confused. Either one might have been adopted without the other. They were—

(1) That the Zamíndárs were settled with; and as they could not fulfil their obligations to the State, nor take an interest in their estates without some definite legal *status*, they were declared proprietors of the areas over which their revenue-collection extended. That proprietary right, however, was a limited one; it was subject, on the one hand, to the payment of revenue to Government, and to liability to have the estate sold *at once* on failure to pay; and it was subject, on the other hand, to the just rights of the old and original cultivators of the soil, the *raiyats*, dependent taluqdárs, and others. The Zamíndár was accepted as the person to be settled with, not as a matter of chance, but as one of deliberate policy, and on administrative grounds.

(2) The other main feature was that the assessments fixed in the manner presently to be described, were declared to be unalterable for ever.

From these two features, the Settlement of 1793 has acquired the name of the PERMANENT Settlement, also (sometimes) that of the ZAMÍNDÁRÍ Settlement of Bengal.

§ 7. *General reflections on the Settlement of* 1789–93.

Let me here pause to correct one of the common misapprehensions about the Permanent Settlement with Zamíndárs. Let me ask whether it was possible for the English administrators to do anything else than acknowledge them?

In the first place, I have already explained in a general way (and shall give some further details in the sequel), that *some* of the Zamíndárs were old Rájás who had a very close connection with the land, and on whom the people greatly depended.

In the next place, there was the strong practical argument that every attempt to dispense with the Zamíndárs had been a failure; injustice had been done, and the Statute of 1784 had insisted on the 'ancient immunities and privileges' of the Zamíndárs being respected. All previous experience had shown that it was impossible to dispense with their agency[1]. Even when each enormous district (as it then was) had its one European Collector, it would have been quite impossible for him to deal with thousands of detailed holdings; how much more would this apply before that date, when, as from 1772–79, there had been only councils or committees for controlling revenue matters —at one time six of them for all the districts included in Bengal, Bihár, and what was then Orissa!

Against these forcible facts it was of little use to take the opinions of experts and historians[2] as to what were the origin and design, or the limitations, of the office of Zamíndár. The *theory* is probably much clearer to us, with all the authorities at hand, than it was to the Collector of 1789; but what he was concerned with was not the true theory of origin, but the practical position at the end of the eighteenth century.

There was no hand-book of ancient law to guide the Collectors in understanding the history of landholding, to direct their attention to the origin of *villages*, the units

[1] This is very instructive. In Akbar's time, the whole country was divided out into 'Sirkárs,' and these into parganas, each with its vigilant revenue 'ámil, and the parganas even had recognized subdivisions under petty revenue officers. As long as this system was kept working by a powerful Government, the revenue was not intercepted, the people were not oppressed. The moment the Government became too weak to control the machinery, the subdivisions disappeared, and then the revenue *could only* be collected by the agency of great farmers, who undertook to pay a fixed sum for a certain portion of territory, saving the Government the trouble of going into any detail. This was the system our early administrators found already long established. In the position they were placed in, it was utterly impossible for them to have restored the 'Akbarian' method, as we have now restored it in Northern India. The 'tahsíldárs,' and all the host of local officials trained and able to carry out such a system, are the product of a century of British rule. In 1789 no such persons could have been found.

[2] This was freely done. See the series of questions and answers appended to Mr. Shore's *Minute* of 1788.

composing the great estates, or to explain what those aggregates of cultivators meant, in the light of a comparative study of early customs and institutions. *Their* only conception of landholding was embodied in the English landlord with his tenants. And it is impossible to deny that the Zamíndár was more like a landlord than anything else[1]. True it was that the tenants' holdings were not valued like English farms and offered to tenants at the consequent rent, to be taken or left at the tenants' pleasure. Even in England tenants had been on farms for generations. The superficial differences were not greater than what differences of race and climate would account for; and the deeper but minuter differences were unperceived, because land-tenures had not been cleared up as they have now. The Zamíndár was more oppressive than an English landlord, therefore measures of protection were required for the tenantry: that seemed the chief, if not the only thing.

Grievous as the failure of the Permanent Settlement has been, its failure is not due to the fact that Zamíndárs were confirmed, or that, in the unavoidable necessity of defining and securing their position in English legal documents, they were called and made, landlords. The evil consisted in this, that their right was not limited with regard to all the older raiyats, leaving new-comers to be in principle (with such detailed conditions as might be advisable) contract-tenants. The other evil—that of assuming to a legislature the power of binding all future lawgivers, and permanently exempting a certain class of proprietors from their due share of the State burdens at the expense of other people and provinces—that is a matter quite unconnected with the grant of proprietary rights or the protection of tenants.

