (2) that no compensation should be granted with respect to collections contrary to any prohibitory order of Government: but (3) the consideration of the case of those reduced to distress thereby was reserved: (4) holders of lakhiraj land, who had been authorised to collect duties on gunjes, bazars, and hauts on their lands, were to be entitled to compensation equal to the annual profit derived therefrom: and (5) as to malgoozary landholders they were to get one-tenth of the net collections as compensation. It is further stated that the Government had found the collection of sayer so impolitic that it had been altogether abolished. This Regulation was repealed by Act XXIX of 1871 as having become obsolete.

Reg. IX of 1825, s. 9.

It appears that these Regulations prohibiting the collection of sayer were supposed by some to forbid the collection of certain items of sewaee[1] levied by the malgoozars and others for local purposes. This misconception was removed by Regulation IX of 1825, section 9, which authorizes the collection of such imposts, when sanctioned by the authorities, and not being taxes on the transport, export or import of goods or merchandise, nor specifically prohibited. The extent to which such cesses could still be lawfully levied will be presently noticed.

Resumption.

We have seen that the zemindar's nankar, khamar, and neej-jote lands were resumed and assessed, unless held from before the accession to the Dewanny;[2] and that the

[1] Land Tenure by a Civilian, 70.

[2] Regulations of 23rd November 1791, art. 35.

malikana lands in Behar were likewise resumed, a percentage being allowed instead.[1] As to waste lands, such as were included in the zemindary, when settled for were not liable to further assessment upon being brought into cultivation,[2] one of the main objects of the Permanent Settlement being to encourage the cultivation of the waste, which was said to extend over one-third or one-half of the country.[3] We have also seen that remissions of revenue were by Regulation I of 1793, section 7, no longer to be allowed; and by Regulation II of 1793, sections 38 and 42, although the Board of Revenue might grant a temporary suspension of the demand of revenue, they could not grant remissions without the sanction of the Governor-General in Council; the defaulter however was not to be imprisoned if his default was occasioned by drought, inundation, or other calamities of season, or any cause not originating in the neglect, mismanagement or misconduct of the proprietor or farmer.[4]

Remission of revenue.

The zemindar was still bound to render accounts in some cases, as in case of default; and putwarries were to be appointed to keep such accounts where such officers were not already existing.[5] A farmer or proprietor not attending with such accounts, when required by law, might be fined,

Accounts.

[1] Regulations of 23rd November 1791, arts. 34, 40.

[2] Regulation XXIII of 1817. Regulation II of 1819, s. 31, cl. 1.

[3] Rajah Lelanund Sing Bahadoor *v.* Government of Bengal, 6 Moore's I. A., 114.

[4] Regulation XIV of 1793, s. 8.

[5] Regulation VIII of 1793, s. 62 (repealed by Regulation XII of 1817, s. 2). Regulation VII of 1799, s. 23, cl. 4. Regulation I of 1819, s. 4, cl. 2. Regulation IX of 1833, ss. 12, 14. As to the nature of zemindary accounts, see Smyth's Zemindary Accounts, and Harington's Analysis, Vol. II, 70 to 73, and Whinfield's Landlord and Tenant, 295, 296.

LECTURE IX.

and the fine levied in the same way as an arrear of revenue:[1] and while in default in not depositing such accounts, he was precluded from ousting his ryots or tenants for non-performance of the conditions of their tenure, or on any other pretext; as well as from distraining or suing for arrears, or for the breach of any agreement.[2] This last provision however was repealed as to Bengal by section 1 of Act X of 1859.

Contumacy.

Stringent provisions were also enacted in case of contumacy or resistance to process by the zemindar. We have seen that the lands of zemindars might be confiscated, and farmers might be imprisoned for such resistance.[3] Similar provisions were contained in Regulation IV of 1793, sections 2, 22 and 24, in Regulation V of 1793 (since repealed by Act X of 1861), and in Regulation VI of 1793. The forfeited estate might be conferred on the heirs of the ejected zemindar, or sold at a public sale. The Governor-General in Council might however commute the forfeiture for a fine.[4]

Preserving the peace.

The zemindars were originally responsible for the peace of their zemindaries: and conniving at robbery was one of the most frequent grounds of forfeiture of their holdings. This penalty is prescribed for the offence by the Regulations of the 8th June 1787;[5] and it is provided that in such a case none of the zemindar's family shall succeed to the forfeited zemindary. By the Regulations for the

[1] Act XX of 1848, s. 1.

[2] Regulation IX of 1833, s. 14.

[3] Regulations of 8th June 1787, art. 12. Harington's Analysis, Vol. II, 53. Colebrooke's Supplement, 253.

[4] Regulation XIV of 1793, ss. 15, 16, 18.

[5] Arts. 69 and 70. Colebrooke's Supplement, 253. Harington's Analysis, Vol. II, 53.

Decennial Settlement[1] the landholders are still to be responsible for the peace of their districts and are to act under rules to be passed. These provisions were however repealed by the Regulations of the 7th December 1792, re-enacted and amended by Regulation XXII of 1793, which is itself repealed as obsolete by Act XXIX of 1871. They were nevertheless still bound as landholders to afford every assistance in apprehending offenders, and in default were still liable to forfeiture upon conviction. And by Regulation VI of 1810 it is declared that all zemindars and other proprietors of land, whether lakhiraj or malgoozary,—all sudder farmers and under-renters, dependent talookdars, and others, are specially bound to give information of robbers within their boundaries.[2] The Regulation then prescribes fine and imprisonment for neglect to give such information, and forfeiture in case of harbouring robbers or sharing in the plunder.[3] These latter provisions have also been repealed by Act XVII of 1862.

Exactions and oppression.

I have noticed the anxiety of the Government to protect the ryots and under-renters from oppression and exactions. The Regulations for the Decennial Settlement provide that exactions by the zemindars from their dependent talookdars and oppression of them shall be punished by the separation of the talook.[4] This provision is omitted from the Regulations for the Permanent Settlement.[5] Further provision is made in both for a

[1] Regulations of 23rd November 1793, art. 72. Colebrooke's Supplement, 308.

[2] S. 2.

[3] Ss. 3, 4.

[4] Art. 5.

[5] Regulation I of 1793, s. 6.

LECTURE IX.

Cesses.

penalty of double the amount in case of such exactions.[1] It is further provided that no new abwab or mathoot shall be imposed upon the ryots under any pretence whatever: and a penalty of three times the amount exacted is to be paid in case of such imposition.[2] It is further provided that the cess called najay is not to be exacted: this, it will be remembered, was an exaction from the remaining ryots to make up the rents of those who had absconded or died.[3] We have seen that exactions of all kinds are still levied.[4] These provisions were only intended to prevent the imposition of any new abwab, and not to disallow imposts in force before the Decennial Settlement.[5] Consequently nuzzerana and mehuranee have been allowed.[6] On the other hand, the following cesses have been held illegal:—*burdana*, for the subsistence of the zemindar; *cutwallee*, a cess for tobacco; and *batta* or exchange;[7] *chanda*;[8] *parobi*, a cess for performing festivals;[9] and *zabita batta*, an excess of half an anna in the rupee on the jumma, although, in this instance, the caboolcut stipulated that the farmer, the defendant in the case, should pay such sums,

[1] Arts. 53, 54. Regulation I of 1793, s. 51.

[2] Regulations of 23rd November 1791, art. 58. Regulation I of 1793, s. 55; see Regulation IX of 1825, s. 9.

[3] Regulations of 23rd November 1791, art. 68. Regulation I of 1793, s. 63; Dhalee Purmanick *v.* Anund Chunder Tolaputtur, 5 W. R. (Act X), 86.

[4] See a list of twenty-seven such in the Twenty-four-Pergunnahs, Campbell's Administration Report, pp. 24, 25. See Robinson's Land Tenures, 31.

[5] Rajah Madho Singh *v.* Rajah Bidyanund Singh, S. D. A. (1848), 442.

[6] Ib.

[7] Chucken Sahoo *v.* Roopchand Panday, S. D. A. (1848), 680.

[8] Megnath Thakoor *v.* Meliss, S. D. A. (1852), 4.

[9] Kamalakant Ghose *v.* Kalu Mahomed Mandal, 3 B. L. R. (A. C.), 44: 11 W. R, 395, s. c.

over and above the agreed jumma, as were realized in the mofussil under that head.[1] This is said in another case to have been so held because the exact sum to be paid was not specified.[2] Again a claim for *russoom kuzza*, or kazee's fees, was held illegal; although the ryot had paid it until a judge by proclamation declared it illegal, and although the assessment at the Decennial Settlement was alleged to have included it.[3] On the other hand a claim for *dustooree batta* and *poonia nuzzerana* (presents on assessment or on payment of the first instalment of rent) have been held valid, when the cabooleut specified these items; the Court considering that section 3 of Regulation V of 1812, which authorizes the landholders to grant such pottahs as they may think fit, with the proviso that this should not legalize arbitrary or indefinite cesses, legalized customary cesses when specified in the pottah or cabooleut: since the Regulation goes on to provide that, while all stipulations for such arbitrary or indefinite cesses were to be held null and void, the definite clauses of the engagements should be carried into effect, and payment of such sums as were specifically agreed upon enforced. Other illegal cesses that have come before the Courts are *purvi-bhika*, a present to the zemindar on his son's first eating rice; and the zemindar's claim to a certain proportion of every maund of *goor* (molasses) manufactured. By Act X of 1859, section 10, and Act VIII of 1869 (B.C.), section 11, exactions beyond the rent specified in the pottah subject the landlord to damages not exceeding double the amount of such exaction.

[1] Radha Mohun Surma Chowdhry *v.* Gungapershad Chuckerbutty, 7 Sel. Rep., 142.

[2] Bhoor Pasban *v.* Khemchand Mahtoon, S. D. A. (1857), 1508.

[3] Luckhee Debea Chowdrain *v.* Sheikh Ahta, S. D. A. (1852), 552.

LECTURE IX.

Proportion taken by the State.

The jumma, as we have seen, was fixed for ever. The proportion professedly taken from the zemindars was ten-elevenths of their rents, leaving them one-tenth of the jumma paid. But the proportion was altered in the course of time, and appears to be now about a half instead of ten-elevenths. The zemindaries were allowed to be freely transferred and divided. I shall notice the provisions for division and alienation hereafter. These powers and the fixity of the jumma led to that vast development of undertenures which is so marked a feature of the Bengal land system.

Disqualified proprietors.

Disqualified zemindars were excluded from the settlement. This disqualification was according to the Regulations of the 12th April 1784,[1] founded upon notorious incapacity, legal disability or debt. In the Regulations of the 25th April 1788[2] the grounds were minority, sex, lunacy, contumacy, notorious profligacy of character, or non-performance of engagements. And in the Decennial Settlement Regulations, females, idiots, minors, lunatics and others incapable of managing their estates by reason of natural defects or infirmities of whatever nature, and those deemed unfit through notorious profligacy or contumacy, were excluded, provided they were not sharers with qualified proprietors; in which case all were required to join in electing a manager, those disqualified voting through their guardians.[3] The estates of disqualified proprietors were to be managed by persons appointed by the Government to that trust.[4] The

[1] Colebrooke's Supplement, 234.

[2] Ib., 266, 269.

[3] Regulations of 23rd November 1791, art. 19. Regulation VIII of 1793, s. 20.

[4] Regulations of 23rd November 1791, art. 20. Regulation VIII of 1793, s. 21.

Regulations of 15th July 1791[1] provide for the establishment of the Court of Wards for the purpose of taking charge of such estates; and Regulation X of 1793[2] lays down rules for the guidance of the Court of Wards. But by Regulation VII of 1796 those provisions which relate to contumacy and profligacy as grounds of exclusion are rescinded.[3] The disqualified proprietors had a voice or were consulted in the choice of a manager until Regulation VII of 1799, section 26, abolished this privilege, as having led to managers being appointed who were totally disregardful of the public interest, and directed that the manager should thenceforth be appointed without any reference to the wishes of the proprietor or to connexion with him. This completed the exclusion of such zemindars as were disqualified.

Julkur, bunkur, phulkur.

The zemindars retained those rights known as julkur, bunkur, phulkur, &c.: and having come to be regarded in the light of English landlords these rights came to be treated as incorporeal hereditaments, and transferable separately from the zemindary as well as from the land. It has consequently been held that a julkur right, or a right to dues from fisheries and water, might be thus transferred, and that no proprietary right passed with it:[4] this is in fact restricting the right to its primitive form, but separating it from the zemindary. The same principle has been laid

[1] Colebrooke's Supplement, 298.

[2] Modified by Regulation L of 1793 as to female proprietors.

[3] S. 20 of Regulation VIII of 1793, and s. 5, cl. 4, of Regulation X of 1793, are repealed by Regulation VII of 1796.

[4] Forbes *v.* Meer Mahomed Hossein, 12 B. L. R., 210, at p. 216. Lukhee Dassee *v.* Khatima Beebee, 2 Sel. Rep., 51. Suroop Chunder Mozoomdar *v.* Jardine Skinner & Co., Marsh., 334. Bissen Lal Dass *v.* Ranee Khyrunnissa Begum, 1 W. R., 79.

LECTURE IX.

down with respect to bunkur, or the right to use all wood of spontaneous growth upon the zemindary.[1]

General effect of the Permanent Settlement upon the zemindar's position.

The general effect of the Permanent Settlement upon the position of the zemindar was that the zemindar was now detached from the Government, and lost some of his former privileges and emoluments, while the revenue demanded from him seems to have been very heavy considering the restrictions to which he was theoretically subject. In practice however he continued his exactions in much the same way as before; and from the slender provision made for the protection of the ryots he was enabled to assume a position of preponderating influence, while his ample power of alienation enabled him to elude much of the Government demand.

Position of the zemindar's tenants.

I come now to consider the position of the subordinate holders or, as we may now call them, tenants. In the earlier times of British rule, the main care of the Government was to protect the ryots and apparently to reduce the zemindars to what was considered their original position; the zemindars in fact seem to have been looked upon as tyrannical officials.

Pottahs.

The Regulations of the 14th May 1772[2] for the farming settlement provide that the farmers shall not receive from the ryots more than the amount stipulated for by the pottah; and the directions as to the settlement to be made at the end of the five years contemplated compelling the zemindars to give pottahs,[3] which as

[1] Byjnauth Mojmoodar *v.* Deen Dyal Gooptu, 2 Sel. Rep., 105.

[2] Colebrooke's Supplement, 190.

[3] Ib., 207. Harington's Analysis, Vol. II, 35. For a specimen of a pottah, see Baboo Dhunput Singh *v.* Gooman Singh, 11 Moore's I. A. 433, at p. 434; and of a cabooleut, Golam Ali *v.* Baboo Gopal Lal Thakoor, 9 W. R., 65, at p. 67.

we have seen were seldom given at this time. By the Regulations of the 8th June 1787, the Collectors were directed to endeavour to fix some mode of fair assessment of the ryots, and to prevent the imposition of new abwabs and taxes.[1] The Regulations for the Decennial Settlement provided for authorized forms of pottahs being drawn up of which the ryots were to have notice, and pottahs were to be granted to them accordingly, specifying the rent or, where that could not be specified, the rate, with all other terms and conditions.[2] No other agreements were to be permitted. But the rents to be demanded were not limited by the assessment of the jumma upon the zemindars; the zemindars being at liberty to demand what rent they thought fit, subject to the restrictions imposed upon them,[3] one of which was that the rent must be an entire sum, consolidating the abwabs lawfully chargeable with the assul or original rent. The provisions for compulsory preparation of pottahs, and for invalidating all but those duly authorized, were rescinded by Regulation V of 1812, section 3; and it was declared by that Regulation that proprietors might lease their lands in such form as the parties chose. By section 2 of Act X of 1859, and section 2 of Act VIII of 1869 (B.C.), every ryot is entitled to receive from the person to whom the rent of the land held or cultivated by him is payable a pottah containing the following particulars:—the quantity and boundaries of the land, and where fields

[1] Colebrooke's Supplement, 253. Harington's Analysis, Vol. II, 53.

[2] Regulations of 23rd November 1791, arts. 59 to 62. Regulation I of 1793, ss. 56 to 59. The notice to the ryots was dispensed with by Regulation I of 1793.

[3] Regulations of 23rd November 1791, arts. 45, 55, 57. Regulation I of 1793, ss. 52, 54.

LECTURE IX.

have been numbered in a Government survey, the number of each field; the amount of annual rent, the instalments in which the same is to be paid, and any special conditions of the lease; or if the rent is payable in kind, the proportion of produce to be delivered, and the time and manner of delivery. Ryots who have held at fixed rates of rent, which have not been changed from the time of the Permanent Settlement, are entitled to receive pottahs at those rates.[1] Ryots having rights of occupancy, but not holding at fixed rates, are entitled to receive pottahs at fair and equitable rates.[2] Ryots not having rights of occupancy are entitled to pottahs only at such rates as may be agreed upon between them and the persons to whom the rent is payable. I shall refer more fully to the position of occupancy ryots hereafter, and to their right to pottahs.

Cabooleuts.

Every person who grants a pottah is entitled to receive from the person to whom the pottah is granted a cabooleut, or counterpart engagement, in conformity with the tenor of the pottah. The tender to any ryot of a pottah, such as the ryot is entitled to receive, shall be held to entitle the person to whom the rent is payable to receive a cabooleut from such ryot.[3] In order to entitle a landlord to sue under this section he must have tendered to the ryot before suit brought a pottah such as the ryot is entitled to receive.[4] When a decree is given for the delivery of a pottah, if the person required by the decree to grant such

[1] Act X of 1859, s. 3. Act VIII of 1869 (B.C.), s. 3.

[2] Act X of 1859, s. 5. Act VIII of 1869 (B.C.), s. 5.

[3] Act X of 1859, s. 9. Act VIII of 1869 (B.C.), s. 10.

[4] Akhoy Sunker Chuckerbutty *v.* Indro Bhoosun Deb Roy, 4 B. L. R., F. B., 58; 12 W. R., F. B., 27, s. c. Thakooranee Dassee *v.* Bisheshur Mookerjee, B. L. R., Supp. Vol., 122: 3 W. R. (Act X) 29, s. c.

pottah refuse or delay to grant the same, the Court may execute a pottah in conformity with the terms of the decree under the signature and seal of such Court: and such pottah shall be of the same force and effect as if granted by the person aforesaid.[1] Similar provision is made for the case of refusal to execute a cabooleut: in such a case the decree shall be evidence of the amount of rent claimable, and a copy of the decree equivalent to a cabooleut.[2] Pottahs are of various descriptions, not confined to interests in land, and are known under various names, as mokurreree, permanent or fixed; thika, specific; shurh mouzah, at the village rate; shurh pergunnah, at the pergunnah rate; bilmookta, adjusted; khoodkasht and paikasht; nowabad, for newly cultivated land; jungleboory, for clearing wood or cultivating waste; sayer, of the sayer duties; khalaree, for salt manufacture; shuhd, for making honey; mom, for making wax.[3]

Dependent talookdars.

The talookdars were next in importance to the zemindars; and Lord Cornwallis could discover no difference between the two. Nevertheless, the majority of the talookdars were left to pay their revenue through the zemindars, and thus to fall into the position of tenants. The independent talookdars, on the other hand, were settled with in the same manner as the zemindars.[4] The Decennial Settlement Regulations endeavoured to secure the dependent talookdars from unauthorized exactions by making such exactions or oppression a ground for separation of the

[1] Act X of 1859, s. 80. Act VIII of 1869 (B.C.), s. 55.

[2] Act X of 1859, s. 81. Act VIII of 1869 (B.C.), s. 56.

[3] Harington's Analysis, Vol. III, 353.

[4] Regulations of 23rd November 1791, arts. 4 to 7. Regulation I of 1793, ss. 5, 6, 8.

LECTURE IX.

talook from the zemindary;[1] but Regulation VIII of 1793 omitted this provision.[2] With regard to jungleboory talooks, the nature of which is described in the Regulations,[3] it is provided that they are not to be separated; although probably they were quite as much entitled to separation as those admitted to that privilege, since they were held by a title of the highest kind according to Hindoo and Mahomedan law, namely on the ground of having brought waste land into cultivation. With regard to the talooks ordered to be separated, it is provided that the holders of them are not to be permitted to pay their revenue through the zemindar.[4] And the dependent talookdars were to have agreements for the same period as the zemindar's settlement,—that is, as would seem perpetual under the Permanent Settlement.[5] Another class of talookdars is noticed in the Perpetual Settlement Regulations as a class of dependent talookdars whose talooks are held under writings or sunnuds from the zemindar or other actual proprietor which do not expressly transfer the property in the soil, but only entitle the talookdar to possession so long as he pays the rent and performs the conditions specified therein. These are considered leaseholders only and not actual proprietors of the soil; and provided they have still continued to pay rent to the zemindar are not entitled to separation.[6]

[1] Regulations of 23rd November 1791, art. 5.

[2] S. 6.

[3] See also Harington's Analysis, Vol. III, 353. Rouse's Dissertations, 51, 56.

[4] Regulations of 23rd November 1791, art. 12. Regulation I of 1793, s. 12.

[5] Regulations of 23rd November 1791, art. 50. Regulation I of 1793, s. 84.

[6] Regulation VIII of 1793, s. 7.

Separation of independent talooks.

The rules in the Decennial and Perpetual Settlement Regulations for the separation of independent talooks having been construed so as to admit of such separation at any period, it is provided by Regulation I of 1801, section 14, that no further separation shall be permitted after a year from the date of that Regulation; and it is declared that these Regulations were only intended to provide for separation at the time of the Decennial Settlement, and not to apply to new talooks constituted since that period.

Assessment of talooks excluded from the Permanent Settlement.

By Regulation XXIII of 1817, section 4, clause 3, it is provided that lands which at the Permanent Settlement were included in talooks under special pottahs from the Collector, such as the puteet-abady (waste land), and jungle-boory talooks of the Twenty-four Pergunnahs and Jessore, and not then assesssed, are to be assessed: but if in the hands of the original pottah-holder or his representatives, the conditions of the pottah with respect to the land specified are to be strictly maintained. This provision is rescinded and re-enacted by Regulation II of 1819, section 3, clauses 1, 3. The rent of the dependent talookdar is not to be increased on account of any increase of the zemindar's jumma, except upon proof to the Collector that the zemindar is entitled to enhance either by the special custom of district, or by the conditions under which the talookdar holds his tenure, or that the talookdar by receiving abatement from his jumma has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.[1]

Enhancement.

Enhancement by auction-purchasers.

By Regulation XI of 1822, section 32, purchasers at sales for arrear of revenue are not to be entitled to disturb

[1] Regulations of 23rd November 1791, ss. 53, 54. Regulation VIII of 1793, s. 51.

LECTURE IX.

the possession of any village zemindar, putteedar, mofussil talookdar or other person having an hereditary transferable property in the land, or in the rents thereof, not being one of the proprietors party to the engagement of settlement or his representative: nor to demand a higher rate of rent than was receivable by the former malgoozar, save when such tenants may have held their lands under engagements stipulating for a lower rate of rent than would have been justly demandable for the land, in consequence of abatements having been granted by the former malgoozar from the old established rates, by special favour or for a consideration or the like; or in cases in which it may be proved that, according to the custom of the pergunnah, mouzah, or other local division, such tenants are liable to be called upon for any new assessment or other demand not interdicted by the Regulations. This provision was repealed by section 1 of Act XII of 1841. This Act, by section 28, re-enacts the latter provision with respect to auction-purchasers of land not permanently settled, but does not expressly notice talookdars, although it provides[1] that tenures existing at the time of the Decennial Settlement in the permanently settled districts, which have not been or may not be proved to be liable to an increase of assessment on the grounds mentioned in section 51 of Regulation VIII of 1793, shall not be enhanced. These provisions of Act XII of 1841 were repealed by Act I of 1845, which re-enacted the same provisions by sections 26 and 27. These were again repealed by Act XI of 1859, which enacted by section 37, clause 3, that the auction-purchaser in permanently settled districts should not eject tenants holding by talookdary and

[1] S. 27, cl. 2.

other similar tenures created since the time of settlement, and held immedately of the proprietors of estates, when duly registered under the Acts; and by clause 2 also exempts from annulment tenures existing at the time of settlement whether held at a fixed rent or not; but makes the latter tenures liable to enhancement. The provisions as to talookdary tenures are omitted from Act VII of 1868 (B.C.), but are not repealed. The provision in clause 2, section 37 of Act XI of 1859, is re-enacted by Act VII of 1868 (B.C.), section 12; but the period from which the tenures are required to have been in existence is the time of the Decennial Settlement. The Privy Council in one case intimated that they considered there was great weight in the contention advanced before them that the mofussil talookdars referred to in Regulation XI of 1822, section 32, were those who were actual proprietors within the meaning of Regulation VIII of 1793, section 5, and not those whose talooks had been created since the Decennial Settlement; and who, under Regulation VIII of 1793, section 7, are declared not to have the property in the soil, but to be mere lease-holders; and they remark that the contention in question derives support from Regulation I of 1801, section 14.[1] With regard to the tenures contemplated by Regulation VIII of 1793, section 51, it has been held that it does not include kudeemee (old) ryotee tenures, but only talooks properly so called;[2] and although it was long considered that in order to bring a talook within section 51 it must be registered, recorded, or recognized under section 48

[1] Khajah Assanoolah *v.* Obhoy Chunder Roy, 13 Moore's I. A., 317, at p. 326; 13 W R., 24, s. c.

[2] Ramchunder Dutt *v.* Jogeshchunder Dutt, 12 B. L. R., 229, overruling previous cases, such as Rajkishen Roy *v.* Bydonath Nundee, S. D. A. (1858), 902.

LECTURE IX.

of the same Regulation, it has now been decided (in 1869) that it is sufficient to show that the tenure existed and was capable of registration at the time of the Decennial Settlement.[1]

Putteedars.

The putteedars referred to in Regulation XI of 1822, section 32, are occupant sharers of a revenue-paying estate, each managing his share separately, but paying his revenue through one of the sharers called a lumberdar: the whole of the estate is liable for the revenue; but in case of default, the defaulter's share is first proceeded against.[2] Upon a sale for arrears, the sharers became occupancy tenants at fixed rents,[3] which was possibly their original condition. This mode of holding is found chiefly in the North-West Provinces, where the settlements with the villages were also upon the same principle under Mr. Bird's settlement. In other parts this mode of settlement was practised in conjunction with the zemindary and ryotwary methods, as in the Saugor and Nerbudda territories.[4]

Intermediate permanent tenures.

By Act X of 1859, section 15, and Act VIII of 1869 (B. C.), section 16, it is enacted that "no dependent talookdar or other person possessing a permanent transferable interest in land, intermediate between the proprietor of an estate and the ryot, who holds his talook or tenure (otherwise than under a terminable lease) at a fixed rent, which has not been changed from the time of the Permanent Settlement, shall be liable to any enhancement of such rent, notwithstanding anything in section 51 of Regulation VIII

[1] Radhika Chowdrain *v.* Bamasundari Dasi, 13 Moore's I. A., 248; 4 B L. R., P. C., 8, s. c.; 13 W. R., P. C., 11, s. c.

[2] See Regulation I of 1841, repealed as obsolete by Act XVI of 1874. Robinson's Land Revenue, 11, 46, 76.

[3] Robinson's Land Revenue, 15.

[4] Ib., 76.

of 1793 or any other law." These provisions have been held to include the *howalas* and *neem-howalas* of Backergunge and the *jotes* of Rungpore, which are mouroosee and hereditary, but not mokurreree, or held at fixed rents.[1]

Khoodkasht ryots.

With regard to khoodkasht ryots little provision is made, and no definition is given of the nature of their holdings: but it seems apparent from the whole scope of the Regulations for the Decennial and Permanent Settlements that, whatever misconceptions may have existed as to their position, their rights were not intended to be affected. The object of the Legislature was to define the conditions under which the zemindar should be settled with for ten years or permanently, and not to define the terms upon which he should become absolute proprietor. It is provided, with regard to the khoodkashts, that the landholders and farmers shall not cancel their pottahs, except on proof that they were obtained by collusion; or that their rents for the three years before the Permanent Settlement were below the pergunnah nirkbundy; or that they had obtained collusive deductions from their rents; or upon a general measurement of the pergunnah for the purpose of equalising and correcting the assessment.[2] This is immediately preceded by a provision that all leases to under-farmers and ryots made before the conclusion of the settlement, and not contrary to any Regulation, are to remain in force during their term, unless proved to have been obtained by collusion or from unauthorized persons.[3] And these provisions are included

[1] Hurry Mohun Mookerjee *v.* Ranee Lalun Monee Dasee, 1 W. R., 5.

[2] Regulations of 23rd November 1791, art. 64. Regulation VIII of 1793, s. 60.

[3] Regulations of 23rd November 1791, art. 63. Regulation VIII of 1793, s. 60.

LECTURE IX.

in the restrictions subject to which the zemindar or other actual proprietor of land is to let the remaining lands of his zemindary or estate in whatever manner he may think proper. But it does not appear that the zemindar was vested with the right of any of the other persons interested: he was not to be interfered with by Government so long as he adhered to the conditions laid down; but it by no means follows that those conditions were an exhaustive description of his true position. The khoodkasht ryots then still retained their existing rights, but no doubt they were in a very unfavourable situation for enforcing them, having to contend with a zemindar whose rights had been recognized by the Government, while their own rights had been left to take care of themselves, the right to Government interference being withdrawn except in specified cases. The rights of the khoodkashts are noticed in Regulation VIII of 1819 (the Putnee Talooks' Regulation), section 11, clause 3, which provides that nothing in that Regulation shall entitle the purchaser at a public sale for arrears of rent of an intermediate tenure to eject a khoodkasht ryot, or resident and hereditary cultivator, nor to cancel *bonâ fide* engagements made with such tenants by the former holder without proof in a suit by the purchaser that a higher rate would have been demandable at the time such engagements were made by the purchaser's predecessor. And section 18, clause 5, excepts such ryots from the operation of clauses 2 and 4 of that section, which provide for sending a sezawul to attach the lands of intermediate holders and to collect rents in case of default, provided a summary suit had been instituted, and which also make provision for cancelling the leases of such holders. The khoodkasht ryots may be proceeded against by arrest,

a summary suit, or distraint. These latter provisions are repealed by Act X of 1859, section 1. Again Regulation XI of 1822, section 32, before cited, provides that the rules in that or any other Regulation, enabling persons to annul engagements between former proprietors and their under-tenants, shall not entitle a purchaser at a public sale to eject a khoodkasht kudeemee ryot, a resident and hereditary cultivator having a prescriptive right of occupancy; or to demand from such ryot a higher rate of rent than was receivable by the former malgoozar, save when such tenants may have held their lands under engagements stipulating for a lower rate of rent than would have been justly demandable for the land, in consequence of abatements having been granted by the former malgoozars from the old established rates by special favour, or for a consideration, or the like; or in cases in which it may be proved that according to the custom of the pergunnah, mouzah, or other local division, such under-tenants are liable to be called upon for any new assessment or other demand not interdicted by the Regulations. This section was repealed by Act XII of 1841, section 1, which by section 27, clause 31, saves from annulment by a purchaser at a revenue sale in the permanently settled districts lands held by khoodkasht or kudeemee ryots having rights of occupancy at fixed rents, or at rents, assessable according to fixed rules under the Regulation in force. This section again was repealed by Act I of 1845, and re-enacted by section 26 of that Act, which again was repealed by Act XI of 1859. Regulation XII of 1841, by section 28, provides that in the districts not permanently settled, nothing in the Act shall entitle such purchaser to demand a higher rate of rent from any person whose tenure or

LECTURE IX.

agreement may be annulled under the Regulation than was demandable by the former malgoozar except in the cases specified in section 32 of Regulation XI of 1822. This section was also repealed by Act I of 1845, re-enacted by section 27 of that Act, and ultimately repealed by Act XI of 1859. Act XI of 1859, section 37, provides that nothing in that section relating to the right of the purchaser at an auction-sale to avoid under-tenures shall entitle any such purchaser to eject any ryot having a right of occupancy at a fixed rent, or at a rent assessable according to fixed rules under the laws in force; or to enhance the rent of any such ryot otherwise than in the manner prescribed by such laws, or otherwise than the former proprietor, irrespectively of all engagements made since the time of settlement, may have been entitled to do. The same provision is found in Act VII of 1868 (B. C.), section 14. Khoodkasht holdings are in some parts transferable without the landlord's consent, but in other parts not.[1]

Mokurreree tenures.

With regard to mokurreree holdings or holdings at a fixed rate, provision is made by the Regulations of 23rd November 1791 and Regulation VIII of 1793, that mokurreree leases to persons other than the proprietors of the land, if granted or confirmed by Government, or obtained before the accession to the Dewanny, are to be continued in force during the lives of the lessees; but on their death the settlement is to be made with the actual proprietors of the soil.[2] This provision clearly refers to mokurreree malgoozars. It is also provided that mokurreree grants to the actual proprietors of the soil are under the same circumstances to be

[1] Joykissen Mookerjee *v.* Rajkissen Mookerjee, 1 W. R., 153.

[2] Regulations of 23rd November 1791, art. 15. Regulation VIII of 1793, s. 16.

continued, without limiting the continuance to the holder's life.[1] Further, mokurreree holders of lands, of which such holders are not the actual proprietors, under grants obtained since the accession to the Dewanny, and not sanctioned by Government, are to be dispossessed, and the settlement made with the proprietors, but with an allowance to the dispossessed holders if they have held for more than twelve years. These last mokurreree holders are supposed to be originally tenants who have ousted their landlords, or mere wrong-doers who have obtained possession without the consent of the landlord. They are classed as tenants in the Regulation, and therefore we may deal with them here, but as I have already pointed out there was no such relation of tenure between the zemindar and the subordinate holder of land; and the mokurrerecdars in question do not seem to have held under leases for terms, but were probably merely subordinate revenue payers of a superior class to the bulk of the ryots, and who held at a fixed revenue.[2] Istemrari and mouroosee tenures are of the same class. An istemrari or mouroosee tenure is a permanent hereditary tenure: if it is also mokurreree it is held permanently at a fixed rent or revenue.[3] Istemrari tenures are mentioned in the Regulations for the Decennial and Permanent Settlements. The holding in perpetuity seems to have been considered less in the nature of an encroachment on the proprietary rights than the holding at a fixed rate; probably because the latter appeared to leave the supposed proprietor a less beneficial

Istemrari and mouroosee tenures.

[1] Regulations of 23rd November 1791, art. 16. Regulation VIII of 1793, s. 17.

[2] Regulations of 23rd November 1791, art. 17. Regulation VIII of 1793, s. 18.

[3] Wilson's Glossary.

LECTURE IX.

property in the land, but to give the fruits of all improvements or increase in the cultivation to the mokurrereedar. Accordingly istemrardars are spoken of as not having got possession to the exclusion or without the consent of the proprietors, as the mokurrereedars are supposed to have done. They are looked upon as holding of the proprietors by lease, and are to be considered as a species of pottah talookdars, and the settlement is to be made with them,[1] so that they are put in the position of direct revenue payers, although they were assumed to have been before subordinate to the zemindar; while the mokurrereedars, who would seem to have been paying revenue direct, are placed in a lower class. It is further provided that istemrardars, as they are called, of the nature of those described as mokurrereedars, holding lands of which they are not proprietors under grants since the accession to the Dewanny, and who have held more than twelve years at a fixed rent, are not to be liable to be assessed with any increase, either by Government or by the zemindar or other actual proprietor, in case he engages for his own lands. In other cases, if the zemindar or other actual proprietor has bound himself by deed not to enhance the rent, he cannot enhance; but in case the zemindary is held khas or let in farm, the Government or farmer may demand the general rate of the district.[2] By Regulation III of 1828, section 11, clause 2, it is provided that persons succeeding to the possession of any lands held on a mokurreree jumma, on the decease of a former occupant, or by gift, purchase

[1] Regulations of 23rd November 1791. Regulation VIII of 1793, s. 19.

[2] Regulations of 23rd November 1791, arts. 51, 52. Regulation VIII of 1793, ss. 49, 50.

or other assignment or transfer of proprietary right, are required to notify the same to the Collector, under penalty of attachment of the land, which attachment is not to be removed except upon payment of a fine of a year's rent. This provision apparently refers to revenue-paying holdings, the jumma being fixed: the section goes on to speak of the ryots as different from the mokurrereedar. The Regulation further provides[1] that all tenures not duly registered, and those whose description in the register does not show them to be held under an hereditary title or as a perpetual endowment, shall be, and be held to have been, liable to resumption on the death of the person in possession at the passing of the various resumption Regulations,[2] unless declared hereditary by a Court. And the Collectors are to assess, and if necessary, attach such lands in the same manner as a lapsed farm. These provisions are for the security of Government and not of private interests.[3] The section then provides, with regard to the construction of the documents of title of land exempt from assessment, that the whole document shall be considered and not merely the designation of the tenures. Thus a jageer shall not be held to be a life-tenure when it appears to be clearly intended that it shall be hereditary: nor shall any tenure be considered hereditary and perpetual unless so expressed in the grant. The provisions in the Regulations appear to concern themselves primarily with the Government right to revenue, although also affecting the zemindar's right to

[1] S. 12.

[2] Regulations XIX and XXXVII of 1793, XLI and XLII of 1795, XXXI and XXXVI of 1803, VIII and XII of 1805.

[3] Umrithnauth Chowdhry *v.* Koonjbehary Singh, W. R., F. B., 34.

LECTURE IX.

rent; since, when the zemindar was entitled to displace the mokurrereedar or istemrardar, or to get rid of their title, he might let the lands in the usual way. The Regulations however do not appear to concern themselves with under-tenures held on mokurreree or istemrari titles, and forming part of the zemindary assessed in the ordinary way; but only with those holdings which, although subordinate in theory to the zemindar, were assessed on the footing of the fixed jumma or perpetual holding. The Permanent Settlement was adverse to such tenures, and strictly limited the rights of their holders.[1]

Statutory mokurreree tenures of ryots.

Act X of 1859, section 3, and Act VIII of 1869 (B.C.), section 3, provide that ryots who hold lands at fixed rates of rent, which shall not have been changed from the time of the Permanent Settlement, are entitled to receive pottahs at those rates. The "fixed rates" here spoken of include not merely fixed and definite sums payable as rent, but also rates regulated by certain fixed principles.[2] And section 4 of those Acts provides that whenever, in any suit under those Acts, it shall be proved that the rent at which land is held by a ryot has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that the land has been held at that rent from the time of the Permanent Settlement, unless the contrary be shown, or unless it be proved that such rent was fixed at some later period.

---

[1] Baboo Dhunput Singh *v.* Gooman Singh, 11 Moore's I. A., 433; 9 W. R., P. C., 3, s. c.

[2] Thakooranee Dossee *v.* Bisheshur Mookerjee (the Great Rent Case), B. L. R., Supp. Vol., 202; 3 W. R. (Act X), 108, s. c. Mahomed Yacoob Hossein *v.* Shaikh Chowdhry Waheed Ali, 4 W. R. (Act X), 23; 1 Ind. Jur., 29, s. c. Ram Dayal Sing *v.* Baboo Latchmi Narayan, 6 B. L. R., App., 25; 14 W. R. 385, s. c.

Mokurreree intermediate tenures.

Act X of 1859, section 15, re-enacted by Act VIII of 1869 (B.C.), section 16, provides that no dependent talookdar or other person possessing a permanent transferable interest in land, intermediate between the proprietor of an estate and the ryot, who holds his talook or tenure (otherwise than under a terminable lease) at a fixed rent which has not been changed from the time of the Permanent Settlement, shall be liable to enhancement. Surbarakaree tenures in Cuttack, the holders of which have no power to transfer their holdings without the consent of the zemindar,[1] have been held to be permanent hereditary tenures within the meaning of this section.[2]

Mokurreree istemrari.

With regard to the creation by the zemindar of permanent heritable tenures at a fixed rent, it was at first held that a mokurreree istemrari tenure under a pottah was not heritable, unless the pottah also contained words of inheritance,[3] the tendency in earlier times being somewhat adverse to permanent under-tenures. Those decisions have however now been overruled;[4] and the use of words of inheritance is not required to create a heritable tenure. It has been also held in a series of cases that where a pottah merely specifies the rent and contains no words importing that the tenure granted is hereditary, the hereditary character of the tenure may be supported by other circumstances, such as long occupation at a fixed rent and the descent of the tenure in the

[1] Doujodhna Doss *v.* Choorga Daye, 1 W. R., 322.

[2] Saddanando Maiti *v.* Nourattan Maiti, 8 B. L. R., 280; 16 W. R., 290, s. c.

[3] Baboo Toolsee Narain Sahee *v.* Baboo Modnarain Singh, S. D. A. (1848), 752. Rajah Modenarain Singh *v.* Kantlall, S. D. A. (1859), 1572.

[4] Baboo Lekhraj Roy *v.* Kanhya Singh, 17 W. R., 485.

LECTURE IX.

ordinary course.[1] It has also been held that the words mokurreree istemrari are sufficient to create an hereditary perpetual tenure, and it seems one of which the rent is fixed,[2] although the decisions are not quite uniform.[3] Following the cases above referred to, it has been held that the words 'mokurreree istemrari,' combined with a descent through two generations, is sufficient to establish an hereditary tenure at a fixed rent.[4] The mere use of the term 'mokurreree' will not create a perpetual tenure,[5] nor will the words '*tikka mohto*.'[6] But a grant by a mokurrereedar of a lease or thika to last as long as the mokurreree lasts has been held heritable.[7] And a grant of an absolute (*moostakhil*) mokurreree to the grantee and her children from generation to generation, gives a transferable interest of the most absolute kind, and which does not revert to the grantor on failure of heirs.[8] Some of these grants are

[1] Mohummud Ismail Jamadar *v.* Rajah Balungee Surrun, 3 Sel. Rep., 346. Joba Singh *v.* Meer Nujeeb Oolah, 4 Sel. Rep., 271. Golam Ali *v.* Baboo Gopal Lal Thakoor, 9 W. R., 65. Baboo Dhunput Singh *v.* Gooman Singh, 11 Moore's I. A., 433, see pp. 465, 466. Rajah Satyasaran Ghosal *v.* Mahesh Chundra Mitter, 2 B. L. R., P. C., 23, following Baboo Gopal Lall Thakoor *v.* Teluck Chunder Rai, 10 Moore's I. A., 191, where however there is only a dictum.

[2] Mussamat Lakhu Kowar *v.* Hari Krishna Sing, 3 B. L. R., A.C., 226. Rajah Lilanund Singh Bahadoor *v.* Thakur Munorunjun Singh, 13 B. L. R., 124.

[3] See Mussamat Ameeroonissa Begum *v.* Maharajah Hetnarain Singh, S. D. A. (1853), 648; and Sorobur Singh *v.* Rajah Mohendernarain Singh, S. D. A. (1860), 577.

[4] Karnakar Mahati *v.* Niladhro Chowdhry, 5 B. L. R., 652.

[5] The Government of Bengal *v.* Nawab Jafur Hossein Khan, 5 Moore's I. A., 467.

[6] Nuffur Chunder Shaha *v.* Gossain Jysingh Bharutte, 3 W. R. (Act X), 144.

[7] Baboo Lekhraj Roy *v.* Kanhya Singh, 17 W. R., 485.

[8] Mirza Himmut Bahadoor *v.* Ranee Sooneet Kooer, 15 W. R., 549.

made while sun and moon endure (*jawatchand diwakar*).[1] On the other hand, some are only life-interests: thus it is customary in the Tipperah Raj to grant mokurreree tenures to members of the zemindar's family which by the custom of the Raj are resumable on the grantee's death.[2]

Such tenures proved by long possession.

These tenures may be proved by long possession although the pottah contains no word sufficient to create such a tenure.[3] Thus the receipt of rent for forty years, and an application made by the zemindar to a Civil Court for the sale of the tenure, were held sufficient ratification of a mokurreree tenure created before Regulation V of 1812, and which would therefore have been invalid under Regulation XLIV of 1793. And in an early case which arose in Cuttack great force was given to a payment of rent for only twelve years. In that case a khandait or sirdar of pykes claimed to hold a perpetual tenure at a fixed rate. He was also the zemindar, but his zemindary had been included in a jageer. His zemindary sunnud specified a certain rate of revenue, and this was also specified in the sunnud granting the jageer, which directed that the jageerdar and his heirs were to have all the privileges of the British Government, but were not to interfere with the rights of the zemindars, khandaits, and mokuddims of the mehals included in the jageer. The zemindar khandait had paid the specified rate for twelve years, and alleged that that rate had been paid under the Mahratta Government. It was held that the holding was perpetual and at a fixed rent, although no

[1] Morley's Digest, Vol. I, p. 419, pl. 37,

[2] Roop Moonjuree Kooeree *v.* Beer Chunder Jobraj, 9 W. R., 308.

[3] Unoda Pershad Banerjee *v.* Chunder Sekhur Deb, 7 W. R., 394. Pearee Mohun Mookerjee *v.* Rajkishto Mookerjee, 11 W. R., 259. Brajanath Kundu Chowdhry *v.* Lakhi Narayan Addi, 7 B. L. R., 211.

LECTURE IX.

terms implying perpetuity were used in the sunnud, and the rate specified was for a particular year.[1] And whether the words mokurreree istemrari mean permanent during the life of the grantee or imply an hereditary tenure (a point which has been much discussed, but now it would seem decided in favour of the hereditary right), such words coupled with a usage of hereditary descent are certainly sufficient to support an hereditary tenure.[2]

Right of occupancy.

We have seen that the Regulations for the Permanent Settlement expressly reserved to the Governor-General in Council the right to make such Regulations as might be necessary to protect the cultivators.[3] This was at length acted upon in 1859, when, by Act X of that year, a new species of right, called an occupancy right, was conferred upon cultivators who had occupied their holdings for twelve years and upwards. I have mentioned that the istemrardars or mokurrereedars who had held at a fixed rent for twelve years before the Decennial Settlement were protected from enhancement: and in like manner, by the provisions of Act X of 1859, a ryot who had occupied for twelve years could not be ejected.[4] The period of prescription in the case of land has always been twelve years in India, and this had probably some influence in determining the period chosen. Act X of 1859, section 6, re-enacted by Act VIII of 1869 (B. C.), section 6, provides that "every ryot who shall have

[1] Moohummud Ismail Jemadar *v.* Raja Balungee Surrun, 3 Sel. R., 346.

[2] Rajah Lilanund Singh Bahadoor *v.* Thakur Munorunjun Singh, 13 B. L. R., 124, at p. 133. See Mr. Macnaghten's note as to mouroosee and istemrari pottahs, 1 Sel. R., 140.

[3] Regulation I of 1793, s. 8, cl. 1.

[4] Ram Mungul Ghose *v.* Lukhee Narain Shaha, 1 W. R., 71. Kalee Kishore Chatterjee *v.* Ram Churn Shah, 9 W. R., 344. Haran Chunder Paul *v.* Mookta Soonduree, 10 W. R., 113; 1 B. L. R., A. C., 81, s.c.

cultivated or held land for a period of twelve years shall have a right of occupancy in the land so cultivated or held by him, whether it be held under pottah or not, so long as he pays the rent payable on account of the same: but this rule does not apply to khamar, nij-jote, or sir land belonging to the proprietor of the estate or tenure and let by him on lease for a term, or year by year, nor (as respects the actual cultivator) to lands sub-let for a term, or year by year, by a ryot having a right of occupancy. The holding of the father or other person from whom a ryot inherits shall be deemed to be the holding of the ryot within the meaning of this section." This provision substantially restores the khoodkasht ryot to his former position: for probably in Hindoo times a ryot who had cultivated the same holding for twelve years would have been considered to have given the pledges required to protect him from ejectment so long as he paid the rent. It was also evidently following the principles of the ancient system that the khamar, nij-jote, and sir land were excluded; such land being in the immediate occupation or cultivation of the zemindar, or if not in his immediate occupation or cultivation, not occupied by khoodkashts. By section 7 of Act X of 1859, re-enacted by section 7 of Act VIII of 1869 (B. C.), nothing in section 6 shall be held to affect the terms of any written contract for the cultivation of land entered into between a landholder and a ryot, when it contains any express stipulation contrary thereto." The ryot mentioned in these provisions is not further defined: it appears from the sections themselves that he may continue to be an occupancy ryot after subletting, and this has been the view taken in several decided cases. It has also been held that the ryot, in order to acquire a right of occupancy, need not himself actually cultivate but

Acquisition of the right.

LECTURE IX.

must derive his profits directly from the produce.[1] A middleman who merely receives rents from the cultivators cannot acquire such a right.[2] Again, the right of occupancy is itself not defined, and it is not expressly said that the occupancy ryot cannot be ejected, though that may be inferred; and section 21 of Act X of 1859, re-enacted by section 22 of Act VIII of 1869 (B. C.), provides that no ryot having a right of occupancy shall be ejected otherwise than in execution of a decree or order under the Act. This section relates to ejectment for arrears of rent. The holding, as we have seen, must be by cultivators: the land consequently as to which the right can be acquired must be land held for the purpose of cultivation and purposes incidental thereto.[3] It has consequently been held that even the cultivation of water-nuts is sufficient,[4] but the right cannot be acquired in a tank which requires no cultivation.[5] Any accretion to the occupancy jote is also the subject of the right.[6] Occupation and cultivation by a mere trespasser will not give the right:[7] but the fact of the ryot's paying rent to a

---

[1] Kalee Churn Singh *v.* Ameerooddeen, 9 W. R., 579. Butabee Begum *v.* Khooshal, 2 All., 24.

[2] Gopee Mohun Roy *v.* Shibchunder Sen, 1 W. R., 68. Hurrish Chunder Koondoo *v.* Alexander, Marsh., 479. Woomanath Tewaree *v.* Koondun Tewaree, 19 W. R., 177.

[3] Kalee Kishen Biswas *v.* Sreemutty Jankee, 8 W. R., 251. Goor Dial *v.* Ram Dutt, 1 Agra, F. B., 15. But see Fitzpatrick *v.* Wallace, 2 B. L. R., A. C., 317.

[4] Moolchund *v.* Chutree, N. W. R., 175.

[5] Siboo Jelya *v.* Gopal Chunder Chowdhry, 19 W. R., 200. Nidhi Krishun Bose *v.* Ram Doss Sen, 13 B. L. R., 416; 20 W. R., 341, s.c.

[6] Attimoolah *v.* Shaikh Saheboolah, 15 W. R., 149.

[7] Sheikh Peer Bux *v.* Sheikh Meahjan, W. R., F. B., 146. Gureeb Mundul *v.* Bhoobun Mohun Sein, 2 W. R., Act X, 85. Ishen Chunder Ghose *v.* Hurish Chunder Banerjee, 18 W. R., 19; 10 B. L. R., App., 5, s.c.

person not entitled to it does not prevent his acquiring such a right, and he can reckon the time during which he paid such rent as part of the required period.[1] A bye-howaladar, whose holding is a division of one intermediate between the zemindar and the actual ryots upon payment of a fixed rent to the zemindar, can, it has been held, acquire the right.[2] The right moreover does not depend upon the payment of rent: for instance where, by the custom of the district, no rent was payable when the land could not be cultivated;[3] a class of holding called *oothundee* or *nuksan*. And a mortgagee in possession is sufficiently in the position of a landlord to enable the ryot to acquire this right under him.[4] It has however been held that the occupancy must be of the same kind throughout as regards the ryot; and that therefore an occupancy of five years under a pottah granted to two ryots jointly, and then a further occupancy of seven years by one alone without a pottah was not sufficient.[5]

[1] Syud Ameer Hossein *v.* Sheo Suhae, 19 W. R., 338.
[2] Ruttun Monee Dabee *v.* Kumolakant Talookdar, 12 W. R., 364.
[3] Permanund Ghose *v.* Shoorendronath Roy, 20 W. R., 329.
[4] Heeroo *v.* Dhoree, 2 All., 129.
[5] Sheikh Mahomed Chaman *v.* Ramprasad Bhagat, 8 B. L. R., 338.

LECTURE X.

RELATIVE RIGHTS OF ZEMINDARS AND HOLDERS OF UNDER-TENURES. RIGHTS OF ZEMINDAR.

Right of occupancy—Acquisition of the right—Transferability of the right—Effect of transfer of holding by occupancy ryot—Subinfeudation—Enumeration of sub-tenures—Enhancement and abatement of rent—Right of measurement—Division of zemindaries—Zemindar's right of alienation—Zemindar's power to lease—Succession to zemindaries—Transfer of under-tenures—Registration.

Right of occupancy.

I HAVE given some account of the nature of a right of occupancy. I go on now to consider the mode of its acquisition, the way in which it may be lost, and the extent to which it is transferable. With regard to the acquisition of the right, the power of the landlord to eject the tenant under a tenancy-at-will does not prevent the right of occupancy arising.[1] In like manner if, after the expiry of a holding for eleven years, the tenant is allowed to remain so that he could not be ejected till the end of the twelfth year, he would have acquired a right of occupancy:[2] and the same principle would apply to a holding during part of which the tenant was allowed to remain as a tenant-at-will. The section expressly says that the right arises whether the holding was under pottah or not. Nevertheless, some learned Judges at first held that the right did not necessarily arise when there was a pottah for a fixed term:[3] and in overruling the case referred to, it was said that an express stipulation for re-entry would be sufficient

Acquisition of the right.

[1] Hyder Buksh *v.* Bhoopendro Deb Coomar, 15 W. R., 231.

[2] Dariao *v.* Dowluta, 5 All., 9.

[3] Damanulla Sirkar *v.* Mamudi Nashio, 3 B. L. R., A. C., 178.

to bar the accruing of the right. However, this opinion was merely an illustration made use of in the later case which overruled, with the concurrence of one of the learned Judges who had originally held the other way, the decision that the stipulating for a fixed term in a pottah prevented the accrual of a right of occupancy.[1] It is now therefore settled that the right may be acquired by holding under a lease or a succession of leases.[2] The occupation cannot however be made up partly by the occupation of the claimant's vendor of the holding, even although the landlord consented to the transfer.[3] The Act being retrospective as to the commencement of the holding, the right may be acquired by a holding partly before and partly after the passing of Act X of 1859.[4]

Transferability of the right.

With regard to the alienability of the tenure much difference of opinion has existed. The Act, as I have before remarked, does not define a right of occupancy: it provides that the ryot holding for the prescribed period "shall have a right of occupancy in the land, so long as he pays the rent." The right is not expressed to be heritable; but it is provided that "the holding of the father or other person from whom a ryot inherits shall be deemed to be the holding of the ryot within the meaning of this section."

---

[1] Pundit Sheo Prokash Misser *v.* Ram Sahoy Singh, 8 B. L. R., 165; 17 W. R., 62, s. c.

[2] See also Damanulla Sirkar *v.* Mamudie Nashio, 3 B. L. R., A. C., 178; 11 W. R., 556, s.c. Khukoornissa Begum *v.* Ahmed Reza, 11 W. R., 89. Golam Sanja *v.* Hurish Chunder Ghose, 17 W. R., 552. Hooba Khan *v.* Munsub Ali, 3 N. W. R., 37. Mukandi Lal Dubei *v.* Crowdy, 8 B. L. R., App., 95.

[3] Tara Pershad Roy *v.* Soorjo Kant Acharjee Chowdry, 15 W. R., 152. Hyder Buksh *v.* Bhubendro Deb Koonwar, 17 W. R., 179.

[4] Thakooranee Dassee *v.* Bisheshur Mookerjee, B. L. R., Supp. Vol., 202; 3 W. R., Act X, 29, s.c.

LECTURE X.

That provision only refers to the acquisition of the right; and the right, when acquired, is nowhere declared to be heritable; and the literal meaning of the terms used would not necessarily include an hereditary quality in the right. Moreover, the right being one created by Statute, although analogous in some respect to the right of the khoodkashts, its nature cannot be ascertained by a reference to the rights of the khoodkashts or to custom. Occupancy tenants may of course have customary or other rights in addition; but it is difficult to see how these can assist in determining their rights as occupancy ryots. Apparently, the strict terms in which the right is bestowed would be satisfied by giving the ryot a personal right, neither hereditary nor transferable. Accordingly, Sir Barnes Peacock in one case doubted whether a right of occupancy was heritable.[1] The right of occupancy is necessarily acquired by holding upon a tenure which is either hereditary and transferable or not: and at one time it was a question whether a right to occupy and not to be ejected so long as the rent is paid is added to the rights already existing, so that it becomes part of the tenure and goes with it, being transferable when the original tenure was so. It has been held that the acquisition of an occupancy right would not render a tenure transferable which before was not so;[2] on the other hand, it has been said that a right of occupancy is perpetual, transferable, and heritable.[3] In other and later cases the right has been decided not to be

[1] Ajoodhya Pershad *v.* Mussamat Emam Bandee, 2 In. Jur., 192; 7 W. R., 528, s. c.; B. L. R., Supp. Vol., 725, s. c. See also Rani Durga Sundari *v.* Brindabun Chandra Sirkar Chowdhry, 2 B. L. R., App., 37; 11 W. R., 162, s. c.

[2] Ib.

[3] Mussamut Taramonee Dossee *v.* Birressur Mozoomdar, 1 W. R., 86.

transferable;[1] while in others the transferability appears to have been decided with reference to the original nature of the holding. Thus it has been laid down that a khoodkasht ryot with a right of occupancy may transfer if there is a custom authorising such transfer; that is, it seems if his original holding was transferable, since at the date of this decision there could be no custom which would affect the new right of occupancy created by Act X of 1859.[2] In several other cases the same test of transferability is applied or referred to, namely, the original nature of the tenure.[3] And in most of the cases in which a right of occupancy was decided not to be transferable, the original tenure was not transferable: and Sir Barnes Peacock says it was not intended to alter the nature of a jote by giving the right of occupancy.[4] But it has now been decided by a Full Bench of the High Court of Calcutta that the statutory right of occupancy is not transferable as such. This decision is grounded upon the personal nature of the right. Thus Chief Justice Couch says "it is a right to be enjoyed only by the person who holds or cultivates and pays the rent and has done so for a period of twelve years:"[5] and again "the ordinary construction of the words" (in section 6) "appears to me to be, that the right is only to be in the person who has

[1] Bibee Sohodwa *v.* Smith, 12 B. L. R., 82; 20 W. R., 139, s. c.

[2] Chunder Coomar Roy *v.* Kadermonee Dossee, 7 W. R., 247. Narendra Narayan Roy Chowdhry *v.* Ishan Chandra Sen, 13 B. L. R., 274.

[3] Juggut Chunder Roy *v.* Ramnarain Bhuttacherjee, 1 W. R., 126. Unopoorna Dossee *v.* Oomachurn Doss, 18 W. R., 55. Sreeram Bose *v.* Bissonath Ghose, 3 W. R., Act X, 3. And see Nanku Roy *v.* Mahabir Prasad, 3 B. L. R., App., 35; 11 W. R., 405, s. c.

[4] Ajoodhya Pershad *v.* Mussamut Emam Bandee, B.L.R., Supp. Vol., 725; 2 In. Jur., 192, s. c.; 7 W. R., 528, s. c.

[5] Narendra Narayan Roy Chowdhry *v.* Ishan Chandra Sen, 13 B. L. R., 274, at p. 287.

LECTURE X.

occupied for twelve years, and it was not intended to give any right of property which could be transferred."[1] This view is more fully developed in the following extract from a judgment of Mr. Justice Phear:[2]

"As the authorities stand, this question seems to be one of some nicety, and in considering it there is need to bear in mind that the relations between the zemindar and the ryot are not generally the same as those between the English landlord and tenant. No doubt the zemindar has been made by legislative enactment the proprietor of the land which forms his zemindary; and as regards his khamar, nij-jote or sir land, it may be taken that the cultivator of the soil has generally no other rights than those which he obtains as a tenant by contract with the zemindar: but with regard to the ryotti lands which constitute the bulk of the zemindary, it is much otherwise. There while the zemindar is still proprietor of the land, the ryots of the village, as the combined effect of custom and legislation, have in most, if not in all, cases some right to cultivate the ryotti land of the village, which is altogether independent of the zemindar, and which, in the case of a ryot having a right of occupation, is a right to occupy and use the soil quite irrespective of any assent or permission on the part of the zemindar. This right resting upon legislation and custom alone, is not derived from the general proprietary right given to the zemindar by the Legislature, but is, as I understand, in derogation of, and has the effect of cutting down and qualifying, that right. I may

[1] Narendra Narayan Roy Chowdhry *v.* Ishan Chandra Sen, 13 B. L. R., 274, at p. 288.

[2] Bibee Sohodwa *v.* Smith, 12 B. L. R., 82, at p. 86; 20 W. R., 139, s. c.

say that, in my conception of the matter, the relation between the zemindar's right and the occupancy ryot's right is pretty much the same as that which obtains between the right of ownership of land in England and the servitude or easement which is termed *profit á prendre:* although I need hardly say the ryot's interest is greatly more extensive than a *profit á prendre.* It appears to me that the ryot's is the dominant and the zemindar's the servient right. Whatever the ryot has, the zemindar has all the rest which is necessary to complete ownership of the land: the zemindar's right amounts to the complete ownership of the land subject to the occupancy ryot's right, and the right of the village, if any, to the occupation and cultivation of the soil, to whatever extent these rights may in any given case reach. When these rights are ascertained there must remain to the zemindar all rights and privileges of ownership which are not inconsistent with or obstructive of them. And amongst other rights, it seems to me clear that he must have such a right as will enable him to keep the possession of the soil in those persons who are entitled to it, and to prevent it from being invaded by those who are not entitled to it."[1]

It was held in an early case that the customary right to occupy as long as the ryot paid the customary or agreed rent could not be transferred, and the zemindar was held entitled to possession as against the transferee.[2] The right dealt with in this case may be the right of the khoodkashts, or an analogous right which had grown up out of mere

[1] See Regulation VII of 1799, s. 15, cl. 7.

[2] Baboo Prosonokoomar Tagore *v.* Rammohun Doss, S. D. A. (1855), 14, referring to Harington's Analysis, Vol. III, 434, 450.

LECTURE X.

occupancy. I have already discussed the position of the khoodkashts: their right may have tended in some parts to become the kind of right here referred to, and to lose such alienability as it had acquired.

Effect of transfer of holding by occupancy ryot.

There has been considerable discussion as to the effect of a transfer of a holding in which the tenant has only a right of occupancy, and which as we have seen cannot itself be transferred. In one case in which the zemindar sued for possession against the transferee, contending that the transfer gave the transferee no rights, it was held that the landlord could not evict the transferee so long as the recorded tenant or his representatives paid the rent, but that he was not bound to recognise the transfer, or take rent from the transferee.[1] The effect of this decision is to keep the right and liability in the original tenant, the transferee being regarded as a lessee of the occupancy holder. Other decisions agree in this view.[2] Again it has been held that the transfer is not a forfeiture.[3] In another case it was said that a tenant with a right of occupancy could not transfer his title without possession as against the zemindar or talookdar.[4] In the same case it was said that if a ryot having a non-transferable tenure quits possession and gives over the land to a stranger, he may be treated as

[1] Joykishen Mookerjee *v.* Rajkishen Mookerjee, 5 W. R., 147.

[2] Ajoodhya Pershad *v.* Mussamat Emam Bandee, 2 In. Jur., 192; B. L. R., Supp. Vol., 725, s. c.; 7 W. R., 528, s. c. Rani Durga Sundari *v.* Brindaban Chandra Sirkar Chowdhry, 2 B. L. R., App., 37; 11 W. R., 162, s. c. Suddye Purira *v.* Boistub Purira, 12 B. L. R., 84 (note); 15 W. R., 261, s. c.

[3] Gorachund Moostafee *v.* Buroda Pershad Moostafee, 11 W. R., 94. Suddye Purira *v.* Boistub Purira, 15 W. R., 261. Dwarkanath Misree *v.* Kanaye Sirdar, 16 W. R., 112.

[4] Hureehur Mookerjee *v.* Jodonath Ghose, 7 W. R., 114.

having abandoned his rights in the land, or as a tenant-at-will whose tenancy is determined, and that the landlord may sue to have it declared that no interest vests in a purchaser from such tenant. In one of the latest cases on the point, however, a view somewhat different to those before referred to is taken. In that case[1] Mr. Justice Phear, in a judgment already quoted, treated a transfer neither as a forfeiture by the original ryot nor as conveying a right to the transferee; he held the transferee to be a mere trespasser as against the zemindar, whom he considers entitled to keep his own tenant in possession and to evict the transferee, who cannot plead as against the zemindar that the original tenant is entitled to possession. The learned Judge throws out that it may possibly be that the transferor has not lost his right as against the zemindar to resume his occupation. In the latest decision upon the point, it was held that an attempt to transfer a right of occupancy by a ryot, who quits his occupation and ceases himself to cultivate or hold the land, may be treated as an abandonment of the right so as to entitle the landlord to evict the transferee.[2] In his judgment in that case, Mr. Justice Phear remarked that in the case before referred to,[3] nothing was decided as to the rights of the transferor. An occupancy ryot may it seems lease:[4] and it has been held that he may grant a mokurreree lease without rendering his

[1] Bibee Sohodwa *v.* Smith, 12 B. L. R., 82; 20 W. R., 139, s. c.

[2] Narendra Narayan Roy Chowdhry *v.* Ishan Chandra Sen, 13 B. L. R., 274.

[3] Bibee Sohodwa *v.* Smith, 12 B. L. R., 82; 20 W. R., 139, s. c.

[4] Jumeer Gazee *v.* Goneye Mundul, 12 W. R., 111. Bibee Sohodwa *v.* Smith, 12 B. L. R., 82; 20 W. R., 139, s. c.

LECTURE X.

lessee liable to ejectment.[1] Moreover, the landlord may be sued for damages by an occupancy ryot who has sub-let, if the landlord takes upon himself to recover rent from the tenants of the occupancy ryot.[2] We have seen that this right has been held to be liable to be lost in some cases, as by abandonment.[3] Setting up a fictitious pottah has been held to cause forfeiture or loss of the right;[4] but this decision has been questioned by Sir Richard Couch.[5] It has even been held in the North-Western Provinces that planting trees on the land without the zemindar's consent forfeits the right of occupancy.

I shall hereafter give some description of the putnee talook in more immediate connexion with the Sale laws. I now proceed to notice some further points in connexion with tenures in general.

Subinfeudation.

It is well known that the Permanent Settlement gave an enormous impetus to the subinfeudation which had already begun to be a marked feature of the land system of Bengal. Upon this subject the following remarks may be inserted here:

Sir George Campbell says:[6]—"At the Permanent Settlement Government by abdicating its position as exclusive possessor of the soil, and contenting itself with a permanent rent-charge on the land, escaped thenceforward all the labour and risks attendant upon detailed mofussil

[1] Dumree Shaikh *v.* Bissessur Lall, 13 W. R., 291.

[2] Jugalkishor Banerjee *v.* Abhaya Charan Sarma, 1 B. L. R., A.C., 81.

[3] See also Huro Doss *v.* Gobind Bhuttacharjee, 12 W. R., 304; 3 B. L. R., App., 123, s. c.

[4] Mirza Nadir Beg *v.* Muddurram, 2 W. R., Act X, 2.

[5] Unopoorna Dossee *v.* Radha Mohun Pattro, 19 W. R., 95.

[6] Bengal Administration Report, p. 79.

management. The zemindars of Bengal Proper were not slow to follow the example set them, and immediately began to dispose of their zemindaries in a similar manner. Permanent under-tenures, known as putnee tenures, were created in large numbers, and extensive tracts were leased out on long terms. By the year 1819, permanent alienations of the kind described had been so extensively effected, that they were formally legalized by Regulation VIII of that year, and means afforded to the zemindar of recovering arrears of rent from his putneedars almost identical with those by which the demands of Government were enforced against himself. The practice of granting such under-tenures has steadily continued, until at the present day, with the putnee and subordinate tenures in Bengal Proper and the farming system of Behar, but a small proportion of the whole permanently-settled area remains in the direct possession of the zemindars. In these alienations the zemindars have made far better terms for themselves than the Government was able to make for itself in 1793. It has rarely happened that a putnee, or even a lease for a term of years, has been otherwise than on payment of a bonus, which has discounted the contingency of many years' increased rents. It is a system by which, in its adoption by the zemindars, their posterity suffers, because it is clear that, if the bonus were not exacted, a higher rental could be pemanently obtained from the land. This consideration has not, however, had much practical weight with the landholders. And if gradual accession to the wealth and influence of sub-proprietors be a desirable thing in the interest of the community, the selfishness of the landholding class is not in this instance of it a subject for regret.

LECTURE X.

"The process of subinfeudation described above has not terminated with the putneedars and ijaradars. Lower gradations of sub-tenures under them, called dur-putnees and dur-ijaras, and even further subordinate tenures, have been created in great numbers. And not unfrequently, especially where particular lands are required for the growth of special crops, such as indigo, superior holders have taken under-tenures from their own tenants. These tenures and under-tenures often comprise defined tracts of land; but a common practice has been to sub-let certain aliquot shares of the whole superior tenure, the consequence of which is that the tenants in any particular village of an estate now very usually pay their rents to two, or many more than two, different masters, so many annas in the rupee to each. It must be added that in many cases where an estate or tenure has been sub-let, the lessor has reserved certain portions, generally those immediately contiguous to his residence, in his own possession. These he may cultivate by keeping ryots upon them, or, especially if he be a European indigo-planter, by hired labour.

"All the under-tenures in Bengal have not, however, been created since the Permanent Settlement in the manner above described. Dependent talooks, ganties, howalas, and other similar fixed and transferable under-tenures existed before the Settlement. Their permanent character was practically recognised at the time of the Settlement, and has at any rate since been confirmed by lapse of time.

"In addition to all these tenures, the country is dotted over with small plots of land held revenue-free, the large majority of them having been granted by former Governments, or zemindars under those Governments, as religious

endowments,—grants which have since been recognised and confirmed by the English Government.

"The general provisions of the Regulations of 1793 were in favour of the tenant. The theory of the Permanent Settlement was to give to all under-holders, down to the ryots, the same security of tenure as against the zemindars, which the zemindar had as against the Government. Sub-holders of talooks and other divisions under the zemindars were recognised and protected in their holdings, subject to the payment of the established dues. As respects the ryots, the main provisions were these: all extra cesses and exactions were abolished, and the zemindars were required to specify in writing the original rent payable by each ryot at the pergunnah or established rates. If any dispute arose regarding the rates to be so entered, the question was to be 'determined in the Civil Court of the zillah in which the lands were situated, according to the rates established in the pergunnah for lands of the same description and quality as those respecting which the dispute arose.' It was further provided that no zemindar should have power to cancel the leases except on the ground that they had been obtained by collusion at rates below the established rates, and that the resident ryots should always be entitled to renew pottahs at these rates. In fact fixity of tenure and fixity of rent-rates were secured to the ryots by law. It has already been pointed out that provision was made for canoongoes and putwaris, an object of whose appointment was declared to be 'to prevent oppression of the persons paying rent.' On behalf of the ryots it was a record of rights only that was wanting. The status that was designed for the tenantry was, however, much impaired, and in great part

LECTURE X.

destroyed, by the great powers subsequently given to the zemindars under the old *huftum* (seventh) and *punjum* (fifth) Regulations with a view to enable them to realise their rents. Under the *huftum* process (Regulation VII of 1799), the person of the ryot could be seized in default; under the *punjum* process (Regulation V of 1812) his property could be distrained; and in either case the proceedings commenced by what has been described as a strong presumption, equivalent to a knock down blow, against the ryot. The whole Rent Law was rescinded by Act X of 1859. The law of 1859 reduced the powers exercised by zemindars themselves, while it increased the grounds of enhancement and afforded the remedy of a summary process before Deputy Collectors, who were, however, often very insufficiently qualified. Rent suits are now transferred to the Civil Courts; they are better tried, and the rights of the ryots are more respected than they were; but, on the other hand, there are now good grounds of complaint that there is difficulty in quickly realising undisputed rents by legal process."

And I may add the following extracts[1]:—"When all intermediate (even to the very lowest) interests became rights of property in land, not only could the owner of any such interest carve it as a subject of property into other interests, by encumbering or alienating within the limits of the right, but even his ownership itself might be of that complex heterogeneous kind, which is seen in Hindoo joint-parcenary.

"Let us look more nearly at the first side of this proposition. Remembering that a middle tenure or interest below

[1] From Rustic Bengal, by J. B. P., in the Calcutta Review for 1874.

the revenue-paying zemindar resembles the primary zemindary, and is essentially the right, on payment of the proper *jamma* to a superior holder, to make collections from the cultivators of land, and to take the *jummas* from subordinate holders within a specified area, we see that as soon as the tenure is converted into a proprietary right, there must almost necessarily be a constant tendency to the creation of minor tenures. The owner of the smallest and lowest tenure is severed from the land itself by the customary occupation of the ryots, and ryottee-tenures, if there are any; indeed, the ryot holdings contain more of that which goes to constitute the English idea of land property than do the middle tenures, although it is not always easy to draw the line which separates the two. The middle tenure of every degree is thus in a great measure an account-book matter, and is very completely represented by the *jummabandi* paper. If the owner of such a property desires to benefit a child, or a family connexion, he can do so by making him a mukerreree grant in some form of a portion of his collections. It would be no easy matter to describe fully the various shapes which such a grant is capable of taking. It may cover a part of a village only, or a whole village, or many villages (according to the circumstances of the grantor and the transaction), and may convey the right to take the rents, dues, and *jummas* within that area by entireties; or it may convey the right to take a fractional part only of them; or again, it may convey the entireties for some villages, and fractional parts for others, and so on. Most frequently the tenure of the grantor himself amounts only to a right to a fractional share of the rents, &c., and then his grant will pass a fraction of a fraction. But not only may a tenure-holder make a grant

LECTURE X.

of this nature to some one whom he desires to benefit, he may do the like to a stranger in consideration of a bonus or premium. Again, he may do so with the view to ensure to himself, in the shape of the rent reserved on the subject of grant, the regular receipt of money wherewith to pay his own *jumma*. Or he may, by way of affording security for the repayment of a loan of money made to him, temporarily assign to the lender under a *zar-i-peshgi ticca* his tenure-right of making collections. In these or similar modes, the Bengalee tenure-holder, landed proprietor, or zemindar (however he may be designated) is obliged to deal with his interest when he wants to raise money, or to confer a benefit; and it is obvious that in each instance (excepting that of out and out sale of the entirety of his interest, to which he rarely has recourse, if he can avoid it), he creates a fresh set of proprietary rights."

Enumeration of sub-tenures.

It is not possible to give any exhaustive account of these innumerable under-tenures: and in many cases what is called a tenure has no distinctive feature; and the name it bears is given, not on account of any peculiarity in the nature of the holding itself, but to indicate the kind of land cultivated or the crop produced, or the mode in which rent is paid. Thus we have (1) sali land, land wholly submerged during the rains; (2) suna land, not so submerged; (3) nakdi or neckdy land, of which rent is paid in cash at a certain rate for the beegah; (4) bhaoli land, of which rent is paid in kind, the rent being a share of the produce; (5) bhiti, raised house-site land; (6) uthbandi or ootbundee, in which the ryot pays for so much of his holding as he actually cultivates.[1] These

[1] Rustic Bengal, by J. B. P., in the Calcutta Review for 1874. Premanund Ghose *v* Shoorendronath Roy, 20 W. R., 399.

names are frequently met with as names of tenures; whereas several of them are not so much indicative of any peculiarity of tenure as of the kind of land held, and the mode of paying rent. This will appear more clearly from an enumeration of some of the various so-called tenures. Thus we have ausat or ousut, a name used in Backergunge to denote a subordinate talook; and nim (or neem) ousut, a sub-division of an ousut talook:[1] ihtimam, a name given to small talooks in Chittagong, and formerly used in Burdwan and Rajshahye: howala, a Backergunge name for a small talook;[2] and nim howala, a half howala.[3] We have mention also of ousut howalas,[4] a general name for tenures intermediate between those of the zemindar and the ryot; and of bye-howalas, or sub-divisions of a nim howala.[5] Again, a tenure subordinate to a howala is called a zimma. There is a tenure called tashkisi zimma, held upon payment of the current rates of the district.[6] In Rungpore we find a tenure called upanchaki, a name said to be derived from a cess of one-fifth; it is apparently a mokurreree istemrari tenure.[7] So also the surbarakaree tenures of Cuttack, which are permanent and hereditary, and, with

[1] Mahomed Kadur *v.* Puddomala, 2 W. R., 185.