I shall point out in due course, the ample evidence there is, that from 1769 onwards, the rights of the *raiyats* were

[1] At any rate he must have appeared to combine the landlord and collector in a fashion which could not explain itself to the Company's servants of 1789.

never intended to be forgotten; but it is easy for us now, after half a century of inquiry and discussion about tenant right, and with the experience gained in many provinces and their Settlements, to criticise our predecessors of 1790. At that time no one knew what practical steps to take. Collectors knew that village rolls—'hast-o-búd,' 'raibandí,' or whatever other name they were known by—existed, showing the sums payable by *raiyats*; but how these sums were ascertained and how far they could be altered periodically, and on what principles if any, they did not know. 'Pargana rates' were talked of rather than actually adopted or enforced; for re-assessments were periodically made, or rather, virtual additions to the old rates were covered by the irregular expedient of 'cesses' and 'benevolences' (abwáb, &c.). With this knowledge, it is hardly wonderful that they should have thought the one and sufficient remedy to be the *compulsory* issue of '*pottahs*' or *leases* to the tenants, setting forth what the payment was, and hoping that vague traditional 'pargana rates' would be, or could be, respected. It was not foreseen that the 'pattás' would not be generally granted, and that no machinery existed for seeing that they were granted; still less was it suspected, that, as afterwards proved to be the case, the pattá would be turned—when used at all—into an engine of extortion.

Another point must be mentioned, and that is that the Zamíndárí Settlement was not Lord Cornwallis's idea. It was distinctly ordered in April, 1786, by the home authorities: it was advocated by all the chief revenue authorities in Bengal. Shore, though he deprecated the hasty assessment of the amount of land-revenue *in perpetuity*, never hesitated in recommending the grant of a secure estate to the Zamíndár. Mr. Thomas Law, Collector of Bihár, was indefatigable in writing in favour of a Zamíndárí Settlement. Mr. Brook of Sháhábád was also urgent in its support. The Settlement was then, as Mr. Kaye says truly, the work of the Company's Civil servants. No doubt it fell in with Lord Cornwallis's views, because, as I have

said, *no one* at that time could have thought of imagining a theory of village communities or of village Settlements. It was not till some years after, that the existence of villages, with all their customs in full force, in Benares, attracted the attention of Mr. Duncan, the Resident, in 1795–6. Even then it is only necessary to read the report to see how completely the landlord theory—as the only one realized—was in the mind of the writer[1].

When Lord Cornwallis, supported by the general opinion, had made up his mind—and he deliberated carefully from 1786 to 1793—that the *Zamíndárí* Settlement was the right thing, he further considered that it would be useless unless the assessment was also declared *Permanent*.

In this one point Lord Cornwallis may be charged with haste—he might have let the originally ordered ten years run out, and then see what it was best to do. His arguments in favour of permanency of the assessment—some of them based on grave mistakes of fact[2]—hardly answered the objections of Mr. Shore.

It is worthy of note here, that while Shore thought it right to declare the Zamíndárs proprietors, he held that time would be required to settle what, under the circumstances, was really meant by the proprietary right conferred[3]. He did not observe any specific rules for the security of the raiyats; he well knew 'the difficulty of making them, *but some must be established*. Until the variable rules adopted in adjusting the rent of the raiyats, are simplified and rendered more definite,' he added, 'no solid improvement can be expected from their labours upon which the prosperity of the country depends.' With true foresight Mr. Shore further predicted that 'if the

[1] Instances of this will also be seen even in the minutes made thirty years later, when the North-Western Provinces villages were beginning to be understood (Revenue Selections, North-Western Provinces, 1818-22).

[2] As, e.g., what Dr. Field calls the 'cardinal' mistake—it vitiates everything—of supposing that the raiyats paid rents by *agreement* with the Zamíndárs. See Field, p. 490, &c., quoting the minute of 18th June, 1789, and Lord Cornwallis's reply.

[3] Mr. Shore's own words will be found quoted further on.

Zamíndárs were left to make their own arrangements with the raiyats without restriction, the present confusion would never be adjusted.' The system, in short, had not *defined the relation* of the new 'landlord' to his 'tenant'; would it not be better to introduce a new system by degrees than to establish it at once beyond the power of revocation?

On the other hand, it may be urged that probably the consideration which most weighed with Lord Cornwallis, was one that would not take long to mature. He was certain he had done the right thing in making the Zamíndár proprietor; he believed that legislation would protect the raiyat; but that if the Settlement, as a whole, was not closed for ever, a revision might occur, which would shake the Zamíndár's position, and so at any moment, all his benevolent work might be undone. In this, of course, he was wrong: reassessment based on just principles of growth in the cultivated area and rise in prices, has nothing to do with unsettling fixed rights of property, any more than a revision of income-tax renders the capitalist's position as a man of property insecure. But that was not understood. It will be remembered that the Zamíndár's revenue, as fixed in 1793, was not a light one under the circumstances. It was certainly supposed that many of the raiyats would pay *fixed rents*: and it was thought that if the Zamíndár was to be secure and prosperous, his revenue *could not* be raised. True, he would cultivate more waste which would bring in new rents; and in some undefined way, *some* rents would rise by improved cultivation[1], but that would only be his legitimate profit; he would become rich and would then import luxuries, live at ease, and enrich the treasury by the indirect taxation he would pay on import of commodities[2].