[2] Juggut Chunder Roy *v.* Ramnarain Bhuttacharjee, 1 W. R., 126. Madhub Chunder Ghose *v.* Nilkant Shaha Roy, 2 W. R., 42. Doorga Soonderee Debia *v.* Dinobundhoo Kyburto Doss, 8 W. R., 475.

[3] Mahomed Kadur *v.* Puddomala, 2 W. R., 185. Doorga Churn Kur Sircar *v.* Anund Moyee Dabia, 3 W. R., 127.

[4] Huree Churn Bose *v.* Meharoonissa Bibee, 7 W. R., 318.

[5] Ruttun Monee Dabee *v.* Kumolakant Talookdar, 12 W. R., 364.

[6] Baboo Gopal Lall Thakoor *v.* Teluck Chunder Rai, 10 Moore's I. A., 185.

[7] See Madhub Janah *v.* Rajkishen Mookerjee, 7 W. R., 96. Shib Kumar Toti *v.* Kali Prasad Sen, 1 B. L. R., A. C., 167.

LECTURE X.

the consent of the zemindar, transferable.[1] Bekhbirt is a name given to talooks sometimes of considerable size in Sarun. A gantie or ganthe is an hereditary tenure at a fixed rent:[2] the name is said to be derived from a Sanscrit word meaning a knot or engagement. Birt land is held for religious purposes or by Brahmins free of revenue, and it is held under a heritable istemrari tenure sometimes known as birt ijara.[3] There is a tenure in Sylhet called mirasdaree also of an istemrari heritable nature.[4] The mulgenies of Canara are perpetual tenures usually granted on payment of a fine, and are transferable and hereditary, reverting however to the landlord on failure of heirs.[5] I have referred to these and other tenures of Southern India on various occasions by way of illustration, but as these tenures are not known under the same names in Bengal, it is unnecessary to give them in detail. In some parts, as in Colgong, there is a right called boro ajwain, which is an hereditary right to sow on land in which the sowers have no property, provided the seed was sown before a plough should have been put into the soft mud; also to all grass and other crops which should spring up in the month of Kartick, and if necessary to re-sow in that month; to burn jungle in Assar; and to sow on all deposit or mud before a plough could pass over the ground. This right prevailed in certain new formations near the Ganges, but it

[1] Doorjodhun Doss *v.* Chooya Daye, 1 W. R., 322. Sudanundo Mytee *v.* Nowruttun Mytee, 16 W. R., 290; 8 B. L. R., 280, s. c. Kasheenath Punee *v.* Lakhmanee Pershad Patnaik, 19 W. R., 99.

[2] Bipinbehari Chowdhry *v.* Ram Chandra Roy, 5 B. L. R., 235.

[3] Morley's Digest, Gloss.

[4] For most of the above tenures, see Whinfield's Landlord and Tenant, 5.

[5] Timmarsa Puranik *v.* Badiya, 2 Bombay H. C. R., 73 (note).

was not confined to the first season during which such formations existed.[1]

Leases and farms are also known under various names, as izara or ijara, and thika (from *thik*, exact), a lease at a certain amount of rent: a holder of this kind may have no land under his own cultivation within the district leased to him, but only farm the rents.[2] Kutkina is a sub-lease by a farmer or under-farmer, who again may have no direct connexion with the soil.[3] Below these again are dur-ijaras and dur-kutkinas, and so on in a line of subinfeudation which is apparently without end. Moostajir is another name for a farmer.[4]

Rent-paying land is called jamai land. Frequently the rent is half the produce: we have seen that this is so in the khamar lands in many cases. The tenants of the class of dihkasht or khoodkasht, and those called adhiar and chikli, pay in this way; so also the dhotar, who holds plough lands in Purneah, and the under-tenants of ryots. These latter are known under the name of kurpha; in Rungpore they are known as chukani ryots: other names are prajali, shikmi, and petao ryots. There is a class of ryots in Behar called ashrafs or gentlemen who hold at low rents. An autbundi ryot (from *aut*, a plough) pays so much a plough-land.[5] Both the ryots and the lands are

[1] Records of Criminal Appeal, No. 57 of 1871, in the Calcutta High Court.

[2] Leela Dhur *v.* Bhugwunt, 3 N. W. R., 39. Baij Nath *v.* Munglee, 2 N. W. R., 411.

[3] Surwan Singh, Petitioner, 2 In. Jur., N. S., 149. Rajah Leelanand Singh *v.* Surwan Singh, 9 Sev., 311.

[4] Whinfield's Landlord and Tenant, 13. Baboo Dhunput Singh *v.* Gooman Singh, 11 Moore's I. A., 462. Government *v.* Dindayal Misir, 5 Sel. R., 118.

[5] Whinfield's Landlord and Tenant, 17.

LECTURE X.

designated rather according to the class to which they belong than to the tenure upon which the lands are held by the ryots or tenants.[1]

Different tenures prevailed in different parts of the country.[2] It is impossible with our present information to give the details of the various local tenures, and many of those which have come under notice do not present any features specially characteristic: we have already seen that the main distinction turns in many cases upon the mode in which rent is paid and upon the hereditary or transferable character of the holdings: so that for our present purpose it is very possible that fuller details might not add much to our information as to the specific varieties of tenure prevailing in Bengal.

Enhancement and abatement of rent.

I have now given some account of the relation between the zemindar and the holders of subordinate interests in the land. I proceed to give some further details upon the subject. And first as to the amount of rent: we have seen generally what was its amount, and the mode of payment; we have now to consider when it could be increased.[3] We have already discussed this subject to some extent in treating of the talookdar's position: but I may here notice a few of the cases upon that part of the subject. The main principle laid down with respect to talookdars is that they are not to be enhanced to the same extent as ryots, but only so as to bring their rent up to that of the neighbouring talookdars, and so as to leave

[1] See for details Whinfield's Landlord and Tenant, 70 to 72.

[2] See Regulations IV of 1794 and X of 1800.

[3] For the general principles as to enhancement, see Radhika Chowdhrain v. Bamasundari Dasi, 4 B. L. R., P. C., 8, at p. 10; 13 W. R., P. C., 11, s. c.

them something after paying their rent.[1] This margin of profit according to the cases should be from one-third to one-sixth of the gross rent.[2] Similarly, it has been held that a howaladar cannot enhance his nim-howaladar to the same extent as his own rent has been enhanced, but only up to the ordinary rate for similar land.[3] We have also discussed the nature of holdings at a fixed rent. Again, we shall consider in connexion with the Sale Laws the statutory power of a purchaser at a sale for arrears of revenue to enhance the rent. It only remains to notice those cases which are not included in any of the foregoing categories. And these may be generally described as cases in which the holding has commenced since the Permanent Settlement, and is not protected by contract or custom. There are however holdings, which, although they may have commenced since the Permanent Settlement, are in a more advantageous position. Thus, section 4 of Act VIII of 1869 (B.C.) provides, with regard to ryots, that whenever in any suit under that Act it shall be proved that the rent at which land has been held by a ryot has not been changed

[1] Dyaram *v.* Bhobindur Naraen, 1 Sel. R., 139. Gopee Mohun Thakoor *v.* Radha Mohun Ghose, 2 Sel. R., 17. Jadub Chunder Haldar *v.* Ishoree Lushkur, W. R. (1864), Act X, 74. Huro Soonduree Chowdhrain *v.* Anund Mohun Ghose Chowdhry, 7 W. R., 459. Mohima Chunder Dey *v.* Gooroo Dass Sein, 7 W. R., 285. Soorasoonderee Dabea *v.* Gopal Lall Thakoor, 19 W. R., 143. Baboo Dhunput Singh *v.* Gooman Singh, 11 Moore's I. A., 433, at p. 468; 9 W. R., P. C., 3, s. c. Khajah Assanoolah *v.* Obhoy Chunder Roy, 13 Moore's I. A., 317, at p. 324.

[2] Gouree Pershad Doss *v.* Ranee Shurno Moyee, 6 W. R., Act X, 41. Munee Kurnika Chowdhry *v.* Anund Moyee Chowdhry, 10 W. R., 245. Fifteen per cent. according to Rani Swarnamayi *v.* Gauri Prasad Dass, 3 B. L. R., A. C., 270; and ten per cent. and charges according to Punchanund *v.* Hurgopal Bhadery, 1 Sel. R., 145.

[3] Mirtenjae Mookerjee *v.* Manick Chunder Dass, 7 Sel. R., 430.

LECTURE X.

for a period of twenty years before the commencement of the suit, it shall be presumed that the land has been held at that rent from the time of the Permanent Settlement, unless the contrary be shown, or unless it be proved that such rent was fixed at some later period. And when a ryot has held lands from the Permanent Settlement at fixed rates, he is entitled to a pottah at those rates by section 3. By sections 16 and 17 of the same Act, the same presumption as to holding from the Permanent Settlement is extended to talooks and other tenures, the rent of which, if dependent talooks or intermediate interests of a permanent and transferable kind, cannot be enhanced. Ryots having a right of occupancy are not liable to enhancement of the rent previously paid by them, except on some one of the following grounds: first, that the rate of rent paid by such ryot is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the places adjacent; second, that the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the ryot; third, that the quantity of land held by the ryot has been proved by measurement to be greater than the quantity for which rent has previously been paid by him.[1] The Great Rent Case[2] explains the mode in which the enhanced rents should be ascertained, having regard to the provisions of the Act which enact that ryots having rights of occupancy, but not holding at fixed rates as described in the two preceding sections, are entitled to receive pottahs at fair and equitable rates; the rates previously paid being deemed fair and equitable until proof to the

[1] Act X of 1859, s. 17. Act VIII of 1869 (B.C.), s. 18.

[2] B. L. R., Supp. Vol., 202. See Regulation V of 1812, ss. 7, 8.

contrary in a suit under the Act.[1] The prevailing rates here referred to are in most cases the village or pergunnah rates. These pergunnah and village rates can still be ascertained in most parts: although in some places it is difficult to fix upon any rate from want of uniformity.[2]

The occupancy ryot is also entitled to claim an abatement from his rents on grounds corresponding to those on which the rent can be enhanced; namely, if the area of the land has been diminished by diluvion or otherwise; or if the value of the produce or the productive powers of the land have been decreased by any cause beyond the power of the ryot; or if the quantity of land held by the ryot has been proved by measurement to be less than the quantity for which rent has been previously paid by him.[3]

It would seem that occupancy ryots can neither be made liable to enhancement nor have the benefit of an abatement in case of dispute without a suit under the Act. In other cases of enhancement the parties are left to the ordinary law.[4] It has been held, with reference to the right to enhance, that one of several joint proprietors may sue to enhance his share of rent without having had a partition (butwara) of his holding;[5] but this, according to the principle of later cases, would only be allowed when the plaintiff had received separately his share of the rent. And a farmer under a lease for a term of years may enhance.[6]

[1] Act X of 1859, s. 5. Act VIII of 1869 (B.C.), s. 5.

[2] Robinson's Land Tenures, 27.

[3] Act X of 1859, s. 18. Act VIII of 1869 (B.C.), s. 19.

[4] Ranee Shurno Moyee *v.* Blumhardt, 9 W. R., 552. Chunder Coomar Banerjee *v.* Azeemooddeen, 14 W. R., 100.

[5] Troylochotaran Chowdhry *v.* Muthoora Mohun Dey, W. R. (1864), Act X, 41.

[6] Rushton *v.* Girdharee Tewaree, Marshall, 331.

LECTURE X.

By Act X of 1859, section 13, and Act VIII of 1869 (B.C.), section 14, even the ordinary ryot is to some extent protected from enhancement. These sections provide that "no under-tenant or ryot, who holds or cultivates land without a written engagement, or under a written engagement not specifying the period of such engagement, or whose engagement has expired or has become cancelled in consequence of the sale for arrears of rent or revenue of the tenure or estate in which the land held or cultivated by him is situate, and has not been renewed, shall be liable to pay any higher rent for such land than the rent payable for the previous year" unless a notice shall have been served upon him as prescribed in the section "specifying the rent to which he will be subject for the ensuing year, and the ground on which an enhancement of rent is claimed." It has been held that under these sections a ryot's rent can only be enhanced up to a reasonable rate[1] and of course it cannot be enhanced at all if the terms of the pottah exclude enhancement.[2] A claim to enhance assumes the existence of some right of occupation in the tenants.[3]

Right of measurement.

Measurement is spoken of in connexion with enhancement and abatement of rent. The landlord has a right to measure the land held by his tenant. We have seen that tenants very frequently in former times held more land than was avowed and paid for, and that the threat of measurement was an effective mode of exaction.[4]

[1] Bakranath Mandal *v.* Binodram Sen, 1 B. L. R., F. B., 25; 10 W. R., F. B., 33, s.c.

[2] Punchanun Bose *v.* Peary Mohun Deb, 2 W. R., 225.

[3] Baboo Dhunput Singh *v.* Gooman Sing, 11 Moore's I.A., 433, at p. 455. Bamasoondery Dassyah *v.* Radhicka Chowdhrain, 13 Moore's I. A., 248

[4] For the mode of measurement, see Whinfield's Landlord and Tenant, 178.

It has now been enacted as a general rule by Act VI of 1862 (B. C.), section 9, re-enacted by Act VIII of 1869 (B. C.), section 25, that "every proprietor of an estate or tenure, or other person in receipt of the rents of an estate or tenure, has the right of making a general survey and measurement of the lands comprised in such estate or tenure, or any part thereof, unless restrained from doing so by express engagement with the occupants of the lands." It has been held upon this that the zemindar may measure a talook held at a fixed rent;[1] and where talooks had been sold by the talookdar with a proviso that the purchaser should get his name registered in the zemindar's sheristah and pay rent accordingly, but the purchaser (the defendant) had not been registered, and had paid his rent to the assignee of his vendor and to his mouroossee lessee, the plaintiff, it was held that the plaintiff was entitled to measure because the land had not been sufficiently disconnected from his talook.[2] The landlord, in order to be entitled to measure, must be in possession or receipt of the rents.[3] The ryot is also entitled to have his land measured, but this right merely depends upon general principles.[4] If

[1] Oomachurn Biswas *v.* Shibnath Bhagchee, 8 W. R., 14. Baboo Run Bahadoor Singh *v.* Mulooram Tewaree, ib., 149.

[2] Tweedie *v.* Ram Narain Dass, 9 W. R., 151.

[3] Rajchunder Roy *v.* Kishen Chunder, 4 W. R., Act X, 16. Doorga Churn Doss *v.* Mahomed Abbas Bhooyan, 14 W. R., 399; 6 B. L. R., 361, s. c. Doorga Churn Doss *v.* Mahomed Abbas Bhooyan, 14 W. R., 121. Kalee Doss Nundee *v.* Ramguttee Dutt Sein, 6 W. R., Act X, 10. Smith *v.* Baboo Nundun Lal, ib., 13. Huradhun Dutt *v.* Hazee Mahomed, ib., 14. Pureejan Khatoon *v.* Bykunt Chunder Chuckerbutty, 7 W. R., 96.

[4] Durpnarain Raee *v.* Sreemunt Raee, S. D. A. (1849), 188. See Afsurooddeen *v.* Mussamut Shorooshee Bala Dabee, Marshall, 558. Ram Churn Bysack *v.* Lucas, 16 W. R., 279.

LECTURE X.

the lands measured are found to be in excess of those included in his lawful holding, he may be treated as a trespasser as to the excess;[1] or he may be charged rent for it, at a fair and equitable rate according to Mr. Justice Phear, or at the rate paid for the lands included in his pottah according to Mr. Justice Bayley;[2] or at the pergunnah rate in the case of jungleboory talooks.[3] Act VI of 1862 (B. C.), sections 9, 10, 11, and Act VIII of 1869 (B.C.), sections 37 to 41, provide for assisting the person entitled to measure and for the standard of measurement. Under these provisions it has been held that one shareholder of an estate cannot obtain the aid of the Collector for the purpose of measurement.[4]

We have seen that the zemindar has no longer his former power over the ryots: he cannot now enforce their attendance for any purpose,[5] and is simply restricted to his rights as a landlord.

Division of zemindaries.

The zemindars were vested at the Permanent Settlement with the power to dispose of their lands more freely than they had theretofore been able to do. At the same time provisions were made for a division of the zemindary under certain circumstances. Thus, it was provided that when there were several joint-proprietors of a zemindary, and some were disqualified, the jumma should be settled by the majority, but a dissatisfied shareholder might have his

[1] Rajmohun Mitter *v.* Gooroo Churn Aych, 6 W. R., Act X, 106.

[2] Golam Ali *v.* Baboo Gopal Lal Thakoor, 9 W. R., 65.

[3] Khaja Arathoon *v.* Mussamut Kureemoonissa, 3 Sel. R., 34.

[4] Mahomed Bahadoor Mojoomdar *v.* Rajah Rajkishen Singh, 15 W. R., 522. Moolook Chand Mundul *v.* Modhoosoodun Bachusputty, 16 W. R., 126.

[5] Act X of 1859, s. 11. Act VIII of 1869 (B. C.), s. 12.

share separated at his own expense.[1] And at the Permanent Settlement these provisions were supplemented by further provisions for division of zemindaries. Regulation I of 1793, section 10, clause 1, provides that all private transfers and divisions shall be notified to the Collector in order that the jumma may be apportioned, and the shares with the jumma registered, and that separate engagements may be executed by the proprietors, who will thenceforth be considered as actual proprietors of land. The section further provides that if such notification is not made, the whole estate will be held liable as if no transfer or division had taken place; and that, if lands be disposed of as a dependent talook, the dependent talookdar's jumma will not be registered, nor will the rights or claims of Government against the lands for the whole revenue be affected. The section then lays down the principles of assessment of the jumma in case of a sale of the whole of the zemindary in lots, and of a portion in one or several lots. The 11th section provides for the sale in lots or otherwise of lands held khas or let in farm. Regulation XXV of 1793 provides that in dividing revenue-paying estates the shares shall be rendered as compact as possible. For the purpose of apportioning the jumma, the officers of Government are to have access to the accounts of the gross collections, the Regulation declaring that the proprietors cannot, under the provisions of the Permanent Settlement proclamation, object to produce their accounts in such a case. It is also provided that the proprietors of two or more estates, which have originally formed part of the same zemindary, talook, or chowdrai, shall be allowed to

[1] Regulation of 23rd November 1791, arts. 22 to 24. Regulation VIII of 1793, ss. 23 to 26.

LECTURE X.

unite them into one estate. It further provides by section 4, clause 1, that if one or more proprietors of a joint estate wish to have the separate possession of their shares, or if two or more desire to hold their shares jointly, but separately from the other shares, the Board of Revenue may authorise the Collector to make the required division. And by clause 2 of the same section, it is enacted that, when any person or persons may succeed to the proprietary right in a portion or the whole of an estate under a decree of Court, the Court may require the Collector to divide the estate, and, if the land is not held khas or let in farm by Government, to put the parties into possession of their separate shares. And the Regulation gives further rules for division of estates, and for assessing the revenue thereupon according to Regulation I of 1793. This Regulation was repealed by Regulation XIX of 1814, section 2: but before its repeal it was explained by Regulation I of 1801, section 12, that its provisions applied to joint estates held in common tenancy, when all the sharers had a common right and interest in the whole of the estate, without any separate title to distinct lands of mohauls forming part of the estate held under one general assessment. This was repealed with the original Regulation. Regulation I of 1801 further, by section 14, provides that if any zemindar shall have disposed of his proprietary rights in any portion of his zemindary, whether as an independent talook or otherwise, without a separate assessment having been made according to the Regulations, such transfer as far as respects the rights of Government must be considered altogether invalid: and if such land has or shall be included in a public sale for arrears of revenue, such transfer must be deemed to have been altogether done away. The lands

transferred in such cases, until publicly registered and separately assessed, form part of an undivided estate, and as such are liable to be sold for any arrear of revenue which may be due from any part of the estate.

Inconveniences were found to arise from allowing the sale of land in portions;[1] and it was therefore provided, by Regulation VI of 1807, that estates, the sudder jumma of which was less than Sic. Rs. 1,000, or the jumma of the divisions of which would be less than Sic. Rs. 500, were not to be divided. This Regulation was repealed by Regulation V of 1810, which contained amended rules for the division of revenue-paying estates. Regulation V of 1810 was in turn repealed by Regulation XIX of 1814, section 2. By section 3, clause 2 of Regulation XVIII of 1812, it is provided that when a joint estate is divided, the revenue shall be assessed on the shares according to section 10 of Regulation I of 1793 without regard to any engagements that may subsist between the proprietors and their dependent talookdars (except the dependent talookdars described in section 7 of Regulation XLIV of 1793), underfarmers, or ryots. But all leases in conformity to sections 2 and 3 of Regulation V of 1812 and section 2 of this Regulation shall remain in full force, notwithstanding division or sale of the whole or a portion under a decree, or the devolving of the same by inheritance, or the private transfer thereof by sale, gift, or otherwise. This Regulation by section 3 repealed a similar provision in Regulation XLIV of 1793, section 3.

Regulation XIX of 1814, while repealing former rules, reduced the Regulations for partition of revenue-paying

[1] Fifth Report, Vol. I, 34.

LECTURE X.

estates into one Regulation. This provided that joint estates might be divided at the instance of some of the sharers as well as of all of them.[1] It re-enacted the provision of Regulation XXV of 1793 that, when two or more estates were originally specific and ascertained portions of the same zemindary, talook, or chowdrai, and had come into the possession of one person, or of several sharers, such estates might be registered and held as one estate.[2] In the case of one sharer having a dwelling-house, which is situated in a village or mehal which may be included in the estate of another, the proprietor of such house may retain it, paying an equitable rent for the ground; and the particulars shall be stated in the paper of partition.[3] Tanks, reservoirs, watercourses, and embankments are to be considered as attached to the land for the benefit of which they were originally made.[4] The proprietors are bound to furnish accounts to enable the Ameen to assess the jumma on the shares.[5] And it is provided that in certain cases the parties may themselves make a partition or appoint an arbitrator for that purpose.[6] The Regulation provides for the division of estates held khas or let in farm by Government,[7] and the same explanation is given of the joint estates contemplated by the Regulation as in Regulation I of 1801, section 12.[8]

Zemindar's right of alienation.

With regard to voluntary alienation of interests in land, the zemindar's right to alienate was placed at the Permanent Settlement on a more secure basis. Before the Permanent Settlement, by the Regulations of 25th April 1788, article 41, the Board of Revenue was empowered to authorise

[1] S. 4.
[2] S. 6.
[3] S. 9.
[4] S. 10.
[5] S. 17.
[6] S. 22.
[7] S. 29.
[8] S. 30.

alienations: the zemindar might, with the sanction of the Board, mortgage or sell, the transaction being registered by the sudder canoongoe, and the Board being satisfied that it was voluntary. Such alienations were, however, to be discouraged: and the Board was to take care that the Government dues were not thereby endangered. By the Decennial Settlement Regulations of 23rd November 1791, article 75, it is provided that, after the conclusion of that settlement, the landholders may borrow money on credit of their lands, and may sell and dispose of them under certain restrictions to be thereafter established. And by section 67, clause 2 of Regulation VIII of 1793, all *bonâ fide* transfers of zemindaries and other estates or talooks made by any actual proprietor of land or dependent talookdar after the 8th June 1787 are to be deemed valid, although made without the sanction of the Board of Revenue; and all actual proprietors of land and dependent talookdars are to be held to have been at liberty since the 29th October 1790 to borrow money without the sanction of the Board. By Regulation I of 1793, the Governor-General in Council declares in order to remove any doubt that zemindars, independent talookdars, and other actual proprietors of land are privileged to transfer to whomsoever they may think proper by sale, gift, or otherwise, their proprietary rights in the whole or part of their estates, without the sanction of Government; and that all such transfers, if according to law, will be held valid. In the preamble to Regulation II of 1723 this privilege is referred to as one not previously enjoyed by the zemindars and other proprietors.

Zemindar's power to lease.

By the Regulations of 23rd November 1791, the zemindar or other proprietor might let such of his lands as were not thereby otherwise provided for in such manner as he

LECTURE X.

might think fit subject to certain restrictions.[1] This was re-enacted by Regulation VIII of 1793, section 52. But the power thus given was materially affected by Regulation XLIV of 1793, which recites that there is danger that the proprietors may dispose of dependent talooks at a reduced jumma, and thereby endanger the payment of revenue, if the jumma fixed should be insufficient to meet the claim for revenue; besides injuring their heirs. Moreover, such engagements are repugnant to the ancient and established usages of the country, whereby the dues of Government, which consist of a certain proportion of the produce of every beegah in money or kind, are inalienable without its express sanction. As therefore the proprietors of land were not, before the Decennial Settlement, entitled to enter into any engagements with their dependent talookdars, under-farmers, or ryots for a period extending beyond their own engagements, it is enacted that no zemindar, independent talookdar, or other actual proprietor shall dispose of a dependent talook to be held for more than ten years at a fixed jumma, or shall fix the jumma of an existing talook for more than ten years, or let any lands in farm, or grant pottahs to ryots or other persons for the cultivation of lands for a longer period. And the leases or terms that may be granted are not to be renewed before the last year of the term. This was repealed by Regulation V of 1812, section 2. By section 6 nothing in this Regulation is to be construed to prohibit any zemindar, independent talookdar, or other actual proprietor of land from selling, giving, or otherwise disposing of any part of his lands as a dependent talook: nor, by section 7 to authorise

[1] Art. 55.

the assessment of any increase upon the lands of such dependent talookdars as were exempted from enhancement under Regulation VIII of 1793, section 51, clause 1 (this section also protects the pottah talookdars—Regulation VIII of 1793, section 19): nor by section 8 to prohibit actual proprietors from granting leases or pottahs to any person, not being a British subject or European, for any term of years or in perpetuity, for the erection of dwelling-houses, or buildings for carrying on manufactures, or for gardens or other purposes, and for offices for such houses or buildings. These provisions are now repealed as obsolete by Act XXIX of 1871. Under this Regulation a grant at a fixed rent would not be a void grant, but only void as to the fixed rent.[1] And an engagement with a former proprietor to hold a talook in perpetuity as an independent talook at a fixed rent was as against a purchaser of the zemindary partly at an auction-sale for arrears of revenue, and partly privately, held good for a term of ten years, but not for the fixed rent.[2] Regulation V of 1812, by section 2, repeals the prohibition against leases for more than ten years, and gives the proprietors of land liberty to lease for any period they may choose and in any form. This provision is explained by Regulation XVIII of 1812, section 2, to mean that, although the leases granted may be at any rent, and even in perpetuity, they cannot extend beyond the grantor's interest.[3]

Succession to zemindaries.

With regard to the succession to the zemindary, we have seen that in many cases primogeniture prevailed, especially

[1] Morley's Digest, Vol. I, p. 410, pl. 38.

[2] Ib., 411, pl. 40, and see p. 418, pl. 30.

[3] See Regulation XIV of 1812 and Act XVI of 1842 (repealed as obsolete by Act VIII of 1868).

LECTURE X.

in the larger zemindaries.[1] And it is clear that the State exercised some control over the succession up to the time of the Permanent Settlement.[2] Regulation XI of 1793 deals with this matter; and recites that by custom "originating in considerations of financial convenience" some of the most extensive zemindaries descended by primogeniture: that such a custom is repugnant both to Hindoo and Mahomedan laws, and subversive of the rights of the other members of the family, who would otherwise be entitled to share in these as in all other estates: that it likewise hinders improvements "from the proprietors of those large estates not having the means, or being unable to bestow the attention, requisite for bringing into cultivation the extensive tracts of waste land comprised in them." And the financial obstacles to division being now removed by the Permanent Settlement and the rules for division of zemindaries, it is enacted that, after the 1st of July 1794, if a zemindar, independent talookdar, or other actual proprietor of land shall die without a will, or a written or verbal disposition of his property, it shall go to his heirs.[3] These heirs may continue to hold jointly or may have a division of the estate under Regulation XXV of 1793, and any two or more of them may hold their shares jointly.[4] When the holding is joint a manager is required to be appointed,[5] under Regulation VIII of 1793; but this pro-

[1] See the zemindar's position discussed—Rajah Lilanund Sing Bahadoor *v.* Government of Bengal, 6 Moore's I. A., 101, at p. 108; and for an instance of primogeniture, see Rawut Urjun Sing *v.* Rawut Ghunsiam Sing, 5 Moore's I. A., 169.

[2] Morley's Digest, Vol. I, 412.

[3] S. 2.

[4] S. 3.

[5] S. 4.

vision is repealed as obsolete by Act XVI of 1874. Finally, this Regulation was not to be construed so as to prohibit disherison when not contrary to law.[1] Under this Regulation it has been held that the zemindary must descend as prescribed, notwithstanding a family custom not to divide the estate.[2] Regulation X of 1800 provides that in the jungle mehals of zillah Midnapore, and in other districts in which primogeniture prevails, Regulation XI of 1793 shall not apply. This Regulation therefore excludes from the operation of Regulation XI of 1793 those districts in which the custom of primogeniture prevails as a general local custom, and not merely as the usage of a particular estate or family."

Transfer of under-tenures.

We have already discussed the extent to which some of the subordinate holdings are transferable. The result is that a transfer by a common ryot of his holding, even if he has acquired a right of occupancy, is not good as against the zemindar without his consent.[4] Such a transfer may be held to be an abandonment of the holding,[5] and provision is now made by Act X of 1859, section 19, and Act VIII of 1869 (B.C.), section 20, for relinquishment by a ryot of his holding, so as to escape further liability for rent, by giving a notice as prescribed by the Acts. Provision is also made for the registration of transfers of subor-

Registration.

[1] S. 6.

[2] Rajah Deedar Hossein *v.* Rance Zuhoor-oon-Nissa, 2 Moore's I. A., 441.

[3] Ib.

[4] Rummun Sing *v.* Maharajah Eshree Pershad, 2 Agra R., 144. Baboo Prosono Coomar Tagore *v.* Rammohun Doss, S. D. A. (*1855*), 14.

[5] Muneer-uddeen *v.* Mahomed Ali, 6 W. R., 67. Nuddear Chand Poddar *v.* Modhoosoodun Dey Poddar, 7 W. R., 153. Muneerooddeen Mojoomdar *v.* Parbutty Churn Ghose, 15 W. R., 121.

LECTURE X.

dinate transferable tenures. Thus Act X of 1859, section 27, and Act VIII of 1869 (B.C.), section 26, enact that "all dependent talookdars and other persons possessing a permanent transferable interest in land, intermediate between the zemindar and the cultivator, are required to register, in the sheristah of the zemindar or superior tenant, to whom the rents of their talooks or tenures are payable, all transfers of such talooks or tenures, or portions of them, by sale, gift, or otherwise, as well as all successions thereto, and divisions among heirs in cases of inheritance." And the zemindar or superior tenant must register and give effect to such successions and divisions, and to such transfers when made in good faith: but is not required to recognise any division or distribution of the rent; nor is such division or distribution valid and binding without the consent in writing of the zemindar or superior tenant. It has been held that the landlord is not bound under these sections to register a division of a tenure otherwise than among heirs, such tenure being already registered as undivided.[1]

The omission of registration does not invalidate the purchase of a tenure;[2] and as the landlord need not take advantage of the absence of registration, so he may by his conduct, by taking rent for instance, estop himself from claiming that advantage. If the landlord elects to insist upon the absence of registration, he may sell the tenure for arrears in a suit against his tenant, but cannot eject an

[1] Watson *v.* Ram Soonder Pandey, 3 W. R., Act X, 165. Watson *v.* The Collector of Rajshahye, 13 Moore's I. A., 161, at p. 175; 3 B. L. R., P. C., 48, at pp. 53, 54, s.c.

[2] Nobeen Kishen Mookerjee *v.* Shib Pershad Pattuck, 8 W. R., 96. Bharut Roy *v.* Gunga Narain Mohapattur, 14 W. R., 211.

unregistered tenant.[1] It is laid down as a general principle that the zemindar need not look beyond the registered tenant, unless he has taken rent from an unregistered tenant, or otherwise recognised him;[2] and when suing the registered tenant for arrears of rent under Regulation VIII of 1819, section 3, he need give no notice to the unregistered tenant.[3] I shall hereafter discuss the provisions of Regulation VIII of 1819, the principles of which are applicable to the present subject. Here I may notice that if a putnee is registered in the name of only one co-sharer, the whole tenure may be sold for arrears of rent in a suit against that shareholder.[4] So where the landlord sold for arrears of rent a tenure registered in the name of the owner's mother, the sale passed the rights of the owner; and under a subsequent purchase by the plaintiff of the owner's interest nothing passed.[5] The landlord, in short, may treat a transfer without registration as a nullity, and may hold his registered tenant still liable for rent.[6] But

[1] Nobeen Kishen Mookerjee *v.* Shib Pershad Pattuck, 8 W. R., 96. Kasheenath Puree *v.* Luchmonee Pershad Patnaik, 19 W. R., 99.

[2] Sonaoolah *v.* Ranee Rajeshurree, S. D. A. (1857), 492. Thakoorchund Banerjee *v.* Shurnumnissa Khatoon, ib., 808. Nubo Coomar Ghose *v.* Kishen Chunder Banerjee, W. R. (1864), Act X, 112. Gudadhur Banerjee *v.* Khetter Mohun Surmah, 7 W. R., 460. Huro Mohun Mookerjee *v.* Goluck Chunder Sircar, 12 W. R., 265. Bharut Roy *v.* Gunga Narain Mohapatur, 14 W. R., 211.

[3] Nobeen Kishen Mookerjee *v.* Shib Pershad Pattuck, 9 W. R., 161. Dhunput Singh Roy Bahadoor *v.* Vellayet Ali, ib., 211. Sadhan Chunder Bose *v.* Gurucharan Bose, 8 B. L. R., 6 (note).

[4] Raghub Chunder Banerjee *v.* Brojonath Koondoo Chowdhree, 14 W. R., 489.

[5] Fatima Khatun *v.* The Collector of Tipperah, 8 B. L. R., 4 (note).

[6] Petumburee Dossea *v.* Chuckoo Ram Singh, S. D. A. (1846), 372. Anundlall Mookerjee *v.* Kalika Persad Misser, 12 B. L. R., 489 (note). Luckhinarain Mitter *v.* Khettro Pal Singh Roy, 13 B. L. R., 146.

LECTURE X.

by recognising an unregistered transfer he affirms the tenancy. Such recognition may be inferred from the receipt of rent; and before Act X of 1859 came into operation receipt of rent for a portion of a ryot's holding was held a sufficient recognition of a transfer of that portion as a separate holding.[1] And where the landlord refused an application by the plaintiff for registration of a transfer of a tenure, but gave the plaintiff a pottah, and afterwards brought a suit against the registered tenant for arrears of rent, and at a sale under a decree in such suit bought the tenure for Rs. 2, it was held that he took nothing as against the plaintiff under such sale, independently of the question whether his purchase was not fraudulent.[2]

[1] Sarkies *v.* Kali Coomar Roy, W. R. (1864), Act X, 98. Mookto-kashee Dassia *v.* Brojundro Coomar Roy, 3 W. R., Act X, 156. Meah Jan Munshi *v.* Kurrunamaye Debi, 8 B. L. R., 1. Allender *v.* Dwarka-nath Roy, 15 W. R., 320. See also Chunder Coomar Roy *v.* Pearee Lal Banerjee, 6 W. R., 190. Abdool Kurreem *v.* Munsoor Ali, 12 R., 396.

[2] Mojon Mollo *v.* Dula Gazi Kulan, 12 B. L. R., 492 (note).

LECTURE XI.

THE PUTNEE TALOOK—REMEDIES FOR RECOVERY OF REVENUE.

The putnee talook—Remedies for recovery of revenue—Imprisonment—Sale of land—Dispossession—Attachment of land—Personal liability—Interest on arrears—Sale of estate or tenure—Regulation XI of 1822—Act XII of 1841 and subsequent Acts—Definition of arrear—Payment or tender of arrear—Deposit of arrear by person other than defaulting proprietor—Exemption of certain estates from sale—Annulment of sale—Finality of sale—Registration of shares of an estate—Resale on default by purchaser to pay purchase-money—Registration of talookdary and other similar tenures—Sale of tenures not being estates—Avoidance of incumbrances.

The putnee talook.

BEFORE proceeding to consider the remedies for the non-payment of revenue and rent, it may be useful to give some account of the putnee talook. The putnee talook is nothing more than a perpetual lease of a talook or zemindary. Regulation VIII of 1819 deals with this tenure, which had its origin on the estate of the Rajah of Burdwan. The Regulation recites that by the rules of the Permanent Settlement, the proprietors of revenue-paying estates, that is, the individuals answerable to Government for the revenue then assesed on the different mehals, were declared entitled to make any arrangements for the leasing of their lands in talooks or otherwise which they might deem most conducive to their interests, subject, by Regulation XLIV of 1793, to two limitations: first, that the jumma or rent should not be fixed for more than ten years; and second, that in case of sale for arrears of revenue, such leases or arrangements should stand cancelled from the day of sale. The preamble then recites the repeal of the limitation to ten years by Regulation V of 1812, section 2; and that by

LECTURE XI.

Regulation XVIII of 1812, zemindars were at liberty to grant talooks or other leases of their lands fixing the rent in perpetuity at their discretion, but still subject to the liability to be dissolved on a sale of the grantor's estate for arrears of revenue in the same manner as before. It then recites that perpetual leases at a fixed rent had always been common, but it had been omitted to declare in Regulations V and XVIII of 1812, whether such tenures, created in violation of Regulation XLIV of 1793, section 2, should be deemed void. The preamble further describes the nature of a putnee talook as a talook created by the zemindar to be held at a rent fixed in perpetuity by the lessee and his heirs for ever, the lessee giving collateral security for his conduct and for the rent at the zemindar's discretion; but that if the original tenant is excused from giving such security, any new tenant is still liable to give such security. It is recited that by the terms of the engagement the tenure may be sold for arrears of rent; and if the proceeds realised are insufficient to pay such arrears, the remaining property of the defaulter is answerable. It is further recited that the talooks are sublet as durputnee talooks on the same terms, and again sublet by the durputneedars as seputnee talooks. The engagements, it is stated, do not show whether upon a sale the tenant is entitled to any surplus proceeds, nor do they prescribe the mode of sale; and neither the Regulations nor usage supply these omissions; these are dealt with by the Regulation in question. This Regulation first declares all such tenures valid although created before Regulation V of 1812, and although in violation of section 2 of Regulation XLIV of 1793. But nothing in the Regulation is to be held to exempt any tenures held under engagements from proprietors of revenue-

paying estates from liability to be cancelled on sale of the said estates for arrears of revenue under section 5 of Regulation XLIV of 1793, unless specially exempted by that section or some other specific rule of the Regulations.[1] By section 3 it is enacted, (1) that putnee talooks, as described in the preamble, shall be deemed to be valid tenures in perpetuity according to the terms of the engagements under which they are held. They are heritable by their conditions, and are by the section further declared capable of being transferred by sale, gift, or otherwise, at the discretion of the holder, as well as answerable for his personal debts, and subject to the process of the Courts in the same manner as other real property. (2) Putnee talookdars are declared to possess the right of letting out the lands composing their talooks in any manner they may deem most conducive to their interests,—such engagements to bind the parties, their heirs and assignees, but not to operate to the prejudice of the zemindar's right to hold the superior tenure answerable for any arrear of his rent in the state in which he granted it and free of all incumbrances resulting from the act of his tenant. (3) In case of arrears occurring upon any tenure of the description alluded to in clause 1 of this section, it shall not be liable to be cancelled under Regulation VII of 1799, section 15, but the tenure shall be sold by public auction, and the holder of the tenure shall be entitled to the surplus proceeds beyond the rent due, subject however to section 17 of this Regulation. I shall hereafter refer again to this and other provisions for sale. By section 4, the durputneedar and seputneedar, &c., stand in the same position to their respective lessors as the putneedar occupies with

LECTURE XI.

respect to the zemindar. It is provided by section 5 that, as the right of alienation has been declared to vest in the holder of a putnee talook, it shall not be competent to the zemindar to refuse to register, and otherwise to give effect to such alienations, by discharging the party transferring his interest from personal responsibility, and by accepting the engagements of the transferee. In conformity, however, to established usage, the zemindar may take a fee of two per cent. on the jumma up to one hundred rupees for registration; and he may demand from the transferee or purchaser of the tenure substantial security to the amount of half the yearly jumma or rent of the tenure: the liability to furnish such security being understood to be one of the original liabilities of the tenure. The above rules apply to sales in execution of decrees as well as to all other alienations, but not to sales for arrears of rent: the purchaser at a sale for arrears of rent being entitled to registration and possession without fee, though of course liable to be called upon to give security. The landlord, by section 6, may, where a fee is payable, refuse registration until it is paid, and until substantial security to the amount specified is tendered and accepted; but an appeal to a Civil Court is given on the question of security. This section and section 5 do not apply to transfers of any fractional part of a putnee talook, nor to any alienation except of the entire interest; for no apportionment of the zemindar's reserved rent can be allowed to stand good unless made under his special sanction. By section 7, in case of sale in execution of a decree, if the purchaser do not conform to the provisions of section 5 within one month from sale, the zemindar may send a sezawul to attach and hold possession of the tenure until the prescribed forms are observed. So

if, on a sale for arrears of rent, the purchaser fails to furnish security within a month after sale, and upon requisition so to do, the tenure may be attached. Such attachments are to be for the benefit and at the risk of the purchaser, who is to receive the surplus rents and to be liable in the same way as if the tenure was not attached, and the zemindar's accounts are to be *primâ facie* evidence to warrant attachment for an arrear of rent.

I now proceed to consider the remedies for default in payment of rent and revenue. The Permanent Settlement introduced great changes in these remedies, and, in general, gave a great impetus to litigation with respect to the rights in land. As an instance, it is stated that, within two years after the Permanent Settlement, thirty thousand suits were filed in Burdwan alone.[1]

Remedies for recovery of revenue.

The most ancient remedies for default in payment of revenue were imprisonment, corporal punishment, and dispossession. Imprisonment was the remedy prescribed by the Regulations of 26th January 1779:[2] and by the Regulations of 8th June 1787, the zemindar or farmer was to be imprisoned for arrears of revenue, and his principal servant or a sezawul was to collect the revenue during such imprisonment.[3] By the Regulations of 8th September 1790, the defaulters were to be released from confinement when lands sufficient to realise the revenue had been ordered to be sold.[4] And by a rule of 12th August 1791, it is provided

Imprisonment.

[1] Evidence of Mr. Traut before the Select Committee of the House of Commons (1832), 2072.

[2] Colebrooke's Supplement, 213.

[3] Arts. 23, 24. Colebrooke's Supplement, 257. Harington's Analysis, Vol. II, 53.

[4] Colebrooke's Supplement, 495.

LECTURE XI.

that no naib, gomastah, or agent of the zemindar shall be confined for a balance of rent or revenue unless personally responsible for it.[1] By Regulation XIV of 1793(now repealed as obsolete by Act XVI of 1874), section 4, the defaulter was still to be imprisoned, and the collections to be made by an Ameen (section 6); but by section 8, the power to imprison was suspended if the default was occasioned by drought, inundation or other calamity of season, or by any cause which was not the fault of the proprietor or farmer. Similarly, by sections 23 and 24, sureties might be confined and their lands attached and sold. The lands of disqualified proprietors were to be sold, but the proprietors were not to be imprisoned (section 48). Regulation III of 1794 abolished imprisonment for arrears of revenue except in a few cases. It recites that the rulers of the province have, from the earliest times, exercised the power of imprisonment for such arrears as well as of attaching and selling the defaulter's property. The Governor-General in Council, however, considering the defaulter's property sufficient security, and being solicitous to refrain from every mode of coercion not absolutely necessary, it is enacted by section 3 that proprietors of land, which in any Regulation is to include zemindars, independent talookdars and all actual proprietors who pay revenue direct to Government, shall not be liable to be confined for arrears of revenue or for any demands of the nature of those specified in section 40 of Regulation XIV of 1793 (such as tuccavy, &c.), except in the cases mentioned in section 14 of this Regulation. Arrears are to be recovered by sale as prescribed in this Regulation; and by section 8

Sale of land.

[1] Colebrooke's Supplement, 307.

demands under section 40 of Regulation XIV of 1793 are to be recovered in the same way. The exceptions are, by section 14, where the lands sold do not realise the amount of the arrears, or where no purchaser can be obtained: in such cases the person and property of the defaulter are liable to the rules of Regulation XIV of 1793. This section is repealed by Act VII of 1868 (B.C.) and Act XVI of 1874. If a proprietor resists process, he may, by section 10, be taken into custody under section 5 of Regulation XIV of 1793.[1] Those provisions, as appears by Regulation VII of 1799, section 21, were abused; the proprietors being free from all fear of imprisonment, allowed their lands to be sold for arrears, and repurchased them at an under-assessment in fictitious names, or reduced the assessment upon the remaining lands by overrating the portion sold. It is hinted that the old system may in consequence have to be restored. And by section 23, clause 2, a defaulter or surety about to abscond may be arrested under section 5 of Regulation XIV of 1793 without a previous demand under section 3 of that Regulation.[2] And by clause 4 of this section failure to furnish the required accounts also renders the proprietor liable to imprisonment under the directions of the Governor-General in Council. Again, by clause 5, any arrear due from the proprietor at the end of the year, and which cannot be recovered by sale, will be recovered by imprisonment or from his other property as prescribed in section 14 of Regulation III of 1794. This provision is repealed by Act VII of 1868 (B.C.), section 30.

[1] Repealed by s. 22, Regulation VII of 1799 and Act XVI of 1874.

[2] Repealed by Act VII of 1868 (B.C.)

LECTURE XI.

Disposession.

Another remedy was dispossession. Thus, in the plan of settlement of 16th July 1777,[1] it is provided that the cabooleuts shall stipulate for dispossession on default. By Regulation XIV of 1793, sections 15 and 16, if the defaulting proprietor resists process of arrest for arrears of revenue, his estate may be forfeited; and, by section 18, either conferred on his heirs, or sold at a public sale at the option of the Governor-General in Council; or the forfeiture may, by section 16, be commuted for a fine. By Regulation VII of 1799, section 23, clause 6, any arrear due at the end of a year from a farmer may be realised by the sale of his or his surety's property: or his lease may be cancelled; but he may still sue his under-tenants for arrears under section 23 of Regulation XIV of 1793. And by Act IX of 1825, which deals with some districts not permanently settled, it is provided that if a malgoozar of such an estate falls into arrears, and there appears to be any objection to a sale, the existing engagements with the malgoozar may be annulled, and the mehal let in farm or held khas for not more than fifteen years, the malgoozar receiving out of the surplus proceeds, if any, malikana at the rate of from five to ten per cent.[2]

Attachment of land.

By the Regulations of the 25th April 1788 and Regulation II of 1793, section 37, the land is in general to be deemed a sufficient security for the revenue, but a malzamin (or surety) is indispensable in case of letting in farm.[3] So with regard to land in Calcutta, it is by the Regulations of 29th June 1789 to be held pledged for revenue, and is

[1] Colebrooke's Supplement, 210.

[2] S. 4.

[3] Colebrooke's Supplement, 270.

liable to be sold for arrears in the hands of a purchaser from the defaulter.[1] Consequently attachment of the land was one of the means of enforcing payment of arrears of revenue; and this was extended to the lands of sureties by Regulation XIV of 1793, sections 23 and 24, which sections were, however, repealed by Regulation XI of 1822, section 2, clause 2. By section 5 of Regulation XLV of 1793[2] and section 9 of Regulation III of 1794, the Board of Revenue may direct land which has been ordered to be sold to be attached and committed to the charge of an Ameen under sections 6 and 25 of Regulation XIV of 1793. This is repealed by section 22 of Regulation VII of 1799 and Act XVI of 1874. Regulation VII of 1799, by section 23, clause 2, provides that if arrears of revenue be not paid upon requisition as prescribed, or the Collector satisfied that it will be paid, the Collector shall proceed to attach a sufficient portion of the estate: the attachment to be removed on paying the arrears with interest and expenses.[3] The Collector is to have a discretion, as under section 8 of Regulation XIV of 1793, to suspend the exercise of these powers.[4] Regulation I of 1801 recites that Regulation VII of 1799 has been on the whole successful, but has failed through indiscriminate attachments as well as through delays in sale. It notices that there must have been many instances of proprietors falling into arrears in the early months of the year without fault on their part, but the Collectors have made few reports of such cases, and have not exercised the discretion

[1] Colebrooke's Supplement, 492.

[2] See Sheik Rujub Alee *v.* Mallick Juffer Alee, S. D. A. (1856), 177. Sujeeoonlal *v.* Laljee, S. D. A. (1857), 1074.

[3] S. 23, cl. 3.

[4] Ib., cl. 7.

LECTURE XI.

allowed to them to suspend attachment. The Regulation then goes on to provide that no Collector shall attach any estate or farm during the first three months of the year without the sanction of the Board of Revenue, nor subsequently unless the Collector thinks it expedient with a view to induce payment, or to prevent misappropriation of the remaining rents of the year, or to obtain accurate information of the assets for the purpose of sale; in either of which cases the attachment must not be made until after the third month of the year: and the whole is to be attached instead of a portion as authorised by clause 2, section 23 of Regulation VII of 1799. The Ameens employed to collect, while the estate is attached, are to collect according to the existing engagements with the under-tenants,[1] except where evidently collusive;[2] but even where evidently collusive, they are not to annul existing leases within the year in which the attachment may have taken place without a decision in a summary suit under Regulation VII of 1799.[3]

Personal liability.

The defaulters were also personally liable. By sections 28 and 44 of Regulation XIV of 1793, the defaulter, after a sale for arrears of revenue, is still liable in person and property for any unrealised balance.[4] Similarly, under section 14 of Regulation III of 1794.[5] By Act XI of 1859 the Collector is authorised to proceed first against the personal property of landlords in Sylhet.[6]

---

[1] Regulation XIV of 1793, s. 6.

[2] Regulation VII of 1799, s. 23, cl. 3.

[3] Regulation V of 1812, s. 4.

[4] S. 28 is repealed by Regulation III of 1794, s. 11; and s. 44 by Act VII of 1868 (B.C.)

[5] Repealed by Act VII of 1868 (B.C.) and Act XXVI of 1874.

[6] S. 4.

LECTURE XI.

Interest on arrears.

A further penalty for non-payment is provided by charging interest upon arrears. By the rules of 2nd March 1781[1] interest was to be charged at one per cent. upon all revenue in arrear for fifteen days. Regulation XIV of 1793, section 7, makes interest payable on wilful default: so Regulation VII of 1799, section 23, clause 1. By section 2, Regulation I of 1801, a penalty of one per cent. per mensem for wilful default may be added in addition to interest until attachment.[2] By Regulation VII of 1830, section 8 (repealed by Act XII of 1841, section 1), the penalty and interest were consolidated into one charge of twenty-five per cent. And by Act XII of 1841, section 2, no interest or penalty is to be demanded in respect of any arrears of revenue after 1st January 1842.

Sale of estate or tenure.

The main remedy, however, for arrears of revenue is now the sale of the estate or tenure. We have seen that this was not a very common remedy in Mahomedan times. By the plan of settlement of 16th July 1777,[3] it was directed that a portion of the zemindary should be sold for arrears, or the zemindar dispossessed.[4] And upon the settlement of 1778, it was directed that, while the engagements were to be renewed with zemindars and farmers not in default, the zemindaries in arrear should be sold or let in farm.[5] By the Regulations of 8th June 1787,[6] sales for arrears were forbidden except under the sanction

[1] Colebrooke's Supplement, 219.

[2] All repealed by Regulation VII of 1830, s. 2, cl. 1, and Regulation V of 1812, s. 28, cl. 1, itself repealed by Regulation XII of 1824, which in turn is repealed by Regulation VII of 1830, s. 2, cl. 1.

[3] Colebrooke's Supplement, 210.

[4] Art. 3.

[5] Colebrooke's Supplement, 212.

[6] Ib., 253. Harington's Analysis, Vol. II, 53.

LECTURE XI.

of the Board of Revenue;[1] and by the Regulations of 25th April 1788[2] the special sanction of the Governor-General in Council was required.[3]

After the Permanent Settlement, sale became the ordinary method of realising arrears of revenue, and the discretion at first allowed to the Collector or other authority has been gradually abolished.[4] Shortly after the Permanent Settlement, sales became frequent. It is said that nine-tenths of the land of Bengal was advertised for sale within a few years after the Permanent Settlement, but the actual sales were although numerous, but a small proportion of the sales advertised, and many of the sales which actually took place were collusive.[5] In some other parts of India the proportion of land sold upon the introduction of the power of sale was even greater.[6] The proclamation of the Permanent Settlement announces[7] that upon default a sale of the whole or a sufficient portion of the defaulter's lands will positively and invariably take place to make good the arrear. Regulation XIV of 1793 gives the details of the procedure to be adopted. It first defines an arrear of revenue as follows:[8] "If the whole, or any portion, of

---

[1] Art. 56.

[2] Colebrooke's Supplement, 272.

[3] Art. 31.

[4] See Robinson's Land Revenue, 28.

[5] Compare the evidence of Mr. Traut before the Select Committee of the House of Commons (1832), 2341, 2342, with Mr. Holt Mackenzie's evidence, 2598.

[6] See the evidence before the same Committee of Mr. Newnham, 2715, 2716, 2719; and of Mr. Robertson before the Select Committee of the House of Lords (1830), 1596, 1597.

[7] Regulation I of 1793, s. 7.

[8] S. 2.

the kist or instalment payable in any month, by a proprietor or farmer of land, shall remain undischarged on the first of the following month," that is an arrear of revenue. This definition has been varied by the different Regulations and Acts. The Regulation then, by section 13, provides that if a proprietor be in arrear at the end of the year, and be not in confinement, and have not given security, and instituted a suit to try the claim under the Regulation, his lands, or a sufficient portion thereof, will be liable to be sold, but not without the sanction of the Governor-General in Council, This is repealed by Regulation XI of 1822, section 2, clause 1. Again, by section 22 (repealed by Regulation III of 1794, section 11), if the proprietor has been in confinement, but the Ameen has not been able to realise the amount of arrears by the end of the year, the lands of the defaulter may be sold as before. Arrears are to be realised from female proprietors and from proprietors of estates under managers by sale.[1] With regard to this class of proprietors, the Regulations of 29th March 1781[2] had exempted their lands from sale, but made the principal executive officer personally liable for default. The details of procedure in sales for arrears were laid down by Regulation XLV of 1793 (repealed by section 2 of Act IV of 1846). Further rules of procedure were contained in Regulation III of 1794, sections 4 to 7 (repealed by Regulation VII of 1799, section 22), and again by Regulation V of 1796 (repealed by clause 1, section 2 of Regulation XI of 1822). Regulation VII of 1799, after referring in the preamble and section 21 to the abuses which have followed the abolition

[1] S. 48.

[2] Colebrooke's Supplement, 222.

LECTURE XI.

of imprisonment for default, which abuses I have before referred to, provides that purchases in fictitious names shall render the land liable to confiscation or such other penalty as the Governor-General in Council may think fit;[1] and that defaulters cannot purchase under pain of forfeiture.[2] This latter provision reversed the rule of 8th October 1790,[3] and was itself repealed by Regulation XI of 1822, section 2, clause 1, which last Regulation, however, by section 13, clauses 2, 3, re-enacted both the above provisions. But by section 30 of Act XII of 1841 and section 29, Act I of 1845, repealed by Act XI of 1859, and substantially re-enacted by section 53, the proprietor is contemplated as a possible purchaser.[4]

Regulation I of 1801 was passed to remedy the delays which took place in sales for arrears. It substitutes distress and sale of small estates for attachment,[5] and provides that estates may be sold for refusal by defaulting proprietors and farmers to deliver up accounts under Regulations XLV of 1793 and VII of 1799.[6] It also provides with reference to section 2 of Regulation V of 1796, which required the portion sold to be as nearly as possible of the required value, that the Board of Revenue may sell the whole estate.[7] Regulation V of 1812 provides that sales of entire estates for arrears of revenue are not liable to be annulled on the ground that one or more sharers may not have possession of his or

[1] S. 29, cl. 3.
[2] Ib., cl. 4.
[3] Colebrooke's Supplement, 496.
[4] Mussamut Neynum v. Muzuffur Wahid, 11 W. R., 265.
[5] S. 4.
[6] Ss. 3 and 5. Repealed by Regulation XI of 1822, s. 2, cl. 1.
[7] S. 6. Repealed by Regulation XI of 1822, s. 2, cl. 1.

their interest in the property;[1] nor on the ground that the proceeds of sale materially exceed the amount of arrears due.[2] By Regulation XVIII of 1814, the Collectors may advertise lands for sale for arrears of revenue, but may not actually sell without the previous sanction of the Board of Revenue.

Regulation XI of 1822.

Regulation XI of 1822, since repealed,[3] was passed to modify and explain the Regulations for sale for arrears. It recites that the existing Regulations are defective in not specifying the conditions necessary to the validity of revenue sales, and in not sufficiently defining the nature of the interest and title conveyed to the purchasers. That it is necessary to clear up these doubts, and to further regulate the course of proceeding. That in order to protect the zemindar against the risk of hardship and injury, which experience has shown must in many cases result from the absolute confirmation of sales according to the prescribed conditions, it is desirable to give the Board of Revenue power to annul sales by the Collectors, not only when irregularly conducted, but also when the defaulter may clearly appear to have been defrauded or deceived by his own agents, or when for any reason the confirmation of the sale may appear to be a measure of excessive severity or otherwise inexpedient or improper. By section 2, clause 2, a previous demand or attachment before sale is dispensed with, and the provisions restricting the revenue officers in selecting lands for sale or in fixing the time of sale are repealed. Section 3, clause 1, recites that the estates of proprietors are

[1] S. 24.
[2] S. 25.
[3] By s. 1 of Act XII of 1841.

LECTURE XI.

primarily liable to sale for arrears under section 2 of Regulation III of 1794, and that the property of all persons under engagements with Government, whether as proprietors, farmers, or managers, or as sureties for such, is likewise answerable for arrears. And it provides that the Collectors shall, with the sanction of the Board of Revenue, be entitled to have recourse to sale for the realisation of any arrear or interest thereon, or other revenue demand, whether any other revenue process shall have issued or not, and at any time of the year, subject only to the restrictions specially prescribed by any Regulation. By clause 2 estates under the Court of Wards are not to be liable to sale for arrears while under such management. By clause 3 joint estates during the progress of a butwarra or partition, and estates under attachment by a Court of Justice, are exempt from sale until the end of the year in which the arrear becomes due.[1] And further, by clause 4, a power is reserved to the Governor-General in Council to issue further restrictions upon the Board of Revenue and the revenue officers: and sales made in contravention of such orders shall be liable to be annulled within three years after such sale although not voidable under section 5.

Further stringency is given to the remedy by sale by section 4, which provides that sales regularly conducted shall not be set aside by the Courts, except on the ground of failure to comply with one of the conditions hereinafter specifically declared essential to the validity of a sale. Parties aggrieved by any other defect in the proceedings are left to an action for damages. The conditions referred

[1] This is repealed as to land under butwarra by Act XX of 1836. See Act XIV of 1870.

to are specified in section 5, and are—(1) that the lands or mehal sold form the estate on account of which the arrear has accrued or parcel of such estate, and are liable be to sold consistently with the principles and provisions of this Regulation; or are the property of the defaulter or surety; or as such property have been specially pledged to answer the demand in arrear: (2) that permission to sell has been received from the Board of Revenue before the day of sale: (3) that due notice of the demand and of the intention of the Collector to sell, as well as of the time and place of sale, has been given as provided in the Regulation: (4) that some part of the amount demanded in the notice, or of interest thereon, is due at the time of the lot being put up for sale: (5) that the sale is made at the time and place stated in the advertisement, and with the due publicity and freedom as thereinafter specifically directed. Provision is then made for the case in which the default is disputed. By section 10, clause 1, if the defaulter deny the existence of an arrear, the sale shall be stayed upon his paying in the whole demand, with five per cent. extra for charges; and by clause 3 such persons can proceed under section 23, provided they at the time deny the justness of the demand in writing. After the sale it shall not be liable to be annulled by any Court of Judicature on the plea that no arrear was justly due, unless such plea was preferred to the Collector or the Board before the sale or the confirmation by the Board, or unless good and sufficient reason be shown why such denial could not be made. And no counter claims by the zemindar against the Government are to affect the right to sell. Again, by section 11, the fact that the person engaging with Government, or his representative, is divested of the possession and management of the estate sold,

LECTURE XI.

whether by the act of an individual or by the Collector or other officer acting under the orders of a Court of Judicature, or attaching the estate by virtue of the powers vested in him by this or any other Regulation, shall not be a ground for annulling the sale. The reason given for this is that all settled estates are liable for the revenue assessed upon them to the extent of the interests possessed by the persons engaging with Government, as ratified and confirmed by the act of settlement, and by those deriving title from such persons, unless otherwise specially provided.

We have already noticed that, according to this Regulation, the defaulter cannot purchase, and the purchase must be *bonâ fide* on the purchaser's own account. Neither can an officer of the Collector's establishment purchase. And the Collector must satisfy himself on these points before knocking down the lot.[1] The defaulter is defined by section 16 to be the person with or on account of whom the settlement of the land revenue may have been concluded by Government, or his heirs, successors, or assignees, in possession of the interest acquired or confirmed by such settlement. But it does not include those proprietors, putteedars, village zemindars, or the like, who at the time of the settlement held distinct properties, though paying their revenue through the recorded malgoozar, except in so far as such persons may be expressly declared responsible to Government. By section 20 it is provided that after the Board of Revenue has confirmed the sale and put the purchaser into possession, he can only be disturbed, on the plea of illegality in his purchase, by a decree in a regular suit. Section 22 provides for the balance of the purchase-money after

payment of the Government claim being paid to the defaulter. The rest of the Regulation is concerned with the effect of sale, a subject which I shall discuss separately. The provisions of Regulation XI of 1822 on the subject of sale were repealed by Act XII of 1841, section 1. By Regulation VII of 1830, also repealed by Act XII of 1841, section 1, the Collector may sell without previous sanction of the local Commissioner, but the sale is not to be final until confirmed by him.

Act XII of 1841 and subsequent Acts.

We now come to a most important Act, XII of 1841. This Act recites that it is desirable for the benefit of the agricultural community to regulate the number of periodical sales for arrears of revenue, to discontinue the levy of interest and penalties on such arrears, and to provide for sales at known and fixed periods. We have seen that it abolishes interest and the penalty on arrears. It provides by section 2 that the Sudder Board of Revenue at Calcutta shall determine, with regard to each permanently settled district or zillah under their jurisdiction, the fixed dates in each year on which shall be commenced the process for realising by the sale of mehals the arrears of land revenue due thereupon, and shall give notice thereof. This is repealed by Act I of 1845, which by section 3 re-enacts the same provisions with this difference, that the Board is to fix the dates on which all arrears of revenue and other claims realisable in the same way are to be paid up, and in default of which payment the estates are to be sold: due notices being also provided for. This provision is again repealed by Act XI of 1859 and re-enacted by section 3 of that Act. By section 4 (repealed by Act I of 1845, and substantially re-enacted by section 3 of that Act, which is again repealed by Act XI of 1859) the special sanction of

LECTURE XI.

the Board of Revenue is required for a sale in districts not permanently settled and in Benares.

Definition of arrear.

Section 5 defines an arrear of revenue. If the whole or any portion of a kist or instalment of any month of the year (or 'era' by Act XI of 1859, section 2), according to which the settlement and kistbundee of any mehal have been regulated, be unpaid on the first of the following month of such year (or era), the sum so remaining unpaid shall be considered an arrear of revenue.[1]

Payment or tender of arrear.

By section 6 no payment or tender of arrears after sunset of the day before that fixed for the sale shall bar the sale or interfere with it either at or after its conclusion. This provision is somewhat modified by the subsequent Acts. Thus Act XI of 1845, after repealing the provision, provides, as we have seen, for a day on which arrears must be paid and which is referred to as the latest day of payment, and the Act then goes on in section 6 to direct notice to be published that the sale will be held on a day after such latest day of payment, and the payment to stay or affect the sale must not be after such latest day. Act XI of 1859 again, which repeals the last-mentioned provisions, by section 6, substantially re-enacts them with a provision for filing notices. By section 7 of Act XII of 1841, no claim to abatement or remission of revenue, unless it shall have been allowed by Government, nor any real or supposed private demand or cause of action of the defaulter against Government, shall bar a sale under this Act or render it void or voidable: nor shall the plea that money belonging

[1] Repealed by Act I of 1845 and re-enacted by s. 2, which was again repealed by Act XI of 1859 and re-enacted by s. 2, with "era" for "year."

to the defaulter and sufficient to pay the balance (or 'arrear' by Act XI of 1859) or part of it was in the Collector's hands, bar a sale or render a sale under this Act void or voidable, unless such money stand in the defaulter's name without dispute, and unless, after application made in due time by the defaulter, the Collector shall have neglected or refused on insufficient grounds to transfer it to the credit of the estate, (or, by Act XI of 1859, 'in payment of the arrear of revenue due').[1]

Deposit of arrear by person other than defaulting proprietor.

By section 9 it is provided that the Collector shall at any time before sunset of the day before the sale (or 'the latest day of payment' by Act I of 1845, section 9, and Act XI of 1859, section 9) receive as a deposit from any but the (or 'a' by Act XI of 1859, section 9) proprietor of the estate in arrear (or 'a share of the estate in arrear,' section 9 of Act XI of 1859), the amount of the arrear to be carried to the credit of the estate at sunset, unless before that time the defaulting proprietor shall have paid. And in case the party depositing, and whose money shall have been credited as aforesaid, shall be plaintiff (or 'a party' by Act XI of 1859) in a suit pending before a Court for the possession of the same (or 'the estate or share from which the arrear is due,' Act XI of 1859, section 9) or any part thereof, it shall be competent to the Judge of the zillah in which the estate is situated (by section 9 of Act XI of 1859 'it shall be competent to the said Court'), to order the said party to be put into temporary possession of the said estate (or 'share or part thereof,' Act XI of 1859, section 9) subject to the rules in force for taking security in the case of appellants and defendants

[1] Repealed by Act I of 1845 and re-enacted by s. 8, which was again repealed by Act XI of 1859 and re-enacted by s. 8.

LECTURE XI.

('parties in civil suits,' Act XI of 1859, section 9). And if the party depositing, and whose money shall have been credited as aforesaid, shall prove before a competent Civil Court that the deposit was made in order to protect an interest of the said party which would have been endangered or damaged by the sale of the estate[1] (or 'which he believed in good faith would have been endangered or damaged by the sale,' Act XI of 1859, section 9), he shall be entitled to recover the amount of the deposit with (or 'without') interest (as the Court may determine) from the (defaulting) proprietor of the said estate.[2] And Act XI of 1859, section 9, further provides that if a party so depositing, whose money shall have been credited as aforesaid, shall prove before such a Court that the deposit was necessary in order to protect any lien he had on the estate, or a share or part thereof, the amount so credited shall be added to the amount of the original lien. It has been decided upon this section that a mortgagee who deposits the amount of arrears in order to stop a sale has no lien upon the land,[3] although he may recover the sum deposited from the defaulter.[4] But a mortgagee who has obtained a decree for possession cannot recover money paid for arrears due after his decree, since they are his own liability.[5] A putneedar of a three-annas share paying under this section may recover from all the sharers whether in arrears or not.[6]

[1] The words "of the estate" are omitted in s. 9 of Act XI of 1859.

[2] The alterations in brackets are from s. 9 of Act XI of 1859.

[3] Fagan *v.* Sreemotee Dassee, Marshall, 226.

[4] Badaum Koower *v.* Lalla Seetul Pershad, 5 W. R., 126. Govind Persaud Pundit *v.* Mussamut Soondree Koonwur Dabea, S. D. A. (1856), 867.

[5] Jussoda Dossee *v.* Matunginee Dossee, 12 W. R., 249.

[6] Shumboonath Biswas *v.* Larmour, S. D. A. (1857), 458.

Exemption of certain estates from sale.

By section 10, Act XII of 1841, estates under the management of the Court of Wards, or which are the property of minors and subject to be taken under the management of the Court of Wards, are not to be sold: and estates attached by the revenue authorities otherwise than under judicial authority shall not be liable to sale for arrears accruing while so held: nor when held under such authority shall they be liable to sale for arrears accruing during such attachment, until after the end of the year in which such arrears accrued.[1] The Collector and Commissioner of Revenue might also, previous to Act XI of 1859, before sale, exempt an estate from sale.[2]

Annulment of sale.

By sections 18 and 19 of Act XII of 1841 a sale might be annulled upon appeal to the Commissioner of Revenue, or at the discretion of the Local Government, which might restore the proprietors on such conditions as might appear equitable. This provision was repealed and re-enacted by Act I of 1845,[3] which was repealed by Act XI of 1859, and which re-enacted the same provisions,[4] to be however finally repealed as to appeals to the Commissioner of Revenue by Act VII of 1868 (B.C.) By section 32 of Act XI of 1859 notice of annulment is to be given, and the purchase-money returned with interest.

Finality of sale.

The Acts then go on to provide for the sale becoming final and conclusive at noon on the thirtieth day after the sale, provided the purchase-money is duly paid[5] and no

[1] Repealed by Act I of 1845 and re-enacted by s. 10, which was repealed by Act XI of 1859 and re-enacted by s. 17.

[2] S. 11 of Act XII of 1841 repealed by Act I of 1845 and re-enacted by s. 11, which was repealed by Act XI of 1859.

[3] Ss. 17, 18.

[4] Ss. 25, 26.

[5] Act XII of 1841, s. 16. Act XI of 1859, s. 23.

LECTURE XI.

appeal preferred. If an appeal has been preferred and dismissed, the sale shall be final and conclusive from dismissal, or from the thirtieth day after sale, if after dismissal.[1] The Collector must give the purchaser a certificate, which shall be sufficient evidence in any Court of the title to the estate being vested in the person named therein. The surplus of the purchase-money belongs to the recorded proprietor.[2] This surplus is by Act XI of 1859, section 31, the balance after payment of arrears and all demands standing against the estate or share sold in the public accounts of the district. If there are sharers who are recorded, the money goes to them in proportion to their shares, and a creditor may stop payment to the proprietor.

A certified purchaser cannot be ousted by suit on the ground that the purchase was made on behalf of another than the certified purchaser, or partly on behalf of himself and partly on behalf of another, although by agreement the name of the certified purchaser was used. Such a suit shall be dismissed with costs.[3] On the other hand, the certified purchaser is answerable for all instalments of revenue falling due subsequently to the latest day of payment.[4] No sale for arrears of revenue, or other demands realisable in the same manner, shall be set aside by a Court, except on the ground of its having been made contrary to the

[1] Act XII of 1841, s. 20, repealed and re-enacted by Act I of 1845, s. 19, and by Act XI of 1859, s. 27.

[2] Act XII of 1841, s. 21. Act I of 1845, s. 20. Act XI of 1859, s. 28, except that in the last section the provision as to surplus purchase-money is omitted.

[3] Act XII of 1841, s. 22. Act I of 1845, s. 21. Act XI of 1859, s. 36.

[4] Act XII of 1841, s. 24. Act I of 1845, s. 23. Act XI of 1859, s. 30.

provisions of the Acts, and upon proof of substantial injury: and unless the contravention of the provisions of the Acts has been declared in an appeal to the Commissioner, and an action brought within a year from the sale being final and conclusive. And no person who has received any portion of the purchase-money shall contest the legality of the sale; but these provisions do not prevent an action being brought for damages.[1] The former proprietor may also, notwithstanding the sale, recover the arrears which were due to him from the tenants on the latest day of payment, by any process which would have been open to him except distraint.[2]

Registration of shares of an estate.

In addition to these provisions, Act XI of 1859 provides for the registration of shares of an estate so as to avoid sale of it. It is enacted by section 10 that, when a recorded sharer of a joint estate held in common tenancy desires to pay his share of Government revenue separately, he may make a written application to the Collector specifying his share. Notices are then to be given, and in the absence of objection a separate account is to be opened. By section 11 if such share consists of a specific portion of the land of the estate, the boundaries, extent, and sudder jumma must be specified in the application. If any objection is raised respecting the applicant's share, or his right thereto, it must be referred to a Civil Court.[3]

By section 13 whenever the Collector shall have ordered separate accounts to be opened for any shares of an estate,

[1] Act XII of 1841, s. 25. Act I of 1845, s. 24. Act XI of 1859, s. 33.

[2] Act XII of 1841, s. 33. Act I of 1845, s. 30. Act XI of 1859, s. 55.

[3] S. 12.

LECTURE XI.

if the estate becomes liable to sale for arrears, the share only from which, according to the separate accounts, an arrear of revenue may be due shall be first put up to sale. But the excluded shares shall still constitute one integral estate, the share sold being charged with its portion of the jumma. And if the highest bid for the share shall not equal the amount of arrears due thereon, the whole estate shall be sold, unless the other recorded sharers within ten days purchase the share in arrear by paying the whole arrear due from such share. If they purchase they obtain the same rights as if the purchase was made at the sale. By section 15, if any recorded proprietor or co-partner of an estate deposit with the Collector money or Government securities with an agreement, pledging the same to Government as security for the jumma of the entire estate and authorising the Collector to apply the same to payment of any arrear that may become due from the estate, then, in case of arrears not being paid before sunset of the latest day of payment, the Collector may apply the deposit in payment, and the estate shall be exempt from sale so long as there is a sufficient deposit; and the deposit shall be exempt from attachment, except in execution of a decree of a Civil Court. The deposit may at any time be withdrawn.[1]

Resale on default by purchaser to pay purchase-money.

This Act also provides for a resale in case the first purchaser makes default in payment of the purchase-money: the first purchaser being liable upon a resale to any difference in price, the deficiency being leviable as an arrear of revenue.[2] It also provides for giving the

[1] S. 16.

[2] Ss. 22, 23.

purchaser possession by removing any other person and by proclamation to the inhabitants.

Registration of talookdary and other similar tenures.

Further important provisions as to registration are also contained in this Act. By section 38 it is enacted that the following rules shall be observed for the registration of talookdary and other similar tenures, created since the time of settlement, and held immediately of the proprietors of estates, and of farms so held for terms of years. Section 39 provides for two sets of registers, the common and the special: common registration protects tenures and farms against any auction-purchaser; and special registration against Government also. The Civil Court cannot order registration, and it may be cancelled at the suit of a person wronged.[1] Special registration may be annulled by Government in a suit on the ground of fraud and injury to the revenue. A *bonâ fide* purchase for value of a tenure or farm shall not be avoided by reason of such fraud, but shall be liable to a rent which would have been fair and equitable at the time of registration; such rent to be fixed by the Collector.[2]

Sale of tenures not being estates.