[1] And so they would. It was a question of paying rent in kind. A bad tenant gets three-hundred seers of wheat off an acre, and the landlord gets one half. A good one gets five hundred, and the landlord benefits thereby, though the rent is not raised. Whatever the truth may be, expressions occur in the early minutes *alluding to a rise in rental, just as often as those which imply fixity of rents.*

[2] 'Every man,' wrote Mr. Law, 'will lay out money in permanent

All this seemed at the time, and backed by Mr. Law's glowing periods about the gratitude of ancient Zamíndár and jágírdár families restored to opulence, to point conclusively to the *permanence* of the *assessment*, as well as the *security of the landlord's title*.

Unfortunately, facts, as they afterwards developed, could not be foreseen; the necessity for punctual payments involved a severe law for recovery; the *sale laws* had from the first suggested themselves without question; and indeed the law would have acted with much diminished harshness if it had not been for the characteristics of the landlords. They were indolent and extravagant; they did nothing for the land; and even when there was no glaring personal defect, the climate and the habits of the country unfortunately suggested that the proprietor should save himself trouble by *farming* out his estate to any one who would give him the largest profit over and above his revenue-payment. And as the proprietor's farmer in time grew rich,—what with freedom from war, and security, and the daily increasing value of land,—so he too farmed his interest to others, till farm within farm became the order of the day, each resembling a screw upon a screw, the last coming down on the tenant with the pressure of them all. But who could have foretold this in 1790?

We must now return to the direct narrative of the progress of the Settlement.

§ 8. *Procedure of Settlement.—Absence of a Survey.*

One of the first things that will strike the student is that the Settlement *was made without ascertaining the boundaries of the estates and without a survey*. The cost

structures, as such works enhance the value of his estate and promise future benefit. If a scarcity happens the landholders will forego demands, and encourage cultivation to preserve their tenants, who become a part of their necessary property. The increasing independence will raise a class of native gentlemen proprietors, who will gradually have established themselves in good houses with the various comforts of life.' (See Kaye, p. 178.) See also par. 32 of Revenue letter to Bengal, 1st February, 1811; Field, p. 544.

of survey would have then been great, and the requisite establishment such as could hardly have been contemplated with equanimity; moreover there were visionary advantages in abstaining from measurement and inquiry which then commanded much attention.

The direct consequence of admitting the Zamíndár to the position of an English landlord, was a desire to leave him in the enjoyment, as far as possible, of the independence dear to an English landholder. What need was there, the rulers of those days thought, to harass the proprietor we have established and now wish to encourage, by surveying or measuring his lands and making an inquisition into his affairs? Fix his revenue as it has all along been paid, or correct the recorded amount if it is wrong; sweep away illegal taxes, resume what land is unfairly held without paying revenue, and then leave the proprietor in peace. If some neighbour disputes his boundary,—if there is room to believe that he is encroaching,—let them go to law and decide the fact.

Besides this feeling, there was another, which at first made a survey unacceptable. Strange as it may appear to European ideas, measurement was looked on with great dread, both by Zamíndár and raiyat. Whenever the raiyat had to pay a very heavy rent, or the Zamíndár to satisfy a high revenue demand, both were glad to have a little (or often a good deal) more land than they were in theory supposed to pay on.

It was always found an effective process under the Mughal rule, to threaten a raiyat with the measurement of his lands; for his 'rent' was fixed at so much for so many *bíghás*. If this rent was oppressive, as it often was, his only chance of meeting that obligation was that he really held some *bíghás* in excess of what he paid for, and this would be found out on measurement. But that was not the only danger; the landholder well knew that even if he had no excess whatever, still the adverse measurer would inevitably *make out* the contrary. By raising the 'jaríb,' or measuring rod, in the middle, and by many other such

devices, he would make the *bíghá* small, and so produce a result showing the unfortunate raiyat to be holding more than he was paying for; and increased rent for the alleged surplus was immediately exacted. In the same way the Zamíndár, even though the Settlement law was explicit, thought it on the whole safer to have the details of his estate as little defined (at least under the eyes of the Collector) as possible.

Of course, the want of survey and boundary demarcation led, as we shall afterwards see, to great difficulties; and various enactments have been since passed to provide a proper register of estates and a survey to ascertain their true limits; but it is not difficult to understand why a survey was not at first thought of. At that time nearly all the occupied parts[1] of the districts were divided out into 'Zamíndárís.' In a few instances in Bengal, but more commonly in Bihár, the estates were called 'jágír,' and some estates were held by grantees called 'taluqdárs.' But whatever the title, the actual allotments of land forming the settled estates were those mentioned in the native revenue records. As before stated, there were no maps or plans or statements of area; the boundaries of the estate were vaguely described in words, and a list of the villages