Act VII of 1868 (B.C.) and Act II of 1871 (B.C.) further deal with this subject. Act VII of 1868 (B.C.), section 2, and Act II of 1871 (B.C.) extend the provisions of Act XI of 1859 to the sale of "tenures" not being "estates:" that is, to all interests in land, whether rent-paying or lakhiraj, except estates and all fisheries which by grant or custom are transferable, whether resumable or not, or whether the right of selling or bringing them to sale for arrears of rent has been specially reserved in any

[1] Ss. 47, 48.
[2] S. 50.

LECTURE XI.

instrument or not. An "estate," on the other hand, is any land or share in land subject to the payment to Government of an annual sum in respect of which the name of a proprietor is entered on the Government register, or in respect of which a separate account has been opened under section 10 or section 11 of Act XI of 1859.

Under these Acts, sales are not valid if there was no arrear actually due.[1]

Avoidance of incumbrances.

We come now to consider the position of a purchaser at a sale for arrears of revenue. Regulation XIV of 1793, section 28, merely provides that the lands purchased shall not be liable in the hands of a purchaser for arrears due before the sale. Regulation XLIV of 1793, section 5, however provides, that when the whole or a portion of the lands of a zemindar or other actual proprietor is sold for arrears of revenue, all engagements by such proprietors with dependent talookdars whose talooks are situated in the lands sold, and all leases to under-farmers and pottahs to ryots (except under sections 7 and 8) shall stand cancelled from the day of sale; and the new proprietor shall be entitled to demand the pergunnah rates from dependent talookdars and ryots, and cultivators of lands farmed and not farmed, in the same way as the former proprietor might have done if such cancelled agreements had never existed. It has been held that this section cancelled farming leases, but kept alive the tenures of talookdars; these only being

[1] Baijnath Sahu *v.* Lala Sital Prasad, 2 B. L. R., F. B., 1. Mangina Khatun *v.* The Collector of Jessore, 3 B. L. R., App., 144. Sreemunt Lall Ghose *v.* Shama Soonduree Dossee, 12 W. R., 276. Ram Gobind Roy *v.* Syud Kushuffodoza, 15 W. R., 141. Har Gopal Doss *v.* Ram Golam Sahi, 5. B. L. R., 135. Mohan Ram Jha *v.* Baboo Shib Dutt Sing, 8 B. L. R., 230.

liable to enhancement up to the pergunnah or customary rates.[1] The Judicial Committee of the Privy Council have expressed considerable doubt as to whether this section is now in force.[2] Regulation III of 1796, by section 3, declares that section 5 of Regulation XLIV of 1793 extends to the cancelling wholly the leases of those under-farmers, a part only of the lands included in whose leases may be sold for arrears.[3] This last provision is now repealed by Act XXIX of 1871. Regulation V of 1812, section 4, after reciting section 5 of Regulation XLIV of 1793, provides that a purchaser shall not annul existing leases within the year in which the sale may have taken place on the ground that such leases were evidently collusive, without a summary suit under Regulation VII of 1799. And section 9 provides that a tenant shall not be bound to pay an enhanced rate to a purchaser at a revenue sale without a written engagement or notice, although liable to enhancement. The rates to which the tenants may be enhanced are the pergunnah rates; or if none, the rates payable for land of a similar description in the places adjacent; or if the leases of a whole village or local division are liable to be cancelled, the new rate shall not be higher than the highest rate paid during the three previous years.[4] These sections (7, 8 and 9) are repealed by section 1 of Act X of 1859. A purchaser at a sale in execution is

[1] Khajah Assanoollah *v.* Obhoy Chunder Roy, 13 Moore's I. A., 317, at p. 325.

[2] Ranee Surnomoye *v.* Maharajah Sutteeschunder Roy Bahadoor, 10 Moore's I. A., 123, at p. 143. Raja Satysarun Ghosal *v.* Moshes Chunder Mitter, 2 B. L. R., P. C., 23. Rajah Lilanund Singh Bahadoor *v.* Thakur Munarunjun Singh, 13 B. L. R., 124.

[3] See Harington's Analysis, Vol. II, 106.

[4] Ss. 7, 8.

LECTURE XI.

declared by Regulation VII of 1825[1] to have none of those extended rights but only to take the right, title, and interest of the former proprietor. Regulation XI of 1822, section 29, declares that, in cases in which any land belonging to a defaulter or his surety is sold for arrears of revenue, such land not being the land on account of which the arrears may have accrued, then, whether the land sold be malgoozary or lakhiraj, the purchaser only acquires the right, title, and interest of the former proprietor as in private sales or sales in execution. But in case of the sale of an estate for any part of the revenue assessed upon it, since the act of sale transfers to the purchaser all the property and privileges which the engaging party possessed and exercised at the time of settlement, free from any accidents or incumbrances that may subsequently have been imposed or have supervened thereupon, such as sale, gift, or other transfer, mortgage, marriage settlement, or other assignment, or the like, the property and privileges possessed and exercised as aforesaid being perpetually hypothecated to Government for the revenue assessed thereon, no claim of right, founded on the act of the original engager or his representative, or on any plea impeaching the title by which the said engager may have held, shall be allowed to impugn the right of the revenue authorities to make the sale, or to bar or affect the title and interest conveyed to the purchaser by the sale. If the Government shall have acquired or assumed the property of any estate subsequent to a settlement, and shall have conveyed the same to another person, such estate shall be held by the transferee subject to all just claims to which it was liable

[1] Repealed by Act X of 1861.

at the time of such conveyance; and consequently any person ousted by Government shall not be barred by a sale made after such conveyance from any right he may have possessed to recover from Government the property so assumed or acquired by it. Further, a person claiming the proprietary right in a mehal, and having instituted a suit for recovery thereof, may, if a sale for arrears of the party in possession be ordered, be put into possession upon application to a Court after notice, and upon payment of arrears with interest and charges, security being also given by him under Regulation XIII of 1808, section 11, clause 4. It has been held that this section, so far as it is declaratory, is still in force as a declaration of the law, although repealed by Act XII of 1841, section 1.[1] The Regulation further, by section 30, in pursuance of the principle of holding the defaulter's estate answerable for the punctual realisation of the Government revenue in the state in which it stood at the time of settlement (at which time, by the dissolution of its previous engagements, Government must be considered to resume all rights possessed on the acquisition of the country, save where otherwise specially provided), enacts that all tenures which may have originated with the defaulter or his predecessors, being representatives or assignees of the original engager, as well as all agreements with ryots, or the like, settled or credited by the first engager or his representatives subsequent to the settlement, as well as all tenures which the first engager may, under the conditions of his settlement, have been competent to set aside, alter, or renew, shall be liable to be avoided and annulled by the purchaser of the estates or mehal at a sale for arrears due on account

[1] Lukhmeer Khan *v.* Collector of Rajshahye, S. D. A. (1851), 116.

LECTURE XI.

of it, subject only to such conditions of renewal as attached to the tenure at the time of settlement: saving, however, *bonâ fide* leases of ground for the erection of dwelling-houses or buildings or offices thereto belonging, or for gardens, tanks, canals, watercourses or the like purposes, which leases shall continue in force so long as the land is appropriated to those purposes and the stipulated rent paid. By section 31, the Governor-General in Council may order the sale to be made subject to all incumbrances. And by section 32, it is provided that the rules in this or any other Regulation enabling persons to annul engagements contracted between former proprietors and their under-tenants, and in certain cases to enhance the rent payable by such tenants, shall not entitle purchasers at public sales to disturb the possession of any village zemindar, putteedar, mofussil talookdar, or other person having an hereditary transferable property in the land or in the rents thereof, and not being one of the proprietors party to the engagement of settlement or his representative. Nor shall such rules authorise such purchaser to eject a khoodkasht kudeemee ryot, or resident and hereditary cultivator having a prescriptive right of occupancy. Nor shall such purchaser demand a higher rate of rent from an under-tenant of either of the above descriptions than was receivable by the former malgoozar, save where such tenants may have held their lands under engagements stipulating for a lower rate than would have been justly demandable for the land, in consequence of abatements having been granted by the former malgoozars from the old established rates by special favour, or for a consideration, or the like; or in cases in which it may be proved that, according to the custom of the pergunnah,

mouzah, or other local division, such under-tenants are liable to be called upon for any new assessment or other demand not interdicted by the Regulations. I have given these provisions fully, although now repealed by Act XII of 1841, and although I have already several times referred to them because they contain the principles and the substance of the rights of the auction-purchaser, and the restrictions upon those rights. It would seem that the mofussil talookdars here mentioned are such as are actual proprietors under section 5 of Regulation VIII of 1793, and not those whose talooks have been created since the Permanent Settlement.[1] So with the other excepted tenures.[2] In an important case under this Regulation before the Judicial Committee of the Privy Council, the plaintiff sued for an enhanced rent. He claimed under a private purchase from a person who bought from an auction-purchaser at a sale in 1823 for arrears of revenue. The defendant, a talookdar, claimed to be exempt from enhancement, on the ground that she and her predecessors in title had held at a fixed rent from a time previous to the Decennial Settlement. It was held (assuming section 5 of Regulation XLIV of 1793 not to be virtually repealed, as to which their Lordships expressed considerable doubt) that the purchaser at the auction-sale had only an option under Regulation XLIV of 1793 to enhance the rent, and could not disturb the possession of the tenant. And that, consequently, the plaintiff and his predecessors, by continuing from the commencement of the tenure, during a period of more than sixty years, to receive the same rent, had waived

[1] Khajah Assanoolah *v.* Obhoy Chunder Roy, 13 Moore's I. A., 317, at p. 326.

[2] Degumber Mitter *v.* Chundy Churn Poorkyte, S. D. A. (1860), 325.

LECTURE XI.

their right to enhance, the option being one which ought to be exercised at the time of the auction-purchase.[1] They remarked that the right to enhance is in terms only given to the auction-purchaser himself and not to his assignees.[2] They further observe that the foundation of the provisions of the Regulation for cancelling under-tenures is that it is assumed that the default of the zemindar may have been occasioned by improvident grants at inadequate rents; that this was in breach of the condition on which the fund was originally created by the sovereign, and the purchaser therefore is set free from the obligation of these grants, with certain specified exceptions, and with certain limitations of his power as to new tenancies to be created. These provisions must, however, be strictly construed. The Regulation did not authorise a wanton and unjust disturbance of vested interests where the grants made were at proper rents: consequently no absolute cancellation was intended; the power given assuming the talookdars and ryots to remain in all respects as before, except that they became liable to an increase of rent up to the pergunnah rates. The result is that the power given to the auction-purchaser has virtually no operation where the rent already paid is at the pergunnah rate.[3]

[1] Ranee Surnomoye *v.* Maharajah Sutteeschunder Roy, 10 Moore's I. A., 123. See Joogul Kishore Roy *v.* Khajah Ahsanoollah, 4 W. R., Act X, 6. Rajah Satyasaran Ghosal *v.* Mahesh Chandra Mitter, 2 B. L. R., P. C., 23; 12 Moore's I. A., 263, s. c.; 11 W. R., P. C., 23, s. c. Khajah Assanoollah *v.* Obhoy Chunder Roy, 13 Moore's I. A., 317; 13 W. R., P. C., 24, s. c.

[2] Ranee Surnomoye *v.* Maharajah Sutteeschunder Roy, 10 Moore's I.A., 123, at p. 148. See 1 Morley's Dig., 408, pl. 32.

[3] Ranee Surnomoye *v.* Maharajah Sutteeschunder Roy, 10 Moore's I. A., 123, at pp. 142, 147. Rajah Satyasaran Ghosal *v.* Mahesh Chandra Mitter, 2 B. L. R., P. C., 23, at p. 31. Karunakar Mahati *v.* Niladhro Chowdhry, 5 B. L. R., 652.

Act XII of 1841, Act I of 1845, and Act XI of 1859 made further provisions upon this subject. By section 27 of Act XII of 1841, a purchaser of an estate sold under the Act for arrears of revenue due in respect thereof in the permanently settled districts of Bengal, Behar, Orissa, and Benares,[1] shall acquire the estate free from all incumbrances which may have been imposed upon it after the time of settlement; and shall be entitled, after notice given under section 10 of Regulation V of 1812, to enhance at discretion (anything in the existing Regulations notwithstanding) the rents of all under-tenures in the said estate, and to eject all tenants thereof with certain exceptions. Act I of 1845, section 26, is in the same terms: but Act XI of 1859, section 37, enacts that the purchaser shall be entitled to avoid and annul all under-tenures, and forthwith to eject all tenants, omitting the provision for notice. These provisions have been held to get rid of a title created by adverse possession.[2] But an auction-purchaser, it has been held, cannot enhance chur lands accreted and assessed since the Decennial Settlement, except under section 51 of Regulation VIII of 1793, and clause 2 of this section, and of section 26 of Act I of 1845, to be presently mentioned. Such a tenure must be treated as if it dated from before the Decennial Settlement.[3]

The exceptions are[4]—

(1.) Tenures which were held as istemrari or mokurreree at a fixed rent more than twelve years before (by Act XI of 1859, section 37, 'from the time of') the Permanent Settlement.

[1] Benares is omitted in s. 37 of Act XI of 1859.

[2] Thakoor Dass Roy Chowdhry *v.* Nubeen Kishen Ghose, 15 W.R., 552.

[3] Kishenkinkur Roy *v.* Brown, S. D. A. (1858), 1521.

[4] Act XII of 1841, s. 27, cl. 1. Act I of 1845, s. 26, cl. 1.

LECTURE XI.

(2.) By Act II of 1841, section 27, clause 2, and Act I of 1845, section 26, clause 2, tenures existing at the time of the Decennial Settlement, which have not been, or may not be proved to be, liable to increase of assessment upon the grounds specified in Regulation VIII of 1796, section 51. But the corresponding clauses of Acts XI of 1859 and VII of 1868 (B.C.)[1] omit all reference to Regulation VIII of 1793, and except tenures existing at the time of the Permanent Settlement, which have not been held at a fixed rent. But such tenures shall be liable to enhancement under any law in force for such enhancement.

(3.) By Act XII of 1841, section 27, clause 3, and Act I of 1845, section 26, clause 3, lands held by khoodkasht or kudeemee ryots, having rights of occupancy at fixed rents, or at rents assessable according to fixed rules under the Regulations and Acts in force, are excepted. This exception is omitted in Act XI of 1859, and in place of it talookdary and other similar tenures are excepted; such tenures being created since the time of settlement, and held immediately of the proprietors of estates; as well as farms for terms of years so held, when such tenures and farms have been duly registered under the provisions of the Act. This clause is omitted in Act VII of 1868 (B.C.), section 12.

(4.) By section 27, clause 4, of Act XII of 1841, and section 26, clause 4, of Act I of 1845, another exception is of lands held under *bonâ fide* leases at fair rents, whether temporary or perpetual, for the erection of dwelling-houses or manufactories, or for mines, gardens, tanks, canals, places of worship, burying grounds, clearing of jungle, or the like

[1] Act XI of 1859, s. 37, cl. 2; and Act VII of 1868 (B.C.), s. 12.

beneficial purposes, such lands continuing to be used for the purposes specified in the leases. By Act XI of 1859, section 37, clause 4, and Act VII of 1868 (B.C.), section 12, this exception is modified and includes leases or tenures[1] of lands whereon dwelling-houses, manufactories, or other permanent buildings have been erected; or whereon permanent[2] gardens, plantations, tanks, wells,[3] canals, places of worship, or burning or burying grounds have been made, or wherein mines have been sunk.[4] And it is further provided that such a purchaser as aforesaid of an estate or tenure shall be entitled to proceed, in the manner prescribed by law, for enhancement of the rent of any land within this clause, if he can prove the same to have been held at what was originally an unfair rent, and if the same shall not have been held at a fixed rent equal to the rent of good arable land for a term exceeding twelve years; but not otherwise.[5]

(5.) By Act XII of 1841, section 27, clause 5, and Act I of 1845, section 26, clause 5, an exception is also made of farms granted in good faith at fair rents and for specified areas by a former proprietor for terms not exceeding twenty years, under written leases registered within a month from their date. Provided that written notice be given to the Collector, who shall be at liberty to object if the revenue is likely to be affected. The purchaser may set aside such farms by a suit if not granted in good faith and at fair rents. This provision is repealed by Act XI of 1859.

Act XI of 1859, section 37, and Act VII of 1868 (B.C.),

[1] Act VII of 1868 (B.C.), s. 12.
[2] Ib.
[3] Omitted in Act VII of 1868 (B.C.)
[4] Omitted in Act VII of 1868 (B.C.)
[5] Act VII of 1868 (B.C.), s. 13.

LECTURE XI.

section 14, further provide that nothing in the before-mentioned provisions shall entitle any such purchaser as before mentioned to eject any ryot having a right of occupancy at a fixed rent, or at a rent assessable according to fixed rules under the laws in force; or to enhance the rent of such ryots otherwise than in the manner prescribed by such laws, or otherwise than the former proprietor, irrespectively of all engagements made since the time of settlement, may have been entitled to do.

Leases of lands coming under clause 4, section 37 of Act XI of 1859 may be registered at the holder's option, and tenures under clauses 1 and 2 also, but only in the special register.

With regard to estates in districts not permanently settled, Act XII of 1841, section 28, and Act I of 1845, section 27, provide that the purchaser shall acquire such estates free of incumbrances imposed since the time of settlement; and that he may avoid and annul all the tenures which may have originated with the defaulter or his predecessors; following substantially the description in Regulation XI of 1822, section 30. And it further provides that nothing in the Acts shall entitle any purchaser of land at a public sale to demand a higher rate of rent from any person whose tenure or agreement may be annulled as aforesaid than was demandable by the former malgoozar, except in cases in which such persons may have held their lands under engagements and circumstances such as are described in Regulation XI of 1822, section 32. Act XI of 1859, section 52, is substantially the same as this section.

By section 29 of Act XII of 1841, the Local Government may direct the sale for arrears to be made, subject to such

of the encumbrances upon it as it may think fit.[1] This provision is not now in force.

When a share is sold under section 13 or section 14 of Act XI of 1859, it is subject to incumbrances, and passes only the right, title and interest of the defaulter. So sales of lakhiraj tenures under section 9 of Act VII of 1868 (B.C.). This last Act adds by section 12 "tenures," as defined by that Act and as before described, to the interests which may be sold free from incumbrances; and it adds also an exception from annulment of tenures created or recognised by the settlement proceedings of any current temporary settlement, as tenures bearing a rent which is fixed for the period of such settlement. I have already noticed the provisions of section 14 of Act VIII of 1869 (B.C.), re-enacting section 13 of Act X of 1859, which prohibits the enhancement of rent of a tenure cancelled by an auction-sale without a certain notice. This completes our consideration of the revenue sale laws, the main features of which as regards the purchaser are summed up in the decision that the purchaser at a revenue sale does not derive his title from the defaulter and is not in privity with him.[2]

---

[1] Repealed and re-enacted by Act I of 1845, s. 28; repealed by Act XI of 1859.

[2] Moonshee Buzlool Rahman *v.* Pran Dhun Dutt, 8 W. R., 222.

LECTURE XII.

REMEDIES FOR THE RECOVERY OF RENT. LAKHIRAJ AND SERVICE TENURES.

Remedies for the recovery of rent—Imprisonment and corporal punishment prohibited—Remedy by imprisonment restored—Remedies against khoodkashts—Distraint—Remedies when distraint ineffectual—Distraint under Acts X of of 1859 and VIII of 1869 (B.C.)—Ejectment—Personal liability of defaulter—Sale—Avoidance of incumbrances—Stoppage of sale by under-tenant—Sale under Act X of 1859 and subsequent Acts—Stoppage of sale—Sale at instance of sharer in joint estate—Avoidance of incumbrances—Unregistered tenants—Assignments of revenue and resumption thereof—Revenue-free grants made before 12th August 1765—Revenue-free grants made since 12th August 1765 and before 1st December 1790—Revenue-free grants made since 1st December 1790—Badshahee grants—Resumption—Provisions where lakhiraj and proprietary rights are distinct—Requisites of lakhiraj grants anterior to British rule—Further provisions—Cases upon resumption—Lands held upon service tenures—Ghatwallee tenures—Mokuddum tenures.

Remedies for the recovery of rent.

THE remedies for the recovery of revenue have, for the most part, been extended to the recovery of rent also.

The Regulations of 29th April 1789 authorised the Collector to proceed against the talookdars and other inferior renters paying revenue to the zemindars in the same way as was prescribed by the Regulations for proceedings against defaulting renters paying revenue direct to Government.[1]

Imprisonment and corporal punishment prohibited.

Personal punishment was one of the original remedies, as in the case of the zemindar. But the Regulations of 20th July 1792[2] forbade this, and provided that any landholder or farmer confining a ryot or inflicting corporal punishment upon him for arrears of rent should lose the arrears and besides be subject to a prosecution for assault

[1] Colebrooke's Supplement, 492.
[2] Ib., 335.

or false imprisonment.[1] This provision is re-enacted in the amended Regulations contained in Regulation XVII of 1793, section 28, with the omission of the penalty of loss of the arrears. And the latter section was repealed by Act X of 1859, section 1.

Remedy by imprisonment restored.

We have seen that the arrears of revenue might be recovered by sale after the Permanent Settlement; but the zemindar could only distrain for his rent, and that under many restrictions, the tyranny of the zemindars[2] being the evil chiefly guarded against. It was found, however, that the powers of distraint given to the zemindars were of little use; and the zemindar's land could be sold for arrears of revenue long before he could realise his rent by any process of law.[3] Thus in Banaressy Ghose's case the Rajah was imprisoned for default while his ryots evaded payment.[4] Regulation XXXV of 1795 was passed to remove these difficulties, but it was ineffective. It allowed defaulters to be imprisoned upon an application to the Court in cases of arrears over Rs. 500.[5] The difficulties of the zemindars were further provided against by Regulation VII of 1799, to be hereafter noticed in detail. This Regulation proved beneficial.[6] It repealed the limit of Rs. 500,[7] and provided that after demand of arrears from the defaulter and his surety, or without demand if he have reason to believe that the defaulter or his surety is

[1] Art. 27.
[2] See as to this, Fifth Report, Vol. I, 637.
[3] Fifth Report, Vol. I, 70, 71.
[4] Ib., 636, 642, 643.
[5] Ss. 9, 10, 11.
[6] Fifth Report, Vol. I, 78.
[7] S. 14.

LECTURE XII.

prepared to abscond, the proprietor or farmer may, if he cannot realise the arrears by the distraint of the personal property of the defaulter or his surety, cause them to be arrested in the prescribed manner;[1] and if the arrears are found to be due after the prescribed investigation, the defaulter and his surety are to be kept in close custody until payment.[2] These provisions are now repealed by section 1 of Act X of 1859.

Remedies against khoodkashts.

By the Putnee Regulation, VIII of 1819, section 15, clause 5, it is provided that khoodkasht ryots may be proceeded against by process of arrest, or summary suit, or distraint, in the usual manner; and if the defendant does not appear or cannot be arrested, the plaintiff may proceed *ex parte* to obtain the management of his lands under clause 3 of the same section. This section was repealed by Act X of 1859, section 1. This Act and Act VIII of 1869 (B.C.), while repealing the provisions for the imprisonment of ryots, also enact[3] that "if payment of rent, whether the same be legally due or not, is extorted from any under-tenant or ryot by illegal confinement or other duress, such under-tenant or ryot shall be entitled" to recover damages up to two hundred rupees, without prejudice to any other liability of the person practising such extortion.

Distraint.

The main remedy provided at the Permanent Settlement was distraint. This had been in use previously; and by the rules of 30th July 1790 the Board of Revenue directed that where the ryots gave security which was accepted by the landholders, the ryot's crops should not be attached

[1] S. 15, cl. 1.
[2] Ib., cl. 5.
[3] Act X of 1859, s. 12. Act VIII of 1869 (B.C.), s. 13.

unless the security had absconded and other good security had not been tendered.[1] The same provision is contained in the Regulations of the 23rd November 1791,[2] but was repealed by the Regulations of the 20th July 1792 and by Regulation VIII of 1793, section 67, clause 3, and Regulation XVII of 1793.

The Regulations of 20th July 1792,[3] after reciting that in consequence of the rights of landholders not being sufficiently defined, some, in accordance with the previous practice, resort to most oppressive modes of realising rent, and often extort money in the same way, while others are deterred from using any compulsion by the same want of certainty as to their rights, empower zemindars, &c., without notice to the Collector, to distrain the crops and products of the earth of every description, the grain, cattle, and all other personal property belonging to their under-renters and ryots and the talookdars paying revenue through them, for arrears of rent or revenue, and to cause the same to be sold in discharge of such arrears. There must, however, be a previous demand.[4] The same powers are vested in dependent talookdars with respect to their under-farmers and ryots: and in under-farmers from zemindars, independent talookdars, and other actual proprietors, or from dependent talookdars; also in farmers who hold direct from Government, to enable such farmers to enforce payment of arrears of rent or revenue from their ryots, under-farmers, or dependent talookdars.[5] But the property of persons

[1] Colebrooke's Supplement, 494.
[2] Ib., 308, art. 70.
[3] Ib., 335.
[4] Art. 4.
[5] Art. 1

LECTURE XII.

employed in the manufacture of the fabrics for the Company's investments is protected.[1] Ploughs and implements of husbandry, cattle actually trained for the plough, and seed grain are not to be distrained if there is other distress available.[2] Resistance to distress is to be punished with imprisonment.[3] These provisions were re-enacted by Regulation XVII of 1793, the Court or a public officer being substituted for the Collector. This Regulation was repealed by section 1 of Act X of 1859. By these Regulations the property could be released by giving security.[4] These provisions were repealed by Regulation XXXV of 1795, a Regulation, as already mentioned, passed to remove some of the difficulties which the zemindars experienced in realising their rents under the restrictions imposed at the Permanent Settlement.[5] This was also repealed by section 1 of Act X of 1859.

Regulation VII of 1799 was also passed in furtherance of the same object. It recites that the present powers were sometimes insufficient, particularly where the crops not being in the immediate possession of the defaulter cannot be distrained and sold under Regulations XVII of 1793 and XXXV of 1795. It enacts, by section 2, that the power of distraint may be delegated to agents; by section 3, that no demand is necessary to constitute default (repealing the provisions of Regulation XVII of 1793, section 5); but the withholding payment beyond the due date renders the defaulter liable to immediate distraint for all such arrears

[1] Art. 2.

[2] Art. 3.

[3] Art. 18.

[4] Arts. 8, 9 of Regulation of 20th July 1792, and ss. 9, 10 of Regulation XVII of 1793.

[5] Fifth Report, Vol. I, 70, 71.

as are not paid on demand. The distrainer, after giving the defaulter's surety notice, may distrain either the defaulter's or the surety's property, or both; but before distraining on the surety's property there must be a demand from the defaulter. Various other restrictions are abolished, and provision is made for the case of a defaulter forcibly or clandestinely removing property attached. It is also provided that no claim to the crops on the ground, or to any gathered product of the ground attached in the possession of the defaulter, shall bar the prior claim of rent; such produce being mortgaged to the proprietor, who is entitled to distrain and sell and realise the arrears due.[1]

Remedies when distraint ineffectual.

The defaulter and his surety, as we have seen, may be arrested under this Regulation when the arrears cannot be realised by distraint; and by section 15, clause 6, if payment is not immediately made, the landlord may attach and manage the tenant's holding until payment, observing the same rules with respect to the tenants as the defaulter was bound to observe. By clause 7, if the arrear is not liquidated within the year, the landlord may annul the lease if the tenant is an under-farmer: or if the tenant is a dependent talookdar or holder of a transferable tenure, his tenure may be sold through the Court: if the tenant is a leaseholder, or has a right of occupancy only so long as a certain rent, or a rent determinable on certain principles according to local rates and usages, is paid, without any right of property or transferable possession, the proprietor or farmer, or the lessee or assignee of the proprietor, may oust the tenant for breach of the conditions of his tenure. And these powers, except that of sale, may be exercised without

[1] S. 9.

LECTURE XII.

an application to the Court. Regulation VIII of 1819, section 18, in explanation of these provisions, authorises sending a sezawul to attach any tenure between the zemindar and the cultivator, in case a summary suit for arrears has been instituted, and the rent has been in arrear for a whole month. This may be done whether the defaulter has been arrested or not.[1] And when an arrear has been adjudged due, the plaintiff may cancel of his own authority any lease, farm, or other limited interest, intermediate between himself and the actual cultivator, on account of which the rent may have been claimed. He cannot, under the award in the summary suit, sell other real property of the defendant except talooks liable to sale, or talooks under section 3 of Regulation VIII of 1819 which may be sold for their own arrears. These provisions do not apply to khoodkasht ryots: such ryots may be proceeded against by process of arrest, by a summary suit, or by distraint. The above provisions of Regulation VII of 1799 and Regulation VIII of 1819 were also repealed by section 1 of Act X of 1859.

Regulation V of 1812 also deals with the same subject. By section 13 distress for rent is illegal unless preceded by demand, accompanied with a jumma-wasilbakee, showing the grounds on which the demand is made. By section 14 ploughs and implements of husbandry are exempt from distress, although there may not be sufficient other property; and by section 15, if the tenant should dispute the demand, he may have the attachment withdrawn upon giving security. These provisions were also repealed by Act X of 1859, section 1.

[1] See Kishen Coomar Moitro *v.* Muzhur Ally, S. D. A. (1860), 244.

By Act X of 1859, section 112, and Act VIII of 1869, (B. C.), section 68, the produce of the land is "held to be hypothecated for the rent payable in respect thereof; and when an arrear of rent as defined in section 21 of this Act is due from any cultivator of land, the zemindar, lakhirajdar, farmer, dependent talookdar, or other person entitled to receive the rent of such land immediately from the actual cultivator thereof, instead of bringing a suit for the arrear as thereinbefore provided, may recover the same by distraint and sale of the produce of the land on account of which the arrear is due, under the following rules: Provided always that, when a cultivator has given security for the payment of his rent, the produce of the land for the rent of which security has been given shall not be liable to distraint. Provided also that no sharer in a joint estate, dependent talook, or other tenure in which a division of lands has not been made amongst the sharers, shall exercise the power of distraint otherwise than through a manager authorised to collect the rents of the whole estate, talook, or tenure on behalf of all the sharers in the same." Section 21[1] here referred to defines an arrear of rent as "any instalment of rent which is not paid on or before the day when the same is payable according to the pottah or engagement, or if there be no written specification of the time of payment, at or before the time when such instalment is payable according to established usage." Such an arrear is chargeable with interest at twelve per cent. per annum. By the Regulations of 23rd November 1791[2] and Regulation VIII of 1793,[3] the instalments of rent are to be

[1] S. 20 of Act X of 1859.

[2] Colebrooke's Supplement, 308. Art. 69.

[3] S. 64.

LECTURE XII.

adjusted according to the periods of reaping and selling the produce.

The rules referred to are contained in the following provisions. Distraint shall not be made for any arrear which has been due more than a year, nor for any sum in excess of the rent payable for the same land for the preceding year, unless a written engagement for the payment of such excess has been executed by the cultivator.[1] Provision is made for distraint by managers under the Court of Wards, and surbarakars and tehsildars of estates held khas, and other persons lawfully in charge, and also by agents.[2] "Standing crops and other ungathered products of the earth, and crops or other products when reaped or gathered and deposited in any threshing-floor or place for treading out grain, or the like, whether in a field or within a homestead, may be distrained," if they are the produce of the land in respect of which an arrear of rent is due, or held under the same engagement: "and no grain or other produce after it has been stored by the cultivator, and no other property whatsoever, shall be liable to distraint under this Act."[3] A demand and account showing the grounds of demand must be served on the tenant before distraint.[4] Standing crops and other ungathered products may be reaped and gathered by the tenant, or in default of his doing so the distrainers shall reap and gather them; and such crops or products as do not admit of being stored may be sold before being cut or gathered; but in such case the distraint shall be made at least twenty days before the

[1] Act X of 1859, s. 113. Act VIII of 1869 (B. C.), s. 69.
[2] Act X of 1859, s. 114. Act VIII of 1869 (B. C.), s. 70.
[3] Act X of 1859, s. 115. Act VIII of 1869 (B. C.), s. 71.
[4] Act X of 1859, s. 116. Act VIII of 1869 (B. C.), s. 72.

time when the crops or products, or any part thereof, would be fit for cutting or gathering.[1] There are further provisions in case of resistance for sale of the distress, and for proceedings and suits to contest or avoid the distress and sale, which we need not here consider.[2]

Ejectment.

The ryot may also be ejected if an arrear of rent remains due at the end of the native year; but if he has a right of occupancy, or holds under a subsisting pottah, he cannot be ejected except in execution of a decree or order under the Acts.[3] And "when an arrear of rent shall be adjudged to be due from any farmer or other lease-holder not having a permanent or transferable interest in the land, the lease of such leaseholder shall be liable to be cancelled, and the leaseholder to be ejected," but only in execution of a decree or order under the Acts.[4]

Personal liability of defaulter.

The person and property of a defaulter may also be proceeded against, but not simultaneously.[5] Act X of 1859 and Act VIII of 1869 (B.C.) abolish all modes of recovering rent except by suit or distress, and the landlords are forbidden to compel the attendance of their tenants for the adjustment of their rents or for any other purpose.[6]

Sale.

I shall now give the provisions with respect to sale for arrears of rent. Regulation VII of 1799, section 15, clause 7,[7] provides that if an arrear of rent is not liquidated within the year, the landlord may annul the lease if the tenant is an

[1] Act X of 1859, s. 118. Act VIII of 1869 (B. C.), s. 74.

[2] Act X of 1859, ss. 119 to 145. Act VIII of 1869 (B. C.), ss. 75 to 101.

[3] Act X of 1859, s. 21. Act VIII of 1869 (B. C.), s. 22.

[4] Act X of 1859, s. 22. Act VIII of 1869 (B. C.), s. 23. See ss. 78 to 80 of Act X of 1859, and ss. 52 to 54 of Act VIII of 1869 (B. C.)

[5] Act X of 1859, s. 17. Act VIII of 1869 (B. C.), s. 57.

[6] Act X of 1859, s. 11. Act VIII of 1869 (B. C.), s. 12.

[7] Repealed by Act X of 1859, s. 1.

LECTURE XII.

under-farmer; if the tenant is a dependent talookdar, or holder of any other transferable tenure, it may be sold through the Court, and if he have a right of occupancy he may be ousted, as we have seen. And by Regulation VIII of 1819, section 3, clause 3, putnee talooks cannot be cancelled under Regulation VII of 1799, section 15, but are to be sold by public auction, and the holder of the tenure is to be entitled to the surplus proceeds, if any, beyond the rent due, subject to section 17 of the Regulation. The provisions of Regulation VIII of 1819 are the model upon which all subsequent provisions have been framed, and it will be convenient to deal with them here. By section 8, clause 1, zemindars or proprietors under direct engagements with Government may apply, as in the Regulation prescribed, for periodical sales of any tenures upon which the right of selling or bringing to sale for an arrear of rent may have been specially reserved by stipulation in the engagements interchanged on the creation of the tenure. This power was not confined to cases in which the stipulation was unrestricted as to time, but was to apply equally to tenures held under engagements stipulating merely for a sale at the end of the year in conformity with the practice theretofore allowed by the Regulations in force. By clause 2 the sale is to be on a petition,[1] to be presented on the 1st of Bysack, specifying the arrears due for the last year; and the sale is to take place on the 1st of Jeyt. Similarly a petition may be presented on the 1st of Kartick, and followed by a sale on the 1st of Aughran. And by section 9 the defaulter may not bid. The sale is bad if the prescribed rules are not strictly

[1] Petition to Collector sufficient under Act XXXIII of 1850.

complied with,[1] and there must be an actual arrear to support the sale.[2] But a payment into the Collectorate by a defaulter of the arrears due, without notice to the Collector or zemindar, has been held not sufficient to invalidate the sale.[3] It has been held that a gantee tenure is not within this section.[4]

Avoidance of incumbrances.

Sales for rent under this Regulation have effects similar to revenue sales. Section 11, clause 1, provides that any talook or saleable tenure that may be disposed of under this Regulation for arrears of rent is sold free of all incumbrances that may have accrued upon it by the act of the defaulting proprietor, his representatives, or assignees, unless the right of making such incumbrances was expressly vested in the holder by a stipulation to that effect in the written engagements under which the talook may have been held. No transfer by sale, gift, or otherwise, and no mortgage or other limited assignment, shall bar the indefeasible right of the zemindar to hold the tenure of his creation answerable, in the state in which he created it, for the rent, unless the transfer or assignment is made with a condition to that effect under express authority obtained from the zemindar. By clause 2, on a sale for arrears, all leases originating with the former holder, creating a middle interest between the resident cultivators

[1] Baikantha Nath Sing *v.* Maharaja Dhiraj Mahatab Chand Bahadur, 9 B. L. R., 87.

[2] Shuroop Chunder Bhoomick *v.* Rajah Pertab Chunder Singh, 7 W. R., 218. See as to the scope of the Regulation, Watson *v.* The Collector of Rajshahye, 3 B. L. R., P. C., 48, at p. 53; 13 Moore's I. A., 160, at p. 175, s. c., and 12 W. R., P. C., 43, s. c.

[3] Krishna Mohun Shaha *v.* Munshi Aftabuddin Mahomed, 8 B. L. R., 134 (Mitter, J., diss.).

[4] Satkowree Mitter *v.* Useemuddeen Sirdar, S. D. A. (1851), 626.

LECTURE XII.

and the late proprietor, must be considered cancelled, unless authority to grant them should have been specially transferred. The possessors of such interests must lose the right to hold possession of the land and to collect the rents of the ryots, such right being enjoyed merely through an assignment of a portion of the defaulter's interest, the whole of which interest was liable for the rent. The section then saves the holdings of khoodkashts, and *bonâ fide* engagements with them, unless proved to be engagements for a lower rent than was demandable at the time of such engagements. Upon this section it has been doubted whether a transfer of a share in a putnee would bind the zemindar.[1] This section being declaratory of the principles to be observed on all occasions when saleable tenures are made responsible for the zemindar's reserved rent, it is by section 12 declared applicable to talooks theretofore sold, if the sale was fair and according to the usual practice. Nothing therein contained is to prejudice any agreement, express or implied, between the purchaser of a talook and his predecessor's lessees. The fall of under-tenures upon sale is declared not to apply to a private transfer by a talookdar of his own interest, nor to a public sale in execution; nor to the case of a relinquishment by the talookdar in favour of the zemindar; nor to any act originating with the former holder, other than default as aforesaid: all such operations involve only a transfer of the tenure in the state in which it may be held at the time; and the new incumbent succeeds to no more than the reserved rights of the former tenant, such as they may be,

[1] Wilson *v.* The Collector of Rajshahye, 3 B. L. R., P. C., 48, at p. 54; 13 Moore's I. A., 175, s. c.

and is of course subject to any restriction put upon the tenure by his act.

Stoppage of sale by under-tenant.

On the other hand the under-tenant is allowed to stop the sale. Section 13 declares that on account of the injury that may be brought upon the holder of a talook of the second degree by the operation of the preceding rules, in case the proprietor of the superior tenure purposely withholds the rent due to the zemindar, after having collected his own rent from the inferior tenants, it is necessary to allow such talookdars means of saving their tenures from ruin by such sale; and enacts (1), that when a tenure is advertised for sale under this Regulation, a talookdar of the second degree, or any number of them, shall be entitled to stay the final sale by paying into Court the amount of balance declared by the person attending on the zemindar's part on the day of sale to be the amount due. And similarly such tenant may lodge money antecedent to sale, and if the amount lodged is sufficient, the sale shall not proceed, and if the amount lodged is in excess of what is due, the excess shall be returned. (2) If the amount lodged be rent due by the inferior talookdar to the holder of the tenure advertised for sale, it shall be so stated at the time of deposit, and the amount lodged shall be deducted from any claim for rent due. (3) If the depositor's rent has been already paid, so that the deposit is an advance, it shall not be set against future rent, but shall be considered a loan to the proprietor of the tenure preserved from sale; and the talooks preserved shall be a security to the persons making the advance, who shall be considered to have a lien thereupon in the same way as if it were a loan upon mortgage, and shall be entitled on application to possession of the tenure in order to recover the advances.

LECTURE XII.

The defaulter shall only recover his tenure from persons so in possession upon payment of the entire advance, with interest at twelve per cent. per annum, or upon proof in a regular suit that the full amount with interest has been realised out of the usufruct of the tenure. An unregistered durputneedar may deposit the arrears under this section, and recover the amount from the defaulting putneedar or landlord:[1] and the tenant so paying may pursue the double remedy of a suit for the money paid, and of possession of the tenure as security until paid.[2] But a purchaser at a sale in execution of an ordinary decree, and who is in possession, would not be affected by a sale for arrears due before his purchase made at the suit of his vendor's landlord, the putneedar; and therefore such a purchaser cannot recover from his vendor money paid to stop the sale for arrears,[3] neither can a mortgagee of a durputnee, who has deposited the arrears in order to stop the sale of the putnee, recover the money so deposited from the putneedar.[4] The same principle applies in such a case whether the deposit is made under Regulation VIII of 1819, section 13, or Act I of 1845, section 9. Where the purchaser of a durputnee being in arrears to the putneedars

[1] Ambika Debi *v.* Pranhari Doss, 4 B. L. R., F. B., 77. Luckhinarain Mitter *v.* Khettro Pal Singh Roy, 13 B. L. R., 146. Khetter Paul Singh *v.* Luckhee Narain Mitter, 15 W. R., 125. But see Luckhee Narain Mitter *v.* Sitanath Ghose, 6 W. R., Act X, 8.

[2] Prem Sookh Raee *v.* Kishen Gobind Biswas, S. D. A. (1849), 18. Ramshunker Raee *v.* Premsookh Raee, ib., 473. Ambika Debi *v.* Pranhari Das, 4 B. L. R., F. B., 77. Kartick Surmah *v.* Bydonath Saenee, 10 W. R., 205.

[3] Ram Baksh Chatlangi *v.* Hridoy Mani Debi, 8 B. L. R., 10 (note).

[4] Annundo Chunder Banerjea *v.* Soobul Chunder Dey, S. D. A. (1857), 1195.

deposited the amount of arrears due by the putneedars to the zemindar in order to stop a sale, and applied to the putneedars (defendants) to set-off the deposit against the arrears due to them by the registered durputneedar (the plaintiff's purchase being unregistered), but the defendants refused and sued the registered durputneedars for the arrears, and the plaintiff unsuccessfully intervened, the High Court considering his payment to have been voluntary;[1] the plaintiff then brought the present suit against his vendor, the registered durputneedar, and the putneedars to recover the money deposited, and he was held entitled to recover.[2]

By section 14 of Regulation VIII of 1819, clause 1, if the balance of arrears remains unpaid on the day of sale the sale must proceed, and shall not be postponed or stayed on any account unless the amount of the demand be lodged. The sale may, however, on sufficient grounds be set aside in a suit against the zemindar and the purchaser. It has been held under this section that the defaulting putneedar, &c., cannot lodge the money on the day of sale.[3] A talookdar disputing the zemindar's claim may have the claim summarily decided, but the sale cannot be stayed before such decision, except upon deposit of the amount claimed.[4]

By section 16 it is enacted that since under-tenures held under engagements similar to those between zemindar

[1] Luckhee Narain Mitter *v.* Sitanath Ghose, 6 W. R., Act X, 8; In. Jur., N. S., 117, s. c.

[2] Luckhi Narain Mitter *v.* Khettro Pal Singh Roy, 13 B. L. R., 146.

[3] The Collector of Tipperah *v.* Goluck Churn Shaha, S. D. A. (1859), 521. See Krishna Mohan Shaha *v.* Munshi Aftabuddin Mahomed, 8 B. L. R., 134, and the remarks of Mitter, J., at p. 146.

[4] S. 14, cl. 2.

LECTURE XII.

and putneedar have been declared not voidable for arrears of rent fixed on them in perpetuity, the person to whom rent is due must proceed under section 15 of Regulation VII of 1799; but the sale must be public. This section is repealed by Act VIII of 1865 (B. C.), section 2. This Regulation further provides, with regard to the proceeds of sale, that any person may sue to have compensation out of the surplus proceeds for the loss of his interest by the sale. If several decrees of this kind are obtained and the surplus is insufficient to satisfy all, they will be paid rateably. But a claimant who was himself in arrear is not entitled to compensation.[1] Regulation I of 1820 provides that the provisions of Regulation VIII of 1819 as to periodical sales shall apply to sales of tenures of the kind described in section 8, clause 1, Regulation VIII of 1819.

Sale under Act X of 1859 and subsequent Acts.

By Act X of 1859, section 105, Act VIII of 1865 (B.C.), section 4, and Act VIII of 1869 (B.C.), section 59, it is enacted that "whenever a decree may be passed for an arrear of rent due in respect of an under-tenure, which by the title-deeds or the custom of the country is transferable by sale, and the judgment-creditor shall make application for the attachment and sale of such under-tenure," the Court shall give twenty days' notice of sale in the manner prescribed.[2] But no order for sale for arrears of rent is to be made while any warrant is in force against the person or moveable property of the judgment-debtor. Any balance, which remains due after sale of the under-tenure, may, however, be realised by process against any other property.[3]

[1] S. 17.

[2] Act VIII of 1865 (B.C.), s. 5. Act VIII of 1869 (B.C.), s. 60.

[3] Act X of 1859, s. 105. Act VIII of 1869 (B.C.), s. 61.

Stoppage of sale.

By Act VIII of 1865 (B.C.), section 2, and Act VIII of 1869 (B.C.), section 62, "if the sum due under the decree, together with interest to date of payment, and all costs of process, be paid into Court at any time before the sale commences, whether by the defaulting holder of the under-tenure, or any one on his behalf, or any one interested in the protection of the under-tenure, such sale shall not take place; and the provisions of section 13 of Regulation VIII of 1819, for the recovery of sums paid by persons other than the defaulting holder of the under-tenure, to stay the sale of the under-tenure, shall be applicable to all similar payments made under this section." By Act X of 1859, section 106, and Act VIII of 1869 (B.C.), section 63, if after attachment and before sale any third party prefers a claim to be the lawful proprietor, and to have been in lawful possession of the under-tenure when the decree was obtained, the Court shall not postpone the sale unless the amount of the decree is deposited by the claimant, or security given for such amount. "Provided always that no transfer of an under-tenure which, by the provisions of this Act or any other law for the time being in force, is required to be registered in the sheristah of the zemindar or superior tenant, shall be recognised unless it has been so registered, or unless sufficient cause for non-registration be shown to the satisfaction of the Court."

Sale at instance of sharer in joint estate.

By Act X of 1859, section 108, and Act VIII of 1869 (B.C.), section 64, if a decree is given in favour of a sharer in a joint undivided estate, dependent talook, or other similar tenure for his share of the rent of an under-tenure, no order shall be made for sale of such under-tenure in execution of such decree until all the judgment-debtor's moveable property within the jurisdiction of the

LECTURE XII.

Court has been seized and sold and proved insufficient: and even then the sale of an under-tenure, of the nature of those described in section 59 of Act VIII of 1869 (B. C.), is to be in the same manner and have the same effect as ordinary sales in execution of decrees; and therefore would pass only the right, title and interest of the judgment-debtor.

Avoidance of incumbrances.

By section 66 of Act VIII of 1869 (B.C.), re-enacting section 16 of Act VIII of 1865 (B.C.), "the purchaser of an under-tenure under the provisions of sections 59 and 60 of this Act, shall acquire it free of all incumbrances which may have accrued thereon by any act of any holder of the said under-tenure, his representatives or assignees, unless the right of making such incumbrances shall have been expressly vested in the holder by the written engagement under which the under-tenure was created, or by the subsequent written authority of the person who created it, his representatives or assignees; provided that nothing herein contained shall be held to entitle the purchaser to eject khoodkasht ryots or resident and hereditary cultivators, nor to cancel *bonâ fide* engagements made with ryots or cultivators of the classes aforesaid by any holder of the under-tenure or his representatives, except it be proved in a regular suit, to be brought by such purchaser for the adjustment of his rent, that a higher rate would have been demandable at the time such engagements were contracted by his predecessor." This section does not apply in case of the defaulter purchasing. The purchaser who wishes to enhance the rents of cancelled under-tenures must serve the notices prescribed by section 14 of Act VIII of 1869 (B.C.).[1] And the landlord, whose holding has been

[1] Re-enacting Act X of 1859, s. 13.

sold for arrears of revenue, may still recover the arrears of rent due from his tenants at the date of sale by any process open to him except distraint.[1]

Unregistered tenants.

I shall now give a summary of the principal cases on the subject of sale for arrears of rent. We have seen that according to the cases an unregistered and unrecognised holder of a tenure cannot set aside a sale for arrears of rent made under a decree against the registered holder for arrears due. There is nothing expressed in the Acts upon this matter except the provisions of Act X of 1859, section 106, and Act VIII of 1869 (B. C.), section 63, already referred to; the Acts only prescribing registration, but providing no other penalty than is provided by the sections just mentioned for failure to register. But the point must it seems now be considered settled. An unregistered tenant who objects to such a sale may, however, proceed under section 63 of Act VIII of 1869 (B. C.) to pay the arrears if he can show under that section sufficient cause for not registering; otherwise he cannot be recognized.[2] If he pays in the name of the registered holder he can sue to set aside a sale made after such payment.[3]

There has, however, been considerable difference of opinion upon the point just noticed, and it may be as well to refer to some of the cases. Thus it has been laid down, as we have seen, that the zemindar need not look beyond his registered tenant; and in any case the sale cannot be set aside for fraud on that ground alone.[4]

[1] Act XII of 1841, s. 31. Act I of 1845, s. 30. Act XI of 1859, s. 55.

[2] Sheik Afzal Ali *v.* Lalla Gaurnarain, B. L. R., Supp. Vol., 519; 6 W. R., Act X, 59, s. c.

[3] Ib.

[4] Bhubo Tarinee Dossia *v.* Prosunno Moyee Dossia, 10 W. R., 304. Sadhun Chunder Bose *v.* Gooroochurn Bose, 15 W. R., 99.

LECTURE XII.

Again, where a tenure stood in the name of one of two original co-sharers, but the other co-sharer had bought all his right at a sale in execution of an ordinary decree, and thus was the owner of the whole tenure, but whose name was not registered, it was held that the tenure might be sold in a suit for eleven years' arrears against the registered tenant who admitted the claim for arrears.[1] And similarly a sale under a decree in a suit for arrears due from all the sharers in a talook, but to which only the registered sharers seem to have been parties, although the other sharers were aware of the pendency of the suit, was held to pass the tenure.[2] In another case the plaintiffs had obtained a decree for possession of a talook, but while the decree was under appeal the zemindar sued the registered tenant for arrears up to a period subsequent to such decree: a sezawul was put in possession of the talook, and a sale decreed in the rent suit; and the plaintiff did not get himself registered, or tender to stay the sale, or apply for the removal of the sezawul: under these circumstances it was held that the plaintiff could not set aside the sale; and that the whole tenure passed, there being the necessary provision to that effect in the lease.[3] But where a transfer of a tenure has been recognised the zemindar cannot sell for arrears in a suit against the registered holder.[4] On

[1] Doorga Persad Bose *v.* Sreekisto Moonshee, 2 Wyman's R., 212; W. R. (1864), Act X, 48, s. c.

[2] Alimoodeen *v.* Sabir Khan, 8 W. R., 60.

[3] Forbes *v.* Protap Singh Doogur, 7 W. R., 409.

[4] Samiraddi Khalifa *v.* Harischandra, 3 B. L. R., A. C., 49. Pran Bandhu Sircar *v.* Sarbasundari Debi, ib., 52 (note). Meah Jan Munshi *v.* Kurrunamayi Debi, 8 B. L. R., 1. Ram Baksh Chatlangi *v.* Hridoy Mani Debi, ib., 10 (note). Mojon Mollo *v.* Dula Gazi Kulan, 12 B. L. R., 492 (note).

the other hand, it has been held that an unregistered purchaser from whom payment in order to stop the sale had been accepted, but without notice to the zemindar of his being entitled as purchaser, cannot avoid a sale made in spite of such payment.[1]

In one case a mortgagee obtained a foreclosure decree on the 18th December 1854 against the heirs of the registered holder of a mokurreree istemrari tenure, and was put into symbolical possession by the Court, but the decree was appealed against, and, while the appeal was pending, the zemindar sued the said heirs for arrears of rent due before the foreclosure decree, and sold under an *ex parte* decree, and appointed sezawuls. The mortgagee had tendered the rent for December, which was refused, and he was told that no rent would be received until the sezawuls were dismissed. The sale took place in April 1855, and in May 1855 the mortgagee applied to have his name registered, which application was refused. The zemindar had full notice of the mortgagee's title and proceedings. Under these circumstances the sale was set aside; apparently on the ground that the auction-purchaser could not, under the law then in force, avoid the mortgagee's title. The Privy Council intimated that it was doubtful whether the tender of arrears was necessary.[2] In this case the sunnuds did not contain a special power of selling so as to come within Regulation VIII of 1819, section 11.

In another case, a talook stood in the names of A and B in 1270, and was attached and sold in execution of an

[1] Mrityunjaya Sirkar *v.* Gopal Chandra Sirkar, 2 B. L. R., A. C., 131; 10 W. R., 466, s. c.

[2] Forbes *v.* Baboo Luchmeeput Singh, 10 B. L. R., 139; 14 Moore's I. A., 330, s. c.

LECTURE XII.

ordinary decree against A and B, and purchased by C and D in equal shares: and in 1274 D's share was sold in execution of an ordinary decree to E, who thus acquired half of A and B's right, title and interest, C having the other half: but no change of names was made in the zemindar's books, the zemindar having however received rent from C and D, who were described in the receipt given to them as auction-purchasers. After E's purchase a rent suit was instituted against A and B, and an *ex parte* decree was obtained, and the talook sold, and bought by F, under a certificate that F had purchased A and B's right, title and interest, and F was put into possession. C and E then sued D and F to have it declared that the plaintiffs were entitled to the talook, and for possession, on the ground that the rent suit was fraudulent. It was held that only the right, title and interest of the judgment-debtors A and B could be sold, and that consequently nothing passed.[1]

In some cases, it appears to be laid down that at a sale for arrears against the former tenant the tenure passes; while in others it is held that only the former tenant's right, title and interest passes.[2] In the latest case upon the subject, the plaintiffs purchased a transferable tenure at a sale in execution of an ordinary decree, but before confirmation of the sale the zemindar sold the tenure in a suit for arrears against the registered tenants, and the plaintiffs did not deposit to stay the sale. It was held that the plaintiffs could not afterwards set aside the sale. The decision is put

[1] Dowlut Gazi Chowdry *v.* Moonshee Munwar, 12 B. L. R., 485 (note); see p. 492.

[2] Compare Rajkishore Dutt *v.* Bulbhuddur Misser, S. D. A. (1859), 389, and Wahed Ali *v.* Sadiq Ali, 12 B. L. R., 487 (note).

by Chief Justice Couch upon the ground that "the holding or interest which has been created by the lease" passes under such a sale; and he argues that if this is not intended when it is said the "tenure" is to be sold, there was no need for the provision, because the right, title and interest of a judgment-debtor could be sold under an ordinary decree. But with great submission, I would venture to point out that the provisions for the sale of an under-tenure for arrears of rent prescribe a different mode of sale from the ordinary process of sale in execution and expressly give a different effect to such sale, since they entitle the purchaser to avoid incumbrances: and if the mere provision that the "tenure" should be sold sufficed to pass the entire interest, in whomsoever vested, as argued by the Chief Justice, there would seem to have been no necessity to provide that incumbrances might be avoided, since to use the words of the Chief Justice the "tenure" means "not the right or interest of any person in the land, but the holding which has been created by the lease." In the case under notice, however, the plaintiff would not have been entitled to succeed as being an unregistered holder, if the cases before referred to are correctly decided: so that it would seem that what fell from the Chief Justice as to the meaning of the term "tenure" was not strictly necessary for the decision.[1]

A sale duly made under the provisions of the Rent Acts entitles the purchaser to avoid incumbrances upon the tenure as provided in section 66 of Act VIII of 1869 (B.C.). Still the tenure is not expressed to be hypothecated for the rent, but only the produce.[2] If the defaulting tenant himself

[1] Shamchand Kundu *v.* Brojonath Pal, 12 B. L. R., 484.

[2] Tirthanund Thakoor *v.* Paresmon Jha, 13 W. R., 449.

LECTURE XII.

is the purchaser he cannot take advantage of section 66 to avoid his own acts.[1] Before Act VIII of 1865 (B.C.), the lease must have expressly reserved the right of sale for arrears to entitle the purchaser to avoid incumbrances.[2] The sale itself does not cancel the incumbrances, but only gives the purchaser a power to do so; of which he may elect to avail himself, or which he may lose by not exercising.[3]

Assignments of revenue and the resumption thereof.

The considerations of the rights arising out of assignments of revenue will now complete our subject. I have already dealt with this branch of my subject and have brought down the law upon the point to the time of the Permanent Settlement.[4] I shall therefore proceed to trace the subsequent legislation, which commences with Regulation XIX of 1793; a Regulation re-enacting and amending the Regulations of 1st December 1790, which embodied the law on the subject at the time of the Decennial Settlement. Regulation XIX of 1793 recites the right of the ruling power of the country to a certain proportion of the produce of every beegah of land, and that a grant by a zemindar of land free of revenue is void. But that notwithstanding many such grants had been made, both by zemindars and officers of Government, on the pretence of applying the

---

[1] Meheroonissa Bibee *v.* Hur Churn Bose, 10 W. R., 220.

[2] Mohima Chunder Dey *v.* Gooroo Doss Sein, 7 W. R., 285. Shahabooddeen *v.* Futteh Ali, B. L. R., Supp. Vol., 646; 7 W. R., 260, s. c. Brindabun Chunder Chowdhry *v.* Brindabun Chunder Sircar Chowdhry, 8 W. R., 507; L. R., In. App., 178, s. c. Satkouree Mitter *v.* Useemuddeen Sirdar, S. D. A. (1851), 626. Meheroonissa Bibee *v.* Hur Churn Bose, 10 W. R., 220. Meer Jasimuddin *v.* Sheikh Mansur Ali, 6 B. L. R., App., 149; 15 W. R., 11, s. c. Forbes *v.* Baboo Lutchmeeput Singh, 10 B. L. R., 139.

[3] Gobind Chunder Bose, *v.* Alimooddeen, 11 W. R., 160. Modhoo Soodun Koondoo *v.* Ramdhun Gangolee, 12 W. R., 383.

[4] See Lecture VIII.

produce of the land to religious or charitable purposes. That the British Government had adopted the principle that grants previous to the accession to Dewanny accompanied with possession should be held valid. But that as no complete register of exempted lands had been formed, and as farmers and officers of Government still continued to make extensive grants, dating them or registering them as before the accession to the Dewanny; it is enacted, by section 2, clause 1, that all grants for holding land free of revenue, made before 12th August 1765, by whatever authority, and whether by writing or not, shall be deemed valid, provided the grantee actually and *bonâ fide* obtained possession of the land so granted, and that it has not since been subject to payment of revenue. By clause 2, if the land is found to have been so subject to payment of revenue for less than twelve years, but the Court is doubtful of the authority of the officer who subjected the land to such payment, the Governor-General in Council shall decide the question. By clause 3 the Courts are not to adjudge any person, not being the original grantee to be entitled to hold, exempt from the payment of revenue, land now subject to the payment of revenue, under a grant before the accession to the Dewanny expressly for the life of the grantee; or if not so expressed, or there is no writing or none forthcoming, then if the grant, from its nature and denomination, shall be proved to be for life only. By clause 4 heirs are not to succeed under such grants; and where the grant is silent, it must be proved to be hereditary to entitle the heirs to succeed. If, however, one or more successions have taken place, the Governor-General in Council shall declare whether revenue is to be paid. By clause 5 holders of life grants cannot transfer or mortgage beyond their own lives.

Revenue-free grants made before 12th August 1765.

LECTURE XII.

Revenue-free grants made since 12th August 1765 and before 1st December 1790.

The next class of grants dealt with consists of those made since 12th August 1765 and before 1st December 1790, the date of the consolidated Regulations upon the subject. By section 3, clause 1, all grants between these dates by any other authority than the Government are void unless confirmed by Government, and doubts as to the authority of any officer confirming such grants are to be dealt with as before directed.[1] An exception out of this class is made, by clause 3, in favour of grants by the Provincial Councils before 1178, B. S., and, by clause 4, of grants before that period, whether for life or otherwise, if not of more than ten beegahs the produce of which is *bonâ fide* appropriated as an endowment on temples, or to the maintenance of Brahmins, or other religious or charitable purposes; and also of such grants made before the Dewanny. By section 4 the grantees or possessors of revenue-free lands alienated before 1st December 1790, are still proprietors of the lands, with the same right of property as is declared to be vested in proprietors of estates or dependent talooks (according as the land exceeds or is less than one hundred beegahs as specified in sections 5, 7 and 21), subject to revenue. That revenue is to be half the usual amount when the lands are held under grants made before 1178.[2] By section 6 the revenue which may be assessable on lands not exceeding a hundred beegahs, whether in one or more villages, and alienated by one grant before 1st December 1790, shall belong to the person responsible for the discharge of the revenue of the estate or dependent talook in which the lands may be situated, notwithstanding anything in section 8 of Regulation I of 1793; and the person

[1] Cl. 2. [2] S. 5.

so entitled to the revenue of such lands is not to be liable to any additional assessment on this account during his engagement. Such lands shall be considered a dependent talook. If held khas, the revenue of the talook shall be paid to the person entitled to receive the rents and revenue until settlement. This provision gives the zemindars the revenue of the lands in question, which, as we have seen, amounted to a very large sum. The revenue on such lands as are last mentioned, but exceeding a hundred beegahs, is to belong to Government, and the lands are to be considered independent talooks.[1] With regard to the revenue to be assessed upon such lands, whether exceeding a hundred beegahs or not,[2] if the grant was made before 1178, the revenue is to be half the produce,[3] calculated according to the rates for other lands in the pergunnah of a similar description. If any part is uncultivated, the proprietor is to bring it into cultivation, and to pay a russud or progressive increase, regulated with reference to his assessment on the cultivated land. If the proprietor does not agree to the assessment, the lands are to be held khas, or farmed under Regulation VIII of 1793. But if he agrees to the proposed assessment, that assessment is to be fixed for ever.[3] If the grant was made since 1178, the assessment shall be under Regulation VIII of 1793, and subject to the provisions before referred to.[4]

Revenue-free grants made since 1st December 1790.

The third class of grants dealt with includes those made since 1st December 1790. These are declared absolutely void, unless made by the authority of the Governor-General in Council. Every proprietor and farmer

[1] S. 7.
[2] Ss. 8, 9.
[3] S. 8, cl. 1.
[4] S. 8, cl. 2.

LECTURE XII.

officer of Government appointed to collect from khas estates is authorised and required to collect the rents from such lands at the pergunnah rates, and to dispossess the grantee thereof, and reannex such lands to the estate or talook in which they are situated, without reference to the Court or Government; without being liable, if a proprietor, farmer or dependent talookdar, to any increase of assessment during his term on account of such resumption. This provision authorises resumption without a suit.[1] By section 20 valid hereditary grants are transferable, but the transfers must be registered[2] within six months; and omission to register renders the lands liable to revenue:[3] but the admission to registration is not conclusive as to exemption from revenue.[4] This Regulation does not extend to badshahee or royal grants such as jageers, altumghas, muddudmash, and ayma grants.[5] The provisions of this Regulation do not differ materially from the previous Regulations on the same subject.

Badshahee grants.

Badshahee grants are regulated by Regulation XXXVII of 1793. This recites that the native Governments occasionally granted the State share of the produce, which is the due of the State with respect to every beegah of land, for the support of the families of persons who had performed public services, for maintaining troops, &c. That the British Government had continued those which were hereditary, and which were granted before the accession

[1] S. 10. Sonatun Ghose *v.* Moulvi Abdul Farar, B. L. R., Supp. Vol., 109, at pp. 122, 152.

[2] According to ss. 21 to 25.

[3] Ss. 26, 27.

[4] S. 28.

[5] S. 49.

to the Dewanny, and of which the grantees or their heirs had obtained possession before that period. That there is no complete register of such grants, and that fabricated and antedated grants are put forward, and that grants for life are treated as hereditary without the consent of the Government. The titles to all such lands are to be tried by the Courts, and a register formed. Consequently the rules of 23rd April 1788 and subsequent dates are re-enacted with modifications. The provisions contained in this Regulation as to the validity of grants are substantially the same as those in Regulation XIX of 1793. The Regulation is declared not to affect the zemindary or proprietary right; but only the right of the Government to revenue.[1] Altumgha, ayma and muddudmash grants are to be considered hereditary and transferable tenures; but succession to them must be registered. Jageers are to be considered to be for life, unless otherwise expressed.[2]

Resumption.

Regulation II of 1819 recites that the previous rules on this subject had been found inadequate, and that it is necessary to declare generally the right of Government to assess all lands which, at the Decennial Settlement, were not included within the limits of a settled estate; not being land for which a distinct settlement had been subsequently made, or which was held free of assessment under a legal and valid title; at the same time renouncing all claim to additional revenue from lands included in permanently settled estates at the settlement. In order to establish a uniform course

[1] S. 4.

[2] S. 15. See a review of the Lakhiraj Regulations in Hureehur Mookhopadhya *v.* Madub Chunder Baboo, 14 Moore's I. A., 152; 8 B. L. R., 566, s. c. See also Mutty Lall Sen Gywal *v.* Deshkar Roy, B. L. R. Supp. Vol., 774; 9 W. R., 1, s. c.; and Kumeshma Dassea *v.* The Court of Wards, 12 W. R., 251.

LECTURE XII.

of proceeding in resumption, it is enacted that lands not settled for and not legally revenue-free are to be liable to assessment; and the revenue of such lands, whether exceeding one hundred beegahs or not, is to belong to Government. This is not to affect the rights of zemindars and other proprietors of permanently settled estates.[1] This provision applies also to churs and islands formed since the Decennial Settlement, and to all lands gained by alluvion or dereliction[2] as well as to lands, which although included within the limits of talooks held under special pottahs, such as the putteetabady and jungleboory talooks in the Twenty-four Pergunnahs and Jessore, were not permanently assessed at the Permanent Settlement. But the terms of the pottah are to be observed as regards the original pottah-holder or his legal representatives.[3] The rules as to the validity of revenue-free grants are declared applicable to grants at a fixed or mokurreree jumma, and to other grants limiting the demands of Government.[4] Similarly as to lands given in lieu of pensions.[5] Nothing in the Regulation is to affect the right of proprietors of permanently settled estates to the full benefit of the cultivation of all waste lands included in their estates at the Permanent Settlement, and no claim is to be made with respect to permanently settled lands on the ground of error, fraud, or any pretext whatever.[6]

[1] S. 3, cl. 1.
[2] S. 3, cl. 2.
[3] S. 3, cl. 3.
[4] S. 4.
[5] S. 29.
[6] S. 31. See as to this Regulation, Sonatun Ghose *v.* Moulvi Abdul Farar, B. L. R., Supp. Vol., 109.

Regulation XIII of 1825 provides for the settlement of canoongoes' lands in Behar, and for the Governor-General in Council continuing in possession the holders of lakhiraj tenures, where the minhye or lakhiraj tenure is distinct from the proprietary right in the soil: the proprietors are in such cases to continue to receive the same dues as before, but they are not to disturb the possession of the minhyedar or lakhirajdar,[1] whose tenures are declared hereditary and transferable. If these tenures escheat to Government, settlements are to be made under the general Regulations with the proprietors.[2] These principles are also to apply to those tenures which, under Regulation XIX of 1793, section 8, clause 2, are to be assessed at half the produce; the intention being that the rule should be applied in favour of long possession.[3] The same rules are to apply also to badshahee grants.[4] These provisions tend still further to limit the wide power of ejectment at first given with respect to invalid lakhiraj. Regulation XIV of 1825 was passed to declare the extent of authority vested in the revenue officers with respect to the confirmation of lakhiraj; and to define the principles upon which grants before the accession to the Dewanny were to be considered valid. It recites that the power of granting or confirming lakhiraj tenures, except judicially, belongs to the Supreme Government alone. It enacts that lakhiraj tenures of which uninterrupted possession has been held at and subsequent to the 12th August 1765, shall be valid without evidence of any formal grant or confirmation, and shall be hereditary where they would be so by ancient usage. This rule does not

Provisions where lakhiraj and proprietary rights are distinct.

[1] S. 2.
[2] S. 3.
[3] S. 4.
[4] S. 5.

LECTURE XII.

however apply to derivative tenures which were held at that date above mentioned by a jageerdar or other tenant under a temporary or conditional tenure: such parcels of land shall follow the condition of the principal tenure.[1] The burden of proof of possession at the date above mentioned, and of the hereditary nature of the tenure, where the holders are not the original grantees, is to be on the parties claiming to hold the lakhiraj tenure; the general principle as to the primary right of the State to a share of every beegah of produce being again asserted.[2] And one or more successions shall not alone be sufficient to establish a right of inheritance.[3] The provision on this point in Regulation XIX of 1793 was omitted with reference to badshahee grants in Regulation XXXVII of 1793, so that with reference to these the present rule was already in force.

Requisites of lakhiraj grants anterior to British rule.

The authorities whose grants of lakhiraj are to be recognised are enumerated, including the kings of Dehli and the soubahdars of Bengal. The grants of these authorities are good if (1) they were made or confirmed within the period during which the person granting or confirming such tenures possessed and exercised supreme power within the territory within which the lands specified in the grants are situate; (2) the grantee actually and *bonâ fide* obtained possession of the land within the same period; and (3) the grant was not subsequently resumed by the Government for the time being, before the British acquisition of the territory; or if so resumed, where the competence of the officer who resumed shall have been expressly disallowed by the Governor-General in Council.[4] Grants not made

[1] S. 3, cl. 2.
[2] S. 3, cl. 3.
[3] S. 3, cl. 4.
[4] S. 3, cls. 5, 6.

or confirmed by the Supreme Power (except those included in clause 2) must have been made or confirmed by some authority expressly declared competent by the Governor-General in Council, and there must have been actual *bonâ fide* possession and no subsequent resumption.[1] This Regulation does not affect religious or charitable grants coming under the Regulations and which do not exceed ten beegahs.[2]

Further provisions.

Regulation III of 1828 provides that persons succeeding to revenue-free lands and lands held on a mokurreree jumma, whether by transfer or inheritance, shall give notice to the Collector. Omission to give such notice renders the land liable to immediate attachment by the revenue officers and a fine of a year's rent.[3] This provision is designed as a security for the revenue and not for private interests.[4] Tenures not duly registered, or to which the specification does not show an hereditary title or that it is a perpetual endowment, shall be and be held to have been liable to resumption, unless they have been declared to be hereditary by a final decree of a Court on the demise of the persons in possession at the date of Regulations XIX and XXXVII of 1793. The Collectors and other officers authorised to do so are to assess, and, if necessary, attach, all lands liable to resumption as above in the same manner as in the case of a lapsed farm. The Regulation then provides for ascertaining the nature of claims to exemption from assessment by the whole deed and not merely from the designation of the tenure. Jageers consequently shall

[1] S. 3, cl. 8.
[2] S. 4.
[3] S. 11, cl. 2.
[4] Umrithnath Chowdhry *v.* Koonjbehary Sing, W. R., F. B., 34.

LECTURE XII.

not be held to be for life only if the tenure granted is clearly hereditary; nor shall any tenure be considered hereditary unless expressed to be hereditary or perpetual.[1]

With regard to the sale of lands of lakhiraj tenure, it is provided by section 9, Act VII of 1868 (B.C.), that when such lands have been sold before that Act for arrears of revenue or demands in the mode provided by Act XI of 1859, the sale shall have the same force and effect against the person liable to pay the revenue or demand as a sale in execution of a decree.

Cases upon resumption.

Upon the above Regulations[2] it has been decided with regard to the holder of land resumed by Government that the proprietor must be settled with; he must be assessed, not evicted.[3] The zemindar of course has, since the Permanent Settlement, no power to free any part of his land from payment of revenue: he may however still make rent-free grants.[4] A zemindar seeking to resume must make a *primâ facie* case that rent has been received on account of the land sought to be resumed since 1790, or that the lands in question were part of the mal lands of his zemindary at the Permanent Settlement. The holder must

---

[1] S. 12.

[2] See a review of them in Maharaja Dheeraj Raja Mahatab Chund Bahadoor *v.* The Bengal Government, 4 Moore's I. A., 466.

[3] Hurryhur Mookhopadhya *v.* Madub Chunder Baboo, 14 Moore's I. A., 152. Mahomed Israile *v.* Wise, 13 B. L. R., 118. See however Bheekoo Singh *v.* The Government, 10 W. R., 296.

[4] Mutty Lall Sen Gywal *v.* Deshkar Roy, 9 W. R., 1, where such grants are fully discussed. Rajah Nilmoney Singh Deo *v.* The Government, 6 W. R., 121. Ahmudoollah *v.* Mithoo Lall, 3 Agra R., 186. As to the zemindar's power to grant free of revenue, see Sonatun Ghose *v.* Moulvi Abdul Farar, B. L. R., Supp., Vol. 109, at pp. 150, 151. And as to altumghas for charitable purposes, see Jewun Doss Sahoo *v.* Shaik Kubeerooddeen, 2 Moore's I. A., 390, at pp. 403, 408 to 410 and 419.

then, in order to maintain his plea of exemption, show that the lands were rent-free before 1790.[1]

A dependent putneedar (shikamee) can resume invalid lakhiraj within his putnee.[2] But the manager of a religious endowment, to which the zemindar has granted the profits of a certain number of villages after paying revenue, cannot resume invalid lakhiraj within the limits of the grant: that right remains with the zemindar.[3] After resumption of a grant made before 1790, the zemindar is entitled to rent but not to possession of the land.[4] It has been held that resumption by Government does not destroy under-tenures; but the under-tenants can be compelled to pay the assessment in addition to their rent, or to give up their tenures.[5] This however must be taken to be subject to the ordinary limitations of the zemindar's power of enhancing the rents of his tenants. Resumption suits were comparatively rare

[1] In the matter of Mudhoosoodhun Chuckladar, S. D. A. (1853), 365. Parbati Charan Mookerjee *v.* Rajkrishna Mookerjee, B. L. R., Supp. Vol., 162. Maharaja Dheeraj Raja Mahatab Chund Bahadoor *v.* The Bengal Government, 4 Moore's I. A., 466 at p. 497. Hurryhur Mookhopadhya *v.* Madub Chunder Baboo, 14 Moore's I. A., 152. Omesh Chunder Roy *v.* Dukhina Soondery Debia, W. R., F. B., 95; 8 B. L. R., 566, s. c.

[2] Rao Ram Shunker Raee *v.* Moulvee Syud Ahmad, S. D. A. (1848), 234. In the matter of Rajkishore Raee, S. D. A. (1849), 66. Rajkishore Raee *v.* Soomer Mundle, S. D. A. (1850), 498.

[3] Nobinchunder Roy Chowdhry *v.* Pearee Khanum, 3 W. R., 143.

[4] Mugnee Ram Chowdhry *v.* Baboo Gunesh Dutt Singh, W. R., (1864), 275.

[5] Fuzal Banoo *v.* Azeezunnissa Beebee, 3 W. R., 72, overruling Mohunt Sheodass *v.* Bibi Ikram, S. D. A. (1850), 167. Annundmoye Chowdharain *v.* Ramkunth Sein, S. D. A. (1860), 660. Pratap Narayan Mookerjee *v.* Madhu Sudan Mookerjee, 8 B. L. R., 197. Mussamat Farzhara Banu *v.* Mussamat Azizunnissa Bibi, B. L. R., Supp. Vol., 175.

LECTURE XII.

before 1848, but an impetus was given to such suits in that year and again in 1855. The zemindars before 1848 seldom sought to dispossess the holders of invalid lakhiraj, there being little competition for land.[1]

I have already described the various kinds of tenure included under the head lakhiraj. It remains to bring down the law to the present time. In order to sustain a claim to an hereditary lakhiraj tenure, the claimant must prove a grant before 12th August 1765, and possession taken thereunder, or enjoyment of the lands as lakhiraj and hereditary at and since that period.[2]

With regard to royal grants, it has been held that a jageer, according to ancient usage, was only a life tenure.[3] A grant of a jageer is a grant of the Government rights; and it has been held that the jageerdar must allow the zemindar malikana.[4] A jageer in Chota Nagpore granted on an hereditary tenure for military services has been held to be resumable by the zemindar on failure of lineal heirs of the grantee. The zemindar in this case appears to have resumed such grants as he pleased, before the British rule: and resumption for want of heirs was found to be customary in that district.[5] A fouj serinjam grant, or grant for military services, was held not resumable by Government

[1] Sonatan Ghose *v.* Moulvi Abdul Farar, B. L. R., Supp. Vol., 109, at pp. 114, 143.

[2] Maharaja Dheeraj Raja Mahatab Chund Bahadoor *v.* The Bengal Government, 4 Moore's I. A., 467, at p. 497.

[3] Collector of Bareilly v. Martindell, 2 Sel. Rep., 188.

[4] Moohummud Ismail Jemadar *v.* Rajah Balunjee Surrun, 3 Sel. Rep., 345, a Cuttack case.

[5] Thakoorain Mussamut Roopnath Konwur *v.* Maharajah Juggunnath Sahee Deo, 6 Sel. Rep., 133.

so long as the holder did not refuse to perform the services.[1] A muddudmash grant to a person "and other fakeers" has been held to create an hereditary tenure.[2] A grant of land as pudangha (water for washing the feet) made to a mohunt is perpetual.[3]

Lands held upon service tenures.

With respect to lands held upon service tenures, there has been considerable conflict as to the circumstances under which they are resumable; particularly in the case of ghatwallee tenures. It has been held that the service need not be performed by the holders of the tenures in person, but they must be responsible for its performance.[4] And it has been held that the rent of a service jageer cannot be enhanced before resumption; since the jageerdar is entitled in such a case to be relieved from the services.[5] With respect to the right to resume, it was held in several cases that the zemindar could resume upon default in performing the services, or if the holder was dismissed,

---

[1] Sparrow *v.* Tanajee Rao Raja Sirke, 2 Borr., 501, and Morley's Digest, 404. See Beema Shunkur *v.* Jamasjee Shaporjee, 5 W. R., P. C., 121, at p. 122. See as to altamgha enams and amaram grants, Unide Rajaha Raje Bommarauze Bahadur *v.* Premmasamy Venkatadry Naidoo, 7 Moore's I. A., 128, at p. 147. See as to a jaidad jageer, Forrester *v.* Secretary of State for India, 12 B. L. R., 120.

[2] Shah Uzeezoollah *v.* The Collector of Sheharanpore, 4 Sel. Rep., 213. See for instances of altumgha grants by firmans followed by perwannahs, Mussamut Qadira *v.* Shah Kubeer-ood-deen Ahmed, 3 Sel. Rep., 407; Jewun Doss Sahoo *v.* Shah Kubeer-ood-deen, 2 Moore's I. A., 390, at p. 408.; of a muddudmash grant for similar purposes, Bibee Kuneez Fatima *v.* Bibee Saheba Jan, 8 W. R., 313. As to polliams, see Naragunty Lutchmeedavamah *v.* Vengama Naidoo, 9 Moore's I. A., 66; The Collector of Madura *v.* Veeracamoo Ummal, 9 Moore's I. A., 446. For a *cuttoogootaga* tenure, see Vencataswara Yettiapah Naicker *v.* Alagoo Moothoo Servagaren, 8 Moore's I. A., 327.

[3] Collector of Bundelkund *v.* Churun Das Byragee, 3 Sel. R., 415.

[4] Shib Lall Sing *v.* Moorad Khan, 9. W. R., 126.

[5] Nilmoney Singh Deo *v.* Ramgolal Singh Chowdhry, Marshall, 518.

LECTURE XII.

although the holding was hereditary.[1] In a subsequent case it was held that this right exists only when the continued performance of the service is the condition of the grant, and not merely something entering into the motive or consideration for it.[2] In this case the grant was of a jageer before the Permanent Settlement, which provided for the jageerdars maintaining a body of men to keep off elephants, but did not make that service a condition of the continuance of the tenure; past services being also part of the consideration of the grant. The grantees had held without objection from the zemindar long after the necessity for keeping off elephants had ceased. The Government had assessed the zemindar for the lands, and he in turn sought to assess the jageerdars on the ground that the services referred to were no longer required. It was held he was not entitled to assess the lands. The zemindar seems to have been assessed for these lands as chakeran under Regulation VIII of 1793, section 41. The chowkeedary lands in the zemindary of Burdwan were annexed to the zemindary under section 41 of Regulation VIII of 1793, but were not assessed: they were included in order to be a security for the revenue but were not assessed, because the zemindar had not the full

[1] Bhugoo Rae *v.* Azim Alee Khan, S. D. A. (1858), 84. Nilmoney Singh Deo *v.* Ramgolul Singh Chowdhry, Marshall, 518. Hurreenarain Ghose *v.* Musst. Urnoo Dassee, S. D. A. (1857), 786. Moharaja Sreeshchunder Rae *v.* Madhub Mochee, S. D. A. (1857), 1772. Tekayet Jugomohun Singh *v.* Raja Leelanund Singh, S. D. A. (1858), 1471. Ram Chunder Chuckerbutty *v.* Gopaul Mirda, S. D. A. (1860), Vol. II, 315. Chunder Nath Roy *v.* Bheem Sirdar, W. R. (1864), Act X, 37. Ram Gopal Chuckerbutty *v.* Chunder Nath Sein, 10 W. R., 289.

[2] Forbes *v.* Meer Mahomed Tuquee, 5 B. L. R., 529, at p. 543; 13 Moore's I. A., 438, s. c.; 14 W. R., P. C., 28, s. c.

benefit of them. The zemindar claiming to resume these lands was held not entitled to do so; but was held entitled to appoint the chowkeedar, who was bound to render the customary service to the zemindar.[1]

Ghatwallee tenures.

With regard to ghatwallee tenures, those in Kurruckpore have been held hereditary, the sunnud containing the terms mukurreree istemrari, and the lands having long descended in the family:[2] but where these words are not used they have been held resumable;[3] and this is said to hold whether the services were no longer required, or the ghatwals neglected to perform them.[4] And it has been further held that these tenures cannot be sold in execution of a decree without the zemindar's consent.[5] Ghatwallee holdings have also been considered indivisible:[6] and a woman may be a ghatwal.[7] Sometimes ghatwals paid a small quit-rent as well as rendering service. These are

[1] Joykissen Mookerjee *v.* The Collector of East Burdwan, 10 Moore's I. A., 16.

[2] Munrunjun Singh *v.* Rajah Leelanund Singh, 3 W. R., 84. Rajah Lilanund Singh Bahadoor *v.* Thakur Munorunjun Singh, 13 B. L. R., 124.

[3] Rajah Neelanund Singh *v.* Surwan Sing, 5 W. R., 290, 292; 2 In. Jur., N. S., 149, s. c.; 9 Sev. Rep., 311, s. c.

[4] Tekayet Jugmohun Singh *v.* Raja Neelanund Singh, S. D. A. (1857), 1812.

[5] Sartuckchunder Dey *v.* Bhugut Bharutchunder Singh, S. D. A. (1853), 900. Rajah Leelanund Singh *v.* Doorgabutty, W. R. (1864), 249. Kustoora Koomaree *v.* Binoderam Sein, 4 W. R. Misc., 5. Lalla Gooman Singh *v.* Grant, 11 W. R., 292.

[6] Mussamut Kustoora Koomaree *v.* Monohur Deo, W. R. (1864), 39, at p. 42. Hurlal Singh *v.* Jorawun Singh, 6 Sel. R., 169.

[7] Mussamut Kustoora Koomaree *v.* Monohur Deo, W. R. (1864), 39. As to the descent of these tenures to the eldest son, see Mussamut Teetoo Koonwuree *v.* Surwun Singh, S. D. A. (1853), 765. See as to ghatwallee and service tenures, Rajah Leelanund Singh Bahadoor *v.* Government of Bengal, 6 Moore's I. A., 101; 4 W. R., P. C., 77, s. c.

LECTURE XII.

considered to have an hereditary tenure.[1] It is not necessary that the sunnud should express that the holding is hereditary, if it has been so held for a sufficient time.[2]

It has been held that a ghatwallee tenure ceases when, in consequence of the Government having made other provisions for Police, the services are no longer required.[3] In this case the ghatwals were liable to dismissal for neglect of duty, and Government had never interfered in their appointment or dismissal of them. When ghatwallee lands have been assessed as part of a zemindary, the Government cannot resume or claim further revenue from the zemindar.[4] But, on the other hand, it has been held that an auction-purchaser of the zemindary cannot resume on the suggestion that the services have ceased, at least if the Government has a joint interest with the zemindar in the continuance of the services and opposes the resumption.[5] In this case the zemindars paid as revenue the same amount as the ghatwals paid as rent. It has been further held that even when the grant is upon condition of service, the zemindar cannot by dispensing with the

[1] Raja Lilanund Sing Bahadoor *v.* The Government, 2 B. L. R., A. C., 114, at p. 122.

[2] Baboo Kooldeep Narain Singh *v.* Mahadeo Singh, 6 W. R., 200; B. L. R., Supp. Vol., 559, s. c. Kooldeep Narain Singh *v.* The Government, 11 B. L. R., 71; 14 Moore's I. A., 247, s. c.

[3] Rajah Neelanund Singh *v.* Nusseeb Singh, 6 W. R., 80. Rajah Leelanund Singh *v.* Kunhya Lall, 17 W. R., 315. Tekayet Jugomohun Singh *v.* Raja Leelanund Singh, S. D. A. (1857), 1812; s. c. on review, S. D. A. (1858), 1471. Raja Anundlal Deo *v.* Government, S. D. A. (1858), 1669.

[4] Rajah Lelanund Singh Bahadur *v.* The Bengal Government, 6 Moore's I. A., 101; 4 W. R., P. C., 77, s. c.

[5] Kooldeep Narain Singh *v.* The Government, 11 B. L. R., P. C., 71; 14 Moore's I. A., 247, s. c.

service put an end to the grant.[1] This applies to all service tenures. And where the Government consented to dispense with the ghatwallee services as regarded the zemindar, and took from him instead additional revenue, it was held that nevertheless an auction-purchaser from the zemindar could not dispossess the ghatwals,[2] although the sunnud was of a date subsequent to the Permanent Settlement.[3] This was in the Kurruckpore zemindary. But in the same zemindary when the appointment of ghatwals rested with the zemindar, it was held that the Government having dispensed with the ghatwallee services, the zemindar was not bound to make any fresh appointment.[4]

The ghatwallee tenures of Beerbhoom have been the subject of legislation. Regulation XXIX of 1814, after reciting that those tenures are hereditary and subject to a fixed rent and services to be rendered to the zemindar, and that these rents have been recently adjusted and made payable direct to Government, enacts that the ghatwals shall not be ejected or their rent enhanced, so long as they observe their own obligations;[5] but that the tenure may be sold for arrears in the same way as other tenures, or transferred by the Governor-General in Council to some other person, the zemindar taking any increase of revenue

---

[1] Baboo Koolodeep Narain Singh *v.* Mahadeo Singh, 6 W. R., 199, at p. 203. The Government of Bombay *v.* Damodhar Parmanandas, 5 Bom. H. C. R., A. C., 202.

[2] Raja Lillanund Singh Bahadur *v.* Thakur Munorunjun Singh, 13 B. L. R., 124, at p. 132.

[3] Ib., p. 134.

[4] Mahaboot Hossein *v.* Mussamut Putasoo Koomaree, 1 B. L. R., (A. C.), 120; 10 W. R., 179, s. c.

[5] S. 2.

LECTURE XII.

thus obtained.[1] And Act V of 1859, after reciting that it has been held that the holders of ghatwallee lands contemplated by Regulation XXIX of 1814 have no power to create an interest extending beyond the life of the holder,[2] enacts that they shall have the same power of granting leases as other proprietors; but not to extend beyond the grantor's life or incumbency unless granted for certain specified purposes and approved by the Commissioners.[3] It has been since held that ghatwallee tenures are not liable for the ancestor's debts in the hands of his successor or heir.[4]

Mokuddumee tenures.

We have noticed the other officers of the zemindary and their emoluments and tenures. It has been held that the zemindar cannot extinguish a mokuddumee tenure in Cuttack, since such a tenure is not derived from the zemindar.[5] And it has been held that the hereditary pergunnah officers appointed to keep the accounts are still entitled to their fees when the pergunnah is granted in enam or jageer, and that whether they perform services or not if willing to do so.[6] And the mokuddums of Bhaugulpore have been held entitled to all the privileges of maliks, and to be quite

---

[1] S. 5. See Chittro Narain Singh Tekait *v.* Commissioner of the Sonthal Pergunnahs, 14 W. R., 203.

[2] See proceedings of the Legislative Council, Vol. IV, p. 687.

[3] S. 1. See Mukinbhanoo Deo *v.* Kostoora Koonwaree, 5 W. R., 215. Deputy Commissioner of Beerbhoom *v.* Rungololl Deo, W. R., F. B., 34; Marshall 117, s. c. Hurlal Singh *v.* Jorawun Singh, 6 Sel. R., 169. Sartuckchunder Dey *v.* Bhugut Bharutchunder Singh, S. D. A. (1853), 900. Grant *v.* Bangsi Deo, 6 B. L. R., 653.

[4] Binode Ram Sein *v.* The Court of Wards, 6 W. R., 129; s. c. on review, 7 W. R., 178.

[5] Goursham Jana *v.* Mussamut Kunneeka Debea, S. D. A. (1860), 504.

[6] Beema Shunkur *v.* Jamas Jee Shapor Jee, 2 Moore's I. A., 23.

independent of the zemindar or chowdhry.[1] These mokuddums are consequently not liable to pay any chuckladaree fees.[2] Nor is the zemindar liable to pay mokuddimee chowdraee or chuckladaree dues.[3] Again in the Madras Presidency, a palki huk was held to be annexed to the office of desai and not to be resumable by Government.[4]

---

[1] Morley's Digest, Vol. I, p. 406 (note). Runglal Chowdhry *v.* Ramanath Dass, 2 Sel. R., 114.

[2] Munsurnath Chowdhry *v.* Bhowany Churn, 4 Sel. R., 126.

[3] Kulian Chowdhree *v.* Raja Ikbal Ali, 4 Sel. R., 215.

[4] The Government of Bombay *v.* Desai Kullianrai Hakoomutrai, 14 Moore's I. A., 551.

APPENDIX.

The following specimens of sunnuds and grants may be usefully studied.[1]

I.—A ZEMINDARY SUNNUD.

Form of a Sunnud for a Zemindary, granted in the time of Akber Shah.[2]

"BE it known to the present and future mutsuddies, chowdries, canoongoes, talookdars, ryots and husbandmen of Pergunnah ——— belonging to Chuklah ———, dependent on the Soobah of Bengal; that the office of zemindar of Pergunnah ——— has been bestowed from the commencement of the year ——— on ——— agreeably to the endorsed particulars, on condition of his paying ——— mohurs. It is required that, having performed with propriety the duties of his station, he deviate not from diligence and assiduity in the smallest degree; but observing a conciliatory conduct towards the ryots, and exerting himself to the utmost in punishing the refractory and expelling them from his zemindary, let him pay his revenues into the treasury at the stated periods; let him encourage the ryots in such a manner, that signs of an increased cultivation and improvement of the country may daily appear; and let him keep the high roads in such repair, that travellers may pass and repass in perfect safety. Let there be no robberies or murders committed within his boundaries. Should any one, notwithstanding, be robbed or plundered of his property, let him produce the thieves with the stolen property; and after restoring the latter to the rightful owner, let him assign the former over to punishment. Should he fail in producing the parties offending, he must himself be responsible for the property stolen. Let him moreover be careful that no one offend against the peace of the inhabitants by irregularities of any kind. Finally, let him transmit the account required of him to the Huzzoor, under his own and the canoongoe's signature; and after having paid up his revenues completely to the end of the year, let him receive credit for the muzcoorat agreeably to usage. Let him abstain from the collection of any of the abwabs that have been abolished or prohibited by Government. It is also required of the aforesaid mutsuddees, &c., that having acknowledged the said person zemindar of that Pergunnah, they consider him as invested with the powers and duties appertaining to that station. Regarding this as obligatory, let them deviate not therefrom."

---

[1] See also Patton's Asiatic Monarchies, Appendix I, p. 333. Galloway's Law and Constitution of India, 43. Orissa, Vol. II, 229, 230 and the Appendix to Baillie's Land Tax.

[2] Harington's Analysis, Vol. III, 252. See Rouse's Dissertations, Appendix No. I and No. II, for specimens of zemindary sunnuds.

Form of a Zemindary Muchulka, executed in the time of Akber Shah.[1]

"Whereas the office of zemindar of Pergunnah ——— in Sircar ——— belonging to the Chuklah ——— dependent on the Soobah of Bengal has been bestowed on me from the commencement of the year ——— on condition of my paying ——— mohurs, I, who am ——— of my own free will and accord, enter into this agreement and obligation; that having performed with propriety the duties incumbent upon my station, I will not be deficient in the smallest degree in diligence and assiduity; but observing a conciliatory conduct towards the inhabitants and exerting myself to the utmost in furnishing and expelling the refractory and disaffected, will pay my revenues into the treasury at the stated periods. I will encourage the ryots in such a manner that signs of an increased cultivation and improvement of the country may be daily visible. I will keep the high roads in such repair, that travellers may pass and repass without molestation and in perfect security. I will admit of no robberies or murders within my zemindary; but (which God avert) should any person be robbed or plundered of his property, I will produce the thieves with the stolen property, and after restoring the latter to the rightful owner, I will consign the former over to punishment; and in case of failure in producing the offending parties, I will myself make good the stolen property. I will take care that no one within my zemindary offends against the established laws and regulations. I will moreover transmit the accounts that may be required of me to the Huzzoor with my own and the canoongoe's signatures affixed to them; and after having completely paid up the revenue of the whole year, I will take credit for the muzcoorat agreeably to custom. Finally, I will abstain from the collections of any of the abwabs that have been abolished or prohibited by Government. I have accordingly given this paper as a muchulka or obligation that recourse may be had hereto when occasion shall require."

A Zemindar's Hazerzaminy (or security for his appearance), granted in the time of Akber Shah.[2]

"Whereas the office of zemindar of Pergunnah ——— in Sircar ——— belonging to Chuklah ——— dependent on the Soobah of Bengal, has been given to ———, I having become security for his appearance engage and bind myself, that in case the aforesaid person should abscond, I will produce him; and in the event of my not being able to do so, I will be responsible for his engagement. I have therefore written these few lines in the nature of a hazerzaminy that they may be called for when necessary."

Translation of a Sunnud under the seal of the Newab Serfraz Khan, Dewan of the Soobah of Bengal, dated the 27th of the month Rumzan, in the 17th year of the Reign of His Majesty Mohummud Shah, or A.D. 1735-6. Superscribed—"It has been seen."[3]

"To the mutsuddies of affairs and the officers entrusted with public transactions for the time being and to come, to the canoongoes, mukuddums and husbandmen of the Pergunnah Rajshahy, &c., belonging to the Soobah of Bengal, the Paradise of Kingdoms, be it known; that in consequence of the furd sewal, which has been signed

[1] Harington's Analysis, Vol. III, 253. [2] Ib., 254. [3] Ib., 279.

by the noble and princely Shujaa-ud-Dowlah, Mohtimun-ul-Muluk, Shujaa-ud-Deen, Mohummud Khan Bahadoor, and Assud Jung, Nazim of the Soobah, and agreeably to which the furd hukeekut and muchulka have also obtained signature (the contents of all which are endorsed therein), the service of the zemindary of the aforesaid Pergunnah has also been conferred, since the decease of Ramjeewun, and in consideration of a peishcush, &c., and the balances and the annual jumma of the Pergunnah above mentioned according to the annexed endorsement, on the first among his contemporaries, Ramkunt, the adopted son of the aforesaid person; to the end that, only attending to the duties and functions of that service, he may not be wanting in the most minute particle of diligence and assiduity; that he pay into the Royal Treasury the peishcush, &c., and the balances according to kistbundy; and discharge year by year at the stated times and periods, the due rents, after receiving credit for the muzcoorat, nankar, &c. agreeable to usage: that he observe a commendable conduct towards the class of ryots and the common people at large; and employ himself diligently in expelling and punishing the refractory and exert his utmost endeavours that no trace of thieves, robbers and disorderly persons may remain within his boundaries; that he conciliate and encourage the ryots, and promote the advancement of cultivation, the improvement of the country, and the increase of its produce; that he take special care of the high roads, so that travellers and passengers may pass and repass in perfect confidence; and if at any time the property of any person shall be stolen or plundered, that he produce the thieves and robbers, together with the property; and delivering the latter to the owner, consign the former to punishment; that in case he do not produce them, he himself become responsible for the property; that he exert his vigilance that no one be guilty of drunkenness, or irregularities of behaviour within the boundaries of his zemindary; that he refrain from the exaction of the abwabs prohibited by the imperial court; and that he deliver into the dufter khanah of Government the official papers required, conformable to custom, signed by himself and the canoongoes of the Soobah. It is therefore required of the aforesaid persons that they regard the abovementioned Ramkunt as the authorised zemindar of Pergunnah Rajshahy; and considering him as invested with the duties and functions appertaining thereto; that they receive all papers regarding that Pergunnah, signed by him as genuine and authentic. Let them therefore look upon these injunctions as obligatory, and obey them agreeable to instruction."

Zimmeen or Endorsement.

"Agreeable to the furd sewal signed by the noble and princely Shujaa-ud-Dowlah, Mohtimun-ul-Muluk, Shujaa-ud-Deen, Mohummud Khan Bahadoor, Assud Jung, Nazim of the Soobah, and the furd hukeekut and muchulka signed in conformity thereto (the contents of all which are herein fully recorded) the zemindary of the Pergunnah of Rajshahy, &c., belonging to the Soobah of Bengal, the Paradise of Kingdoms, has been conferred, from the time of the decease of Ramjeewun, upon his adopted son Ramkunt, on his consenting to a peishcush, &c., the balances, and the jumma year by year of the aforesaid Pergunnah agreeable to the annexed particulars.

Derobust Mehals	96
Kismutiah ditto	68
Total Mehals	164"

Contents of the Furd-sewal.

"Ramkunt, the adopted son of Ramjeewun, the deceased zemindar of Pergunnah Rajshahy, &c., belonging to the Soobah of Bengal, the Paradise of Kingdoms, has presented to the Exalted Presence a petition (the contents of which are herein recorded) representing his acquiescence in a peishcush, &c., and the balances and the annual jumma of the aforesaid Pergunnah agreeable to the annexed particulars, in the hope of obtaining a Royal firman and a perwannah for the zemindary, from the time of the decease of the aforesaid Ramjeewun. In respect hereof what are your commands?

Derobust Mehals	...	...	...	...	...	96
Kismutiah ditto	...	...	...	...	...	68
				Total Mehals	...	... 164"

Contents of the Arzee or Representation.

"From the time of my elevation at the decease of Ramjeewun, zemindar of the Pergunnah of Rajshahy, &c., in the Bengal year 1137 to the end of 1140, I exerted myself diligently and paid up the revenues of the Khalsa and Jageer Mehals without a balance at the stated times and seasons; but since the Pergunnahs of the aforesaid zemindary are variously and widely dispersed among the distant Chuklas, within the boundaries of powerful zemindars; and owing to my not having yet been honoured with a sunnud confirming me in the zemindary, my ryots are molested; my boundaries by the abovementioned zemindars infringed; and my gomastahs and husbandmen prevented attending to the cultivation of the lands and improvement of the country with full confidence and security; I am therefore hopeful from your favour and kindness that I may be honoured with a royal firman, and soobahdary and dewanny perwannah, for the zemindary of the aforesaid Pergunnahs; to the end that I may appear with credit and dignity among my equals. In the hope of obtaining the abovementioned deeds, I agree to the Royal peishcush, &c., together with the balances and the annual jumma of these Pergunnahs, agreeable to the annexed particulars."

(Here follow full details.)

Contents of the Furd-huckeekut.

"The zemindary of Pergunnah Rajshahy, belonging to the Soobah of Bengal, the Paradise of Kingdoms, having been conferred, in conformity to the furd-sewal signed by the noble and princely Shujaa-ud Dowlah, Mohtimun-ul-Muluk, Shujaa-ud-Deen, Mohummud Khan Bahadoor and Assud Jung, Nazim of the Soobah (the contents of which are hereunto annexed) upon Ramkunt, the adopted son of Ramjeewun, from the time of the decease of the latter, in consideration of his agreeing to a peishcush, &c., and the balances and the annual jumma of the abovementioned Pergunnah agreeable to the account hereunto annexed, the aforesaid person prays to obtain a perwannah. In regard to preparing a deed of that kind for the zemindary of the Pergunnahs

in question, after taking a muchulka and cabooleut, in conformity to custom. What may be your commands?

Durobust Mehals					96
Kismutiah ditto					68
Total					164

Peishcush, &c., in the hope of being honoured with a Royal firman and with a perwannah, *viz.*:

Peishcush	10,11,000	0	0		
Balances during the time of Ramjeewun	1,92,378	1	11		
				12,03,378	1 11 0

Kistbundy.

Payable between the years 1141 and 1146 inclusive at the annual instalment of Rs. 1,75,000	10,50,000	0	0		
Payable in the year 1147	1,53,378	1	11		
	12,03,378	1	11		
Jumma of the Khalsa and Jageer Mehals payable annually agreeable to the statement signed by the Canoongoes of the Soobah				18,53,325	10 11 3
Total				30,56,703	12 2 3"

Then follows a specification of the Mehals with the rent of each composing the mal or rent and a specification of peishcush. After which follows a muchulka or obligation executed by the zemindar.

Form of the Muchulka.

"I, who am Ramkunt, the adopted son of the deceased Ramjeewun, the zemindar of Pergunnah Rajshahy, &c., Khalsa and Jageer Mehals, in the Soobah of Bengal, the Paradise of Kingdoms.

"Whereas the zemindary of the aforesaid Pergunnah from the time of the decease of the abovenamed Ramjeewun and on my acquiescing in a peishcush to the Royal Sirkar, and in the balances and yearly jumma of the aforesaid mehals, according to the specified endorsement, has been conferred on me,

"Do agree and consent of my own accord and inclination and do give in writing that punctually attending to the duties and functions of that service, I will not neglect or be deficient in the most minute particle of diligence and assiduity. I will observe a commendable conduct towards the body of the ryots and the inhabitants at large; and employing my assiduous endeavours in expelling and punishing the refractory. I will exert myself in such a manner that not a trace of thieves or robbers shall remain within the boundaries of my zemindary. I will use my utmost diligence to conciliate and encourage the ryots; and to promote increase of cultivation and the improvement of agriculture. I will take such especial care of the high roads that travellers and passengers shall pass and repass in perfect confidence and safety; and that no instances

of robbery or murder shall occur. If however (which God forbid) the property of any person shall be plundered or stolen, I will produce the thieves or robbers, together with the property; and delivering the latter to the owner, I will consign the former to punishment; or, in the event of my failing to produce them, I will myself be responsible for the property so stolen or plundered. I will exert my endeavours that no person be guilty of drunkenness or irregularities of any kind within the boundaries of my zemindary. I will discharge year by year at the stated times and periods the due rents of Government, after receiving credit for the muzcoorat agreeable to usage; and lastly I will transmit to the dufterkhanah of Government the official papers required conformably to custom under my own signature and that of the canoongoes of the Soobah. I have therefore written these few lines in the nature of a muchulka cabooleut that recourse may be had thereto when occasion shall require. Dated the 22nd of Rumzan-ul Mubaruk in the 17th year of His Majesty's Reign."

II.—TWO ROYAL FIRMANS FOR A KHANKAH. A SORT OF MAHOMEDAN MONASTERY.[1]

"The villages in question were granted by two Royal Firmans, the first by Mahomed Feroksir, 14th March 1717, the second by Shah Alum, 13th October 1762.

The first of these instruments states, that a Firman has been issued; that one lac of dams from Pergunnah Havilly Sahseeram, in Soobah Bahar, which yields the sum of about 1,179 rupees to the Royal Treasury, are endowed and bestowed for the purpose of defraying the expenses of the Khankah of Sheikh Kubeer Dervish, as an altumgha grant, and it shall be established according to the specification made therein. The children of the Sovereign, the Amir, and those who transact the affairs of State, and the jagheerdars and their successors, are enjoined to relinquish the said dams to the aforenamed individual for him to manage and control, and to descend to his heirs in succession from remove to remove, and they are required to consider the grant in every respect exempt from all contingencies, and not to demand from the said person a fresh sunnud annually. Upon this instrument a memorandum is endorsed that one lac of dams has been granted by His Majesty as an altumgha for the use and expenses of the Khankah of Sheikh Kubeer Dervish.

In 1744, on the petition of Sheikh Gholam Shurf-ood-deen, the grandson of Sheikh Kubeer, who had succeeded him as the Sijjada-nashin, a perwannah was granted by Mahomed Shah enjoining the chowdries, cultivators, &c., to consider the said one lac of dams as an altumgha-inam, by virtue of the perwannah of His Majesty, for the purpose of being appropriated to the charges of the travellers to and from the Khankah of the said Sheikh Kubeer, as it stood before, to descend to the offspring in succession, and to refrain from taking from the said Gholam Shurf-ood-deen as was the rule before, the true and fair revenue payable to the State and the Dewanny taxes, and enjoining them not to deviate from what may be for the benefit of the person in question. The terms expressing the grant to have been made for the purpose of meeting the charges of the Khankah, and the travellers who frequent the Sheikh Kubeer Dervish, are repeated several times in the endorsement. A similar perwannah was granted on the petition of Sheikh Kiam-ood-deen, after the death of his father, and it is declared that

1 Jewun Doss Shahoo *v.* Shah Kubeer-ood-deen, 2 Moore's I. A., 390, at pp. 408 to 410; see another description of these firmans in Mussamut Qadira *v.* Shah Kubeer Oodeen Ahmed, 3 Sel. Rep., 408, 409.

Sheikh Kiam-ood-deen is established in the Sijjada-nashin in the same manner as his father and grandfather were.

The second instrument of the third year of Shah Alum, about the 18th of October 1762, is a grant nearly similar in form, of two lacs and eighty one thousand dams, the produce of which is Rs. 3,000, to be fixed as an altamgha-inam to the sanctified Sheikh Kiam-ood-deen for the purpose of defraying the expenses of the frequenters to and from him, exempting the lands from the present assessment and from all that may be realized thereout by his good management; and the children and vizeers, &c., of the Sovereign are enjoined always to maintain and uphold the said order, and to relinquish the aforesaid dams to them, to descend to the offspring in succession to be enjoyed by them, and deeming this grant free from the contingency of alteration or change, the public officers are not to demand anything from them upon the score of revenues or charges, and to consider the grant free of all Dewanny taxes, or for any writings whatever made on account of the State. Deeming this a full and positive injunction, they are not to demand a fresh sunnud annually, nor deviate from these royal and munificent orders.

Upon this instrument a memorandum was endorsed that 2,81,000 dams have been granted by His Majesty in Pergunnah Sahseeram, &c., as an altamgha-inam to Sheikh Kiam-ood-deen for the charges of the Fakirs."

III.—AN ALTAMGHA SUNNUD.[1]

"From the autumn crop, viz. from the month of Tingo Zail (last month of the Fasli year) as an altamgha grant to her from generation to generation, to her children, and those related to her. This grant is to be considered as safe from the strokes of change or alteration. No peshcush or the fees of Soobahdari, faujdari revenue, or other kinds of cess, such as tax or exaction, &c., is to be demanded from this estate; all increase in the revenue or proceeds of the estate proceeding from a good cultivation to go to the grantee. This sunnud or grant is all sufficient, fresh confirmation is not to be required year by year, nothing ought to be done contrary to this grant.

Dated 9th of Zillah of the 30th year of the Reign (11th September 1788)."

A Perwannah in pursuance of the same Grant.[2]

"Be it known to the chowdhries, canoongoes, zemindars and cultivators of the Pergunnah Badshapore and Jharsa, that whereas the aforementioned mehal was formerly granted as an altamgha jageer (jagiri altamghai) to the kind friend, the Begum Zeboolnissa, by a royal sunnud, so it is to be considered on the same footing as before, and all are required as heretofore to present themselves and pay the revenue to her without fail. This is very strictly enjoined, so let them be very careful to obey it."

[1] Forester v. The Secretary of State, 12 B. R., 142.

INDEX.

Page.

Abatement of rent 379

Abwabs—

amount of, settled by headman in Mahomedan times 29

prohibited by Ala-ood-deen 66

specific prohibition in Mahomedan zemindary sunnud against exaction of illegal 105

recognition of zemindar's right to levy 108, 170

incorporated with the assul toomar jumma 111

imposed by Jaffier Khan 128, 179

object of Mahomedan rulers in imposing 128, 176

from time to time consolidated with customary rates 172, 178

imposed by Sujah Khan 180, 181

imposed by Aliverdi Khan 182

imposed by Cossim Ali 183

restrictions upon, under the farming settlement of 1772 245

provisions of the Decennial Settlement regarding 297, 299, 330

restrictions upon, under the Permanent Settlement 330

See CESSES.

Adhiar ryot 375

Adhipati 6, 26

Agore buttai 189

Agraghrah vadiky villages . . . . . 15, note 5

Ahl 191

Ahuk 182

Akbar, settlement of, *see* TODAR MULL'S SETTLEMENT.

Akta 199

Alienation,

power of, of khoodkashts in Hindoo times . . . . 13, 15—17, 220—222

not possessed by pyckashts in Hindoo times 21, 22

of holder of wuzeefa land 47, 48

of holder of mookasumah land 48

growth of zemindar's 109

growth of talookdar's 151, 156, 158

by zemindar, restrictions upon 267, 269, 270, 300

full powers of, conferred upon actual proprietors by the Permanent Settlement Regulations 307, 387

of occupancy right . . . . . 359—364

of holding by occupancy ryot . . . . . 364—366, 391

putnee talookdar's power of 397

Altumgha enams . . . . . 471, note 1

Page.

Altumgha grants—
characteristics of 198, 199
to be considered hereditary and transferable 463
lands in Behar, registration of 287
Sunnud, specimen of 484
Amaram grants . . . . . 471, note 1
Ameen—
a Mahomedan fiscal officer 93
duties of, with respect to attached estates 400, 403, 404
Amilguzzar—
the chief Mahomedan fiscal officer 76
his duties with respect to ryots 77
disobedient zemindars to be punished by 78
Anchumna 166
Annual settlements, from 1777 to 1787 . . . . . 252—265
Arzee 103, 105, 481
Ashraf 375
Assignments of revenue, *see* REVENUE.
Assul 175
Assul toomar jumma 72, 175
abwabs incorporated with 111, 172
Astrologer, a village officer 24
Athprohoris 209
Attachment—
of crops to secure payment of mookasumah 49
by landholder, restrictions upon 284, 298
of lands and goods for arrears of revenue 271
of lands for arrears of rent . . . . . 284, 402—404
of lands liable to resumption 467
Auction-purchaser, rights of, *see* SALE FOR ARREARS OF REVENUE, AND SALE FOR ARREARS OF RENT, tit. AVOIDANCE OF INCUMBRANCES.
Aumanee settlement 73
Aumil—
head of the chucklah 29
appointed to control zemindar 63, 126
appointed to control talookdar 63, 149
collection of revenue by 126, 130
superintendence of native collectors by 250
substituted for European collectors 251
Aurungs of Beerbhoom 321
Ausat talook 373
Autbundi ryot 375
Ayagandras 23
Ayma grants . . . . . 205—207
to be considered hereditary and transferable 463
See MALGUZARY AYMAS.

Page.
Badshahee grants 462
Balaghunti 208
Barah bullooteh 23
Barber, a village officer 24
Batta 172
to be abolished 238
held to be illegal 330
Baurie gundee prohibited 245
Bazee jumma 175
forbidden 247, 324
Bazee zemeen 212, 214
rules of 31st May 1772 for resumption of 256
duftor, establishment of 255
Beegah 68
Bekhbirt 374
Bermootur 214
Bhaolee (bhawely) 72
land 372
Bhay-khelat 180
Bhiti land 372
Bhuimal 159
Bhuinhar 96
Bhuinia 63
Bila shurt 201
Bilmookta pottah 337
Bilmookta tenure 161
Birt 214
ijara 374
land 374
Bishnpareet 214
Bisi 37
Bissoi 37
Biswahdar 155
Blacksmith, a village officer 24
Board of Revenue—
creation of 262
Regulations of 1787 for 268
Boomee 96
Boro ajwain 374
Bunjer land 68
assessment on, under Todar Mull's settlement 71
zemindar's right to revenue of 113
measurement of, by Jaffier Khan 130
Bunkur 119
transferability of 333
Burdana held to be illegal 330

Page.
Burdwan, acquisition of 235
Bustomitter 214
Buttai 49, 73, 18
attempt of Alla-oo-deen to abolish 59
Buttej 73
Bye-howala 373
Cabooleut—
from applicant for sunnud 103
from zemindar suspected of insubordination 106
from farmer under annual settlements 253
from zemindar under annual settlements 254
of zemindar at time of the Permanent Settlement, principal stipulations in 309
to be given by person receiving pottah 336
Calcutta—
East India Company's purchase of talookdary right in 231
declared a presidency 231
made lakhiraj in Company's hands 234
lands in, declared to be pledged for revenue 270
Caniatchy ryot 13
Canoongoo 36, 89, 159
his functions 89, 160
official documents of zemindary attested by 104, 106
prepared hustabood 111, 160
kept register of pergunnah rates 112
his emoluments 161
abolition and restoration of 161, 162, 247, 254, 261
Carpenter, a village officer 24
Cesses—
prohibited by Ala-ood-deen 66
prohibited by Akbar 120
exaction of . . . . . 120—123, 131
incorporated with customary rates 171, 178
instructions to supervisors regarding 241
prohibition against, in 1772 245
prohibited by Decennial and Permanent Settlement Regulations . . . 330
provisions of existing Rent Law respecting 331
See ABWABS.
Chakeran lands 25, 208, 210
duties of holders of 209
reannexation of, under Decennial Settlement Regulations 295
Chanda held illegal 330
Checher land 68
Todar Mull's assessment upon 71
Chikli ryot 375
Chiraghy 169

Page.
Chittagong, acquisition of 235
Chout 172
Chout Mahratta 182
Chowdhry 37, 81
became Mahomedan crory 61, 86, 142
title sometimes given to fiscal head of circar 86
title said to have been given to zemindars distinguished for good management 86
as subordinate of zemindar 86, 87
tendency of, to become zemindar 86, 128, 142
his office practically hereditary 87
settlement with 289
Chowkeedars, village police 29
Chucklah 83
superseded circar 83, 87, 90, 129
Chukani ryot 375
Chupperbund ryot 13, 19
Circar 6, 61, 83
superseded by chucklah 83, 87, 90, 129
Collectors—
supervisors to be called 245
duties of 246, 261, 266, 267, 291, 293, 300, 349, 412, 413, 418, 467
servants of, not to farm lands, or be security for farmer 246, 267
to be natives 250
not to be farmers, or security for, or lend money to, farmer of revenue . 267
Committee of Circuit 245
Committee of Revenue 250
functions of Provincial Councils transferred to 254
abolition of 262
Construction—
of documents of title of land exempt from assessment 349
of Regulations 303
Contumacy, penalties for 266, 328, 401
Court of Wards 288, 333
estates under, not liable to sale for arrears of revenue 410
Crory—
Hindoo chowdhry became 61, 86
his functions and remuneration 61, 88
tendency of, to become zemindar 61, 86, 90, 101, 142
his office practically hereditary . . . . . 87.
Curnum, the village registrar 24, 89, 162
Custom—
rights of Hindoo khoodkashts regulated by . . . . . 13—15, 17
assessment of ryots in Mahomedan times controlled by . . . 112, 171
as the foundation of proprietary rights 218

Page.

Cutcherry attached to each division of zemindary 85
Cuttoogootaga tenure . . . . . 471, note 2
Cutwallee held illegal 330

Danabundi 189
Dandput 83, 85
Decennial Settlement—
instructions for . . . . . 262—265
object of 272, 282, 315
arguments of Mr. Shore and Lord Cornwallis for and against . . 275—282
of Bengal 269, 284
of Behar 278
of Bengal, Behar and Orissa, amended Regulations for . . . 289—302
Deh 84
Dehdary . . . . . 185, note 1
Deh khurcha 29
headman entitled to surplus of 30
putwarry received small sum from 164, 165
serf sicca half anna included in 183
Deotur 214
Desmookh 37, 86, 87, 88, 101, 128
See CHOWDHRY, CRORY.
Despandeah 89, 159
See CANOONGOE.
Dewan—
office of, assumed by Revenue Councils 244
association of, with Collector under Settlement of 1772 245
to manage estate of disqualified proprietor 258, 265
abolition of native provincial 261
collection of revenue by 267
Dewanny, accession of East India Company to 236
Dewusthan 38, 214
Dewuttur 214
Dhee 85
Dheehatee jumma 85
Dhotar 375
Digwars 208
Dihkasht ryot 375
Disqualified proprietors 258, 265, 287, 293, 332
lands of, not liable to sale for default 254, 305, 407, 410, 417
settlements of their estates 258, 265, 268, 288, 293, 332, 333
Distraint—
under Decennial Settlement Regulations . . . . 300—302, 436, 437
under Permanent Settlement Regulations . . . . . 438—440
under the Rent Acts 441, 442

Page.

Doul bundobust 166
Dufterserinjamy 87
Dur-ijara 368, 375
Dur-kutkina 375
Dur-putnee 368
Dustoorat 116, 169
Dustooree batta when-legal 331

Eahtimam 136
East India Company as zemindar of Twenty-four pergunnahs 232
Ejectment—
cultivator not liable to, for non-payment of khiraj 50
of ryot by zemindar in Mahomedan times 271
restrictions upon, in zemindar's cabooleuts at time of Permanent Settle-ment 310
of sub-tenure holder by purchaser at revenue sale . . . 340, 426, 429—432
of sub-tenure holder by purchaser at rent sale 344, 345, 346
of ryot for arrears of rent 328, 356, 443
Enam 165 206, 214
Enamdars, admission of their hereditary rights 101
Enhancement of rent—
in Mahomedan times 112, 179
of istemrardars 295, 296, 348
of dependent talookdars 339, 341, 376
by purchaser at revenue sale . . 339, 340, 344, 345, 346, 423, 426—431
of permanent transferable intermediate tenures 342, 35
of occupancy ryots 346, 378, 379
by one of several joint proprietors 379
by farmer under a lease for years 379
of ordinary ryots 380
by purchaser at rent sale 446, 452
of service jageer, resumption a condition precedent to 471
Europeans—
prohibited from renting lands 246, 267, 269
not to be accepted as security for renter 267, 269

Fakeeran 214
Farms of revenue—
in Hindoo times 33, 95
in Mahomedan times . . . . . 34—36, 124, 168
for five years from 1772 . . . . . 244, 245
under annual settlements 253, 254, 258, 265, 266, 267, 268
under the Decennial Settlement 293, 294, 295
Fasli ryot 174
Fiscal divisions—
in Hindoo times 6, 37, 81
in Mahomedan times . . . . . 81—90
enlarged by Jaffier Khan 128, 129

Page.

Fiscal officers—
in Hindoo times 28, 37
in Mahomedan times 61, 76, 78, 86, 87, 88, 89, 92, 93
practically hereditary 87
superior Mahomedans, inferior Hindoos 88, 91, 93
tended to become zemindars 92, 96, 97, 101, 128

Fixtures 230
Forfeiture of village omitted from asssessment 295
Forfeiture of zemindary—
for crime 98, 124, 267
for non-payment of revenue 124, 190
for contumacy 328
Foujdar 78, 200, 208
Foujdar Aumildar 87
Foujdary 172, 181
Foujdary jageer 200
Fouj serinjam 200, 202
resumption of 200, 201, 470
Furd-huckeekut 203, 481
Furd-sewal 203, 481

Ganda 26
Gantie (ganthe) 374
Gaong 37, 84
Ghasskur 119
Ghatwalee tenures 209
descent of 210
power to resume . . . . . 210, 211, 471—475
of Beerbhom 475
Gond 26
Gorayet, a village officer 24, 208
Gorayt 169
Gram 6, 37, 81, 84
Gram adhiput 26
Guire mushroot 201

Haldaree, abolition of 247
Halhasili land 174
Hari ryot 174
Hat-hackut 166
Havilly lands 82, 186
Hawuldar, a village officer 24
Headman . . . . . 23, 26—33
a partly elective, partly hereditary officer 26
supposed origin of his right 26
sale of his office 27

Page.

Headman.—(*Continued.*)
State's power to veto appointment of 27
State's power to dismiss 27, 31
his functions 28, 29
his emoluments 29, 30
merely an official in his relation to State 31, 58
responsible for revenue 31, 33
but not a farmer 33
ejectment of, by Mahomedans 36
existed up to time of British rule 36, 62
tendency of Mahomedan fiscal machinery to depress . 57, 58, 62, 64, 65, 76, 129
tended to become zemindar 63, 65, 79, 96
allowance to, under Todar Mull's settlement 74
settlement by zemindar with ryots often made through 113

Hindoo land system—
scanty nature of information respecting 2
adopted by Mahomedans 3, 52, 57, 90
proprietary rights under . . . . . 6, 39, 217, 220—227
essentially hereditary 41, 42
similarity between Mahomedan and 52, 53
one of joint property 220

Hisabana 123

Howala 373

Huks 29, 165

Hustabood 111, 160, 163
zemindar's settlement with Government based upon 111
prepared by canoongoe 111, 160
supervisors to compile 238, 243
of 1772 247
prohibited in Bengal 299

Huzooree malgoozar 32, 62, 63, 107

Ihtimam talook 373

Ijara 375

Iktaa 199

Ilaha guz 67

Immigrants in village community 11, 19
included under term pyekasht 19
nature and extent of their rights . . . . . 20—22

Imprisonment—
defaulting holder of wuzeefa land liable to 49, 190
for arrears of revenue 253, 266, 270, 285, 289, 327, 399, 400, 404
for arrears of rent 300, 302, 434, 435, 436

Incumbrances, avoidance of, upon sales for arrears of revenue or rent.
See SALE.

Interest on arrears of revenue 254, 405

Page.

Istemrardar 292, 348
settlement with 293, 348
enhancement of rent of 295, 296, 348
Istemrari tenure 347, 350
when protected upon revenue sale 429

Jageerdar, *see* JAGEERS.
Jageer lands 81, 191
incorrectly called lakhiraj 192
forming part of zemindary 84
Jageers—
strictly assignments or remissions of revenue . . 37, 65, 191, 195, 196, 199
granted for support of chowdhry in Hindoo times 37
purposes for which granted in Mahomedan times 65, 88, 149, 165, 191, 193, 194, 199, 200
origin of 193
growth of 193, 194
temporary nature of 194, 199, 470
of lands included in zemindaries 196
cesser of grant upon inability of grantee to perform services . . 200, 204
became hereditary under British rule 201
are now alienable 201, 204
conditional or unconditional 201, 202
powers and liabilities of grantees of 203, 470
how created 204
supervisors to enquire into titles to 238
register of, in Behar 259, 267
enquiries respecting 263, 264, 265
not to be deemed a life-tenure when clearly intended to be hereditary . 349
resumption of 470, 471, 472
Jaidad jageer . . . . . 471, note 1
Jamai land 375
Jat serinjam 202
Joint estates—
settlement of 253, 293, 306, 307
notification of division of 306, 383
division of 310, 311, 382, 386
enhancement by one of several sharers of 379
sale of, for arrears of revenue 410
registration of shares in 419, 420
distraint by one of several sharers in 441
sale of under-tenure at instance of one of several shares in . . . 451
Joshee 24
Jotishee 24
Julkur 119, 333

Page.
Jumma 85
Jumma-bundy 142
Jumma-bundy neckdy 71
Jumma-kaumil-toomar 160, 166, 175
Jumma-wasil-bakee 160, 163, 168
Jungleboory pottah 337
Jungleboory talooks not to be separated from zemindaries . . . 290, 338
Jungleboory zemindary said to be always hereditary 97
Jureeb 68
Jutekaly zemindary 127

Kandh hamlets in Orissa 10, 12, 30
Karkun 164, 214
Keffyet foujdaran 184
Keffyet hustabood 184
Khalaree pottah 337
Khalsa lands 84
Khamar land 113, 190, 240
supervisors to ascertain amount, &c., of 238
to be changed into ryotty lands 239, 240
grants by zemindar of, to be valid 258
included in settlement 294, 326
Khana bari 18
Khand-adhpati 37
Khandait 37, 88, 92
Kharidge jumma 212
Kharij malgoozar 32
Khas holding 82, 125
when zemindar incompetent 126
when zemindar refused to agree to assessment 168
supervisors to ascertain amount, &c., of 238
where proprietor cannot be ascertained 294
where proprietor declined settlement 295, 304
assessment of lands under, when sold or divided 307
Khasnoveesy 179
Khelaat 172
Khet buttai 189
Khewut 215
Kheyrat 169, 213
Khiraj 43, 53
two kinds of 45
amount of 48
remission of 49
payment of, how enforced 49, 50
Khoodkasht land 114

Page.

Khoodkashts—
under village system 12
nature and extent of their rights . . . 12—19, 20, 22, 222, 229
restrictions on the cancelment of their pottahs by landholders or farmers 298, 314, 343
restrictions on power of purchaser at revenue sale to cancel their pottahs or eject them 344, 345, 426, 429, 430
or to enhance their rent 345, 426, 429, 430
remedies for non-payment of rent by 436, 440

Khurcha mofussil 167
Khush bash 18
Khut 204
Killadar 96, 202, 209
Kimut kheshtgour 182
King (Hindoo)—
his share of produce . . . . . 5, 37—39
entitled to services of servile labourers 25, 39
nature of his interest in land 6, 223, 224

Kismuts 83
Koolkurny 89, 162
Koot 166
Kuddum-russool 169
Kumherahs 12
Kunkoot 72, 73, 164, 189
Kurpha ryot 375
Kutkina 375
Kyally 169

Lakhiraj land 192
khewut paid by 216
proposed register of, in 1782 257
provisions of Decennial Settlement respecting . . . . . 285—287
provisions of Permanent Settlement Regulations respecting . . . 459—463
evidence of validity of 465
authorities whose grants of, are to be recognised 466
sale of 468
See RESUMPTION, SETTLEMENT.
Lang buttai 189
Lumberdar 342

Maafee 213
Mahajun 28
Mahomedans—
adopted Hindoo land system 3, 52, 57, 90
their system of government a non-hereditary one 41, 60
struggle between systems of Hindoos and 42, 60, 100

Page.

Mahomedans.—(*Continued.*)
attempted centralization 42, 90
their assessment higher than that of Hindoos 187
Mal 6, 174
Malgoozar 28
Malgoozary aymas 206
settlement of, under Decennial Settlement Regulation 291
Malikana—
paid by jageerdars 84, 197, 204
allowed to zemindars of Behar 116, 144, 147, 269
to talookdars of Behar 157
paid by ryot 119
to dispossessed zemindar 125, 126, 145, 153
paid by holder of altumgha grant 199
paid by holders of ayma and enam grants 207
to zemindars declining settlement 295
to purchaser of lands held khas or farmed 307
payable by farmers to be paid monthly 309
Malikana lands—
in Behar to be included in settlement 269, 294
grants of, when valid 309
Malzamin 268
Mangun 120, 172
imposition of, prohibited 245
Maniums 18
Marahs 18, 24
Mathoot feel-kaneh 181
Mathoots, prohibition against imposition of 245, 330
Mauniums 270
Measurement—
of khoodkashts lands in Hindoo times 17
standards of, established by Akbar 67, 68
of ryot's lands adopted as a mode of extortion 131, 171, 172, 380
prohibited in Bengal 299
landlord's right of 380, 381
ryot's right of 381
Meerassadars 13, 15, 88
Mehurany 169, 330
Midnapore, acquisition of 235
Milk (Millik) grants 192, 195, 197, 198
Minerals—
right to, not conferred by imposition of wuzeefa 47
rights in, contemplated by Hindoo law 217, 222
right to, apparently not conferred by Permanent Settlement . . . 322
Minority under Regulations of 15th July 1791 288

Page.
Mirasdaree tenure 374
Moamlutdar 214
Mofussil jumma 85
Mofussil malgoozar 32
Mofussil talookdar, restrictions on enhancement or ejectment of, by purchaser at revenue sale . . . . . 339—341
Mohturfa 30, 119
Mohurrirs 93
Mohuteran 214
Mokuddemy 169
Mokuddim (Mokuddum) 26, 63, 476
Mokuddumee tenure 476
Mokurreree istemarari 351, 352
Mokurreree potta 476
Mokurreree tenures—
provisions of Decennial Settlement regarding 292, 346
provisions of Permanent Settlement regarding . . . . . 346—35
of ryot's under Rent Acts 350
of intermediate tenants under Rent Acts 351
how far hereditary and transferable 352
proved by long possession 353
when protected upon revenue sale 429
Mom pottah 337
Months 167
Montijee 146
Mookasumah 45
mode of enforcing payment of 49
Mookasumah land—
power of alienation over 48
went to heirs of holder 48
proprietary rights in 50
Mooroosee ryot 13
Moostajir 375
Mortgagees, settlement with 298
Moshaira 145
Mouroosee tenure 347
Mouzah 6, 37, 81, 83, 84, 89
Mozaraut 44
defaulter's land to be given in 50
Muchulka 103, 134
Muchulka-in-dareed 168
Muddud-mash grants 195, 197, 463
transferability of 199, 463
register of, in Behar 267
Mujaraeen 214

Page.

Mujumudar 93
Mundul 26, 63
Munsub 204
Munsubdar 101
Mushroot 201
Muzkoorat 109, 115, 169, 185
Muzkooree malgoozar 32
Muzkooree talookdar 147
Nair mulguenies . . . . . 13, note 4; 19, note 1
Najay 120, 243, 298
Nakdi land 372
Nanha 193
Nankar (nancar) . . . . . 61, 75, 114—118, 136
  amount of 118
  retained by zemindar when only temporarily displaced . . . 126, 168
  possessed by some talookdars 153
  to be restricted to proper amount 238
  to be included in settlement 294
Nautwars 108
Neckdy land 372
Neej-jote 114
  to be restricted to proper amount 238
  to be included in settlement 294
Neemtucky 169
Neergunty 24
Nim-howala 373
Nim-ousut 373
Nirkh (nirrik) 171
Nowabad pottah 337
Nujkaree 30
Nunjah land 186
Nurguaty 24
Nussuk 189
Nuzzeranah—
  paid by zemindar 99, 139, 179, 180
  an abwab paid by ryot 172
    to be restricted to reasonable contribution 238
    held legal 330
Nuzzeranah mocurrery 180
Nuzzeranah Munsoorgunge 180
Nuzzur-pooneah 180
Nuzzurs paid by jageerdars 204
Occupancy rights—
  of khoodkasht in Hindoo times . . . . . 13—15, 17, 19, 177, 222, 229
  of immigrants into village 21

Page.

Occupancy rights.—(*Continued.*)
of cultivators under Mahomedan law 50
of ryots, Lord Cornwallis' view of 280, 281
under Decennial Settlement 298
not affected by Permanent Settlement 313, 318
under Acts X of 1859 and VIII of 1869 (B. C.) 354
acquisition of 355, 357, 358
can only be of land used for agricultural purposes 356
how far hereditary or transferable . . . . . 359—364
effect of transfer of holding by ryot having . . . . . 364—366

Ool paracoodies 20
Oopurees 22, 29
Ooshr 43
Ootbundee land 357, 372
Ousut howala 373
Ousut talook 373
Ownership of soil—
under Hindoo system 6, 39, 217, 222-225, 226
under Mahomedan system 47, 71, 226
zemindar's claim to 96, 108, 115, 137, 228, 276
sovereign's claim to 227
cultivator's claim to 229
not conferred by Decennial Settlement 273
not conferred by Permanent Settlement . . . . . 312—322

Paibakee 81, 203
Paikan 169
Paikasht pottah 337
Paliary 24
Paracoodies 22
Parbonee 120
Parobi 330
Pausban 24, 208
Pergunnah 6, 37, 61, 81, 83, 86, 89
Pergunnatee jumma 85
Permanent Settlement—
preparations for 250
of Bengal and Behar, plan for 250
enquiries made in 1787 the basis of the 265
Decennial Settlement intended to be preparatory to 272, 289
advocated by Lord Cornwallis 275, 276, 282
proclamation of . . . . . 303—307
object and effect of . . . . . 311—322, 334
extension of cultivation under 322
impetus given to sub-infeudation by 366
Perowty land 68, 69, 70

Page.
Perwannah 103, 104
Peshkush 99, 103, 139
Petao ryot 375
Pharidar 208
Phulkur 119, 333
Poligars . . . . . 65, notes 1 and 5 ; 127, note 3
appropriation of headman's emoluments by . . . . . 119, note 1
Polliams 202
Poolbundy 172
Poolej land 68, 69, 70, 74
Poonia-nuzzeranah when legal 331
Pooshtabundy 181
Potail 26, 35, 36
Potee, a village officer 24
Pottahs—
disinclination of ryots to take 173
ryots bound to take at customary rates 173
duty of zemindars to give . . . . . 242, 297, 298, 334—336, 350
cancelment of khoodkashts' 298, 343
enumeration of 337
cancelment of, upon revenue sale 422, 423
cancelment of, upon rent sale 445
Prajali ryot 375
Primogeniture, descent of superior zemindaries by 64, 99, 389
Proprietary rights in land
under Hindoo system . . . . . 4, 5, 6, 13—19, 21, 39, 216—225, 55, 56
in Mahomedan times 44, 46, 217, 226
imposition of wuzeefa, a recognitionof tax payer's 44, 46, 47
gradually affected by Mahomedan fiscal machinery . . . . . 56—60
not altered by Decennial Settlement 273, 314
how far altered by Permanent Settlement 312, 320
Provincial Revenue Council—
creation of 251
abolition of 254
Punchayet 23
Punjah land 186
Purdhan 26
Purjote 119
Purvi-bhika 331
Putnee talook . . . . . 367, 395—399, 444
Putteedar 342
Putteet-abady talooks 339
Puttookut ryot . . . . . 13, note 4
Putwarry 24, 36, 89, 162
his functions 163

Page.

Putwarry.—(*Continued.*)
his emoluments 641
appointment of compulsory 298
Pyacarries 20, 21, 22
Pyekashts under village system . . . . . 19—23
Pykes 25, 37, 88, 92, 209

Quinquennial register of revenue-paying estate 310

Raikunkuti lands 174
Rebba 70
Registration—
of revenue-free lands . . . . . 255—258, 259, 267
of tenures under Regulation III of 1828 . . . . . 349, 467
of sharer in divided estates 383
of two or more estates in possession of one person as one estate . . . 386
of transfers of under-tenures . . . . . 391—394, 451, 453—456
of transfers of putnee talooks 398
of sharers in joint estates 419, 420
of talookdary and similar tenures 421
common and special 421, 432
of badshahee grants 463
Rent—
amount of, in Mahomedan times controlled by custom . . . 112, 171
amount claimable as, to be fixed and specified in pottahs 242
payable under Farming Settlement of . . . . . 1772—245
settlement of, under Decennial Settlement . . . . . 295—298, 335
distinction between revenue and 308
presumption as to fixed 350, 377, 378
abatement of, *see* ABATEMENT.
enhancement of, *see* ENHANCEMENT.
remedies for recovery of, *see* ATTACHMENT, DISTRAINT, EJECTMENT, IMPRISONMENT, SALE.
Resumption—
of assignments of revenue might be at end of any year 199
of altumgha grants 199
of fouj serinjam grants 200, 201, 470
of ghatwallee tenures . . . . . 210, 211, 473—475
of lands illegally held free of revenue 238
of unconfirmed talooks 238
of charitable and religious endowments 239
rules of 31st May 1782 for . . . . . 256—258
of alienations of revenue subsequent to 8th June 1787 . . . 267, 269
under Lakhiraj Regulations of 1st December 1790 . . . . 285—287
of malikana, nankar, khamar, neej-jote, and chakeran lands . 294, 295, 326
of non-registered and non-hereditary tenures 349, 467

Pages.

Resumption.—(*Continued.*)
of revenue-free grants under Permanent Settlement . . . . 458—463
under Regulation II of 1819 463
right of 469
effect of, upon under-tenures 469
of service tenures 471

Revenue—
in Hindoo times:
rates paid by cultivators 17, 21, 22
rate paid by headman 30
assessed upon individual cultivator 31
village and headman responsible for 31, 33
farms and leases of 33
assignments of 25, 37
amount of 37, 83
in Mahomedan times, *see* KHIRAJ:
amount of . . . . . 48, 53, 66, 69—71, 74, 75, 175—187
collection of . . . . . 57—66, 81, 84, 130, 168, 92, 93
farms of, *see* FARMS.
remissions of 74, 117
mode of assessment . . . . . 165—174
See TODAR MULL'S SETTLEMENT.
divided into mal and sayer 174
occasional sources of 175
originally paid in kind 194
remedies for non-payment of 180
See ATTACHMENT, FORFEITURE, IMPRISONMENT, SALE.
application of 191
assignments of . . . . . 191—212
See JAGEERS, RESUMPTION.
alienations of, by zemindars . . . . . 212—215
contribution to, from lakhiraj lands 215, 216
in British times:
collection of 236, 254
direct management of 243
farm of, for five years from 1772 244
administration of, up to 1772 reviewed 248
annual settlements of . . . . . 252—265
Decennial Settlement of . . . . . 269, 284, 289—296
assessed on villages resumed under Regulation of 1st December 1790, to whom to belong 286
increase of, upon Permanent Settlement 302
Permanent Settlement of . . . . . 303—311, 338
remission of, prohibited 305, 327
distinguished from rent 308

Page.

Revenue.—(*Continued.*)
in British times:
assessed on talooks excluded from Permanent Settlement . . 339
remedies for recovery of, *See* ATTACHMENT, FORFEITURE, IMPRISONMENT, INTEREST, SALE.
Revenue Councils—
creation of 243
of Moorshedabad abolished 247
Revenue-free lands—
of khoodkashts in Hindoo times 18
of village officers 24, 36
of chowdhry 87
of crory 88
of zemindar . . . . . 114—119, 136
See NEEJ-JOTE.
of canoongoe 161
of putwarry 165
jageer lands not strictly 192, 195, 196, 199
grants of 195, 196, 197, 205, 206, 208
grants of, said to be non-resumable 210
held illegally to be resumed 238
plan for register of 255, 258
rules of 31st May 1782 for resumption of 256
register of, in Behar 259
Collectors to enquire what lands were 261
grants of, after 8th June 1787 to be resumed 267, 269
resumption of, under Regulations of 1st December 1790 . . . 285—287
right to assess invalid, reserved 305
provisions of Permanent Settlement respecting . . . . . 458—463
resumption of, under Regulation II of 1819 463
succession to, to be notified to Collector 467
See LAKHIRAJ, RESUMPTION.
Reybundee 112, 171
Rozinah 169
Russoom-i-zemindaree 126, 153
Russoom kuzza illegal 331
Russoom nezarut 181
Russooms—
to khoodkashts 18, 20, 22
to village officers 24
to chowdhries 87
to crories 88
to zemindars 117, 136, 142
included in muzkoorat 169
Rùssud, occasional diminution in jumma to be restored by a 299

Page.

Ryots—

in Hindoo times:

assessment was with individuals . . . . . 31—33
when directly settled with 33
not forming part of village committees 65, 95

in Mahomedan times:

proprietary rights of 55, 71
See WUZEEFA.
Todar Mull's settlement direct with 74, 75, 80
zemindar's relation with 104, 106, 108, 137, 142
exactions from, by zemindar . 101, 108, 112, 120, 123, 131, 172, 173, 178
See ABWABS, CESSES, MEASUREMENT.
zemindar's settlement with 111, 112, 170, 174
assessment upon, controlled by customary rates . 112, 113, 171, 172, 179
zemindarana paid by 119
oppression of, by zemindars and farmers 127
loans to, by Jaffier Khan 130
collection of revenue direct from 168
bound to take pottahs at customary rates 173

in British times:

amount claimable from, by zemindar to be fixed 242
right to pottahs at such amount 242, 334
farmer not to exact larger rents from 245, 334
exactions from, forbidden 245, 247, 267
provisions regarding loans to 246
enquiries directed for purpose of securing perpetual and undisturbed possession of their lands to 251
Collectors to protect them from oppression and exaction . . 261, 267
settlement of rent with, under Decennial Settlement 295—300, 329, 330
remedies under Decennial Settlement for recovery of rent from . 300—302
their present right to pottahs 335, 336, 350
duty of, to give cabooleuts 336
rights of khoodkasht . . . . . 343—345, 426, 430, 452
protection upon revenue sale of occupancy 346, 432
acquisition of occupancy rights by . . . . . 354—356
See OCCUPANCY RIGHT.
enhancement of rent of . . . . . 376—380, 432
abatement of rent of 379
right of, to measurement 381
transfer of holding by 391
remedies for recovery of rent from . . . . . 434—445
See ATTACHMENT, DISTRAINT, EJECTMENT, IMPRISONMENT, SALE.

Ryotty lands 174
enquiry by supervisions regarding 238
Ryotwar rents 35, 36

Page.
Salamees, abolition of 245
Sale for arrears of rent—
under Regulations . . . . . 443—450
of putnee talook 393, 397
avoidance of incumbrances by 445
stoppage of, by under-tenant 447
under Rent Acts . . . . . 450—458
stoppage of 451
at instance of sharer in joint estates 451
avoidance of incumbrances by 452
rights of unregistered tenants with respect to 453
Sale for arrears of revenue—
in Mahomedan times 190
under annual settlements 353, 267, 268, 270, 405, 406
estates of disqualified proprietors protected from . . . 254, 407
of lands in Calcutta in hands of purchaser from defaulter 270
under Decennial Settlement 285
under Permanent Settlement 305, 306, 310, 406
rules of procedure for 406, 407
estates of disqualified proprietors made liable to 407
under Regulations subsequent to 1793 . . . . . 407—413
under Acts XII of 1841 and subsequent Acts . . . . . 413—433
definition of arrear 414
stoppage of sale by payment or tender 414
by deposit of arrear by person other than defaulter . . . 415
exemption of certain estates from 417
annulment of sale 417
finality of sale . . . . . 417—419
application of surplus proceeds of 418
registration of shares in joint estate to avoid 419, 420
resale on default by first purchaser 420
of tenures not being estates 421
avoidance of incumbrances by . . . . . 422—43
Sale on default in payment of khiraj 50
Sali land 372
Savannah negar 93
Saverum 61, 118, 132, 134, 142
Sayer 121, 174
abolition of 267, 324, 326
zemindars forbidden to collect 284, 325
right to re-establish reserved to Government 306
collections of, since acquisition of Dewanny to be accounted for . . 326
Sayer pottah 337
Schulwar 24
Sebundy 129

Page.
Sebundy fussula 92
Sedee to be restricted to reasonable contribution 238
Seer land 114
Seer nankar 114
Serf sicca half anna 183
Sershikun 214
Servile labourers under village system 12, 18, 25, 29
Settlement—
when direct with cultivator in Hindoo times 33
of Todar Mull, direct with cultivator 74, 75, 77, 80
with zemindar in Mahomedan times, length of 111, 168
of zemindar with ryot in Mahomedan times always annual . . . 111, 171
how made in Mahomedan times . . . . . 165—172
arguments for and against perpetual . . . . . 275—277
does not conclude question of proprietorship 319
See Annual Settlements, Decennial Settlement, Farms of Revenue, Permanent Settlement, Todar Mull's Settlement.
Sewaee 112, 120, 326
Seyurghal grants 205
Sezawuls—
appointed to control zemindars 126
quartered by zemindars on ryots 127
appointment of, to manage estates 254
Shaeenar 24
Shaikdar 92
Shamboug 24
Shamili malgoozar 32
Sheristadar 93
Shikmi malgoozar 32
Shikmi ryot 375
Shudh pottah 337
Shurh mouzah pottah 337
Shurh pergunnah pottah 337
Shurtee jageer 201
Silversmith, a village officer 24
Sircar 83
Sood, imposition of, prohibited 245
Soubah 83, 129
Sovereign (Mahomedan) proprietary rights of 44, 46, 48, 51, 227
Sub-infeudation 366
Sub-tenures—
enumeration of . . . . . 372—375
registration of, transfers of . . . . . 392—394, 451
avoidance of, upon revenue sale . . . . . 422—433
avoidance of, upon rent sale 445, 452

Page.

Sub-tenures.—(*Continued.*)
not destroyed by resumption 469
See ISTEMRARI, MOKURRERER, PUTNEE, TALOOK.
Sudder cutcherry 85
Sudder jumma. 85
Suna land 372
Sunnud—
extent to which zemindar's rights depended on . . . . . 98—102
mode of obtaining 103
contents of . . . . . 104—106
contemplated personal grant only 109
of jageerdar 204
specimens of . . . . . 478—482
Sunnud enams 207
Supervisors—
appointment of 236
instructions to . . . . . 237—240, 242
to be called collectors 245
Surbarakar 288
Surbarakaree tenure 373

Talookdars—
origin of 63, 64, 149, 151, 152, 155
difference between dependent and independent 64, 150
their rights hereditary 99, 150, 151, 156
confirmation of, by sunnud unnecessary 151
their position . . . . . 152—154, 155—158
malikana paid by 153
their emoluments 153, 154
their right of alienation 156, 158, 387
in Behar entitled to malikana 157
enquiry by supervisors into their titles 238
forbidden to lend money to ryots 246
farms to be let to 246
enquiry as to rents payable by 265
Collectors to ascertain number, &c., of 266
settlement of Government with . . . . . 268, 289—292
considered by Lord Cornwallis to have same proprietary rights as zemindars 281, 337
liabilities of defaulting dependent 269, 436
settlement by zemindar with 295, 338
distraint by dependent 437
remedies of, for recovery of rent 301, 441
duty of, to give information about robbers 329
enhancement of rent of dependent 339, 342, 376
registration of transfer by dependent 392

Page.

Talooks—
separation of dependent from zemindary for oppression or exaction by zemindar 290, 291, 308, 329, 337, 339
consolidation of malgoozary and private lands in dependent . . . 294
assessment of those excluded from Permanent Settlement 339
Tannahdars 181
Tashkisi zimma 373
Tehsildars 93
Tepukchy . . . . . 160, note
Teshkees 176
Thani ryot 13, 18
Thika (theeka) 33, 124, 337, 375
Todar Mull's Settlement—
duration of 67, 74
mode of assessment under 68, 69, 75
rate of assessment under 69, 70, 74
the basis of subsequent settlements 70, 72, 80, 175
object of 72, 72
payment of revenue in money not obligatory under 72, 75
remissions of revenue under 74
was with ryot direct 74, 75, 77, 80
headman's duties under 76
an attempt to return to Hindoo system 78
only partially carried out 79
Tookhem rezi 166
Toomar 185
Totie 24
Towfeer 184, 203
Towfeer jageer-daran 184
Tuccavee—
zemindar in Mahomedan times bound to advance 106
advanced by Jaffir Khan 130
farmer might advance 246
Collector not to advance without sanction of Board of Revenue . . . 267
advance of, by Board of Revenue 166
Tuckseem 185
Tullatie . . . . . 162, note 3
Tulliar 24
Tunka 204
Turf (turriff) 85
Turrabuddy enams 207
Twelfths 167
Twenty-four Pergunnahs, acquisition of 232

Uldcudies 13

Page.

Upanchaki tenure 373
Uthbandi land 372

Veek 167
Village referred to by Menu 6
Village communities—
Lord Metcalfe's description of 7
found throughout India 8
lands of 9, 11
self-governing corporations 10
developed from joint family 10
extraneous elements of 11
servile labourers in 12
three classes of cultivators had beneficial interests in lands of . . . 12
ruled by village council 23
officers of 23
how paid 23
mostly hereditary 23, 26
could be dismissed by community 26, 27
decay of 42, 60, 61, 62, 77

Wakeh negar 93
Washerman, a village officer 24
Waste-lands—
ownership of, under village system 9
rights of Hindoo cultivators over 19
ownership of, in Mahomedan theory 51, 226
zemindar's assumed right to sanction cultivation of 51
zemindar's right to revenue of 113
enquiry by supervisors regarding 238
included in zemindary when settled for, not liable on cultivation to further assessment 327
Wilayati canoongoe 159
Wuttun 30, 165
Wuzeefa 45
imposition of a recognition of taxpayer's proprietary rights . . . 44, 46, 47
its similarity to Hindoo land tax 46
remedies for recovery of 49

Yetool 202

Zabita batta illegal 330
Zatee jageer 204
Zatie tenure 32
Zemindarana 119
Zemindars—
in Hindoo times 95, 96

Page.

Zemindars.—(*Continued.*)
derivation of
from village headmen 31, 63, 65, 79, 97
from farmers of revenue 34. 64, 97
from Hindoo chowdhries 37, 86
from Hindoo rajahs 57, 58, 63, 64, 96, 99
from military chiefs 65, 78
from robber chiefs 65, 96
all revenue officers tended to become 65, 92, 101
from crories 88, 90, 91
originally mere officials 34, 35, 59, 101
bound to account for all collections 35, 101, 170
ultimately contracted for fixed amount 35, 102, 170
growth of their power 35, 58, 59, 60, 63, 65, 80, 91, 102, 109
attempts to check their power in Mahomedan times, 66, 74, 77, 78, 91, 109, 127—131
their office hereditary . . . . . 97—101, 109
extent to which their rights depended on sunnud . . . 98, 100, 101, 102
their duties under sunnud 106, 107
change in their relations to state and ryots 107, 108, 170
growth of their power of alienation 109, 110
their emoluments . . . . . 110—124, 169, 170
dismissal of . . . . . 114—426
allowances to displaced 126, 197, 294
under-renting by 35, 127, 131
their position discussed . . . . . 131—144
of Bengal and Behar compared . . . . . 144—148
talooks created by 155
alienations of revenue by . . . . . 212—215
rents legally claimable by, to be fixed 242
displacement of, under farming settlement of 1772 246
rights and liabilities of, under annual settlements 252, 253, 254, 258, 265, 267, 268
alienations by, without sanction of Board of Revenue prohibited . 267
forbidden to collect sayer . . . . . .
Decennial Settlement with . . . . . .
settlement of rent by . . . . . .
alienations by, under certain restrictions allowed . . .
separate allowances to families of, to cease . . . .
Permanent Settlement with . . . . . .
full powers of alienation conferred on . . . .
not made absolute proprietors of soil by Permanent S
freed from Government interference by Permanent
accounts to be rendered by . . . . .
preservation of peace by . . . . . .
division of zemindaries by . . . .
their power to lease . . . . .

Page.

Zemindars.—(*Continued.*)
their rights of succession 389

Zemindary, *see* FORFEITURE, PRIMOGENITURE, ZEMINDARS.

Zer mathoot 180
Zimma 373
Zimn 205
Zubtee 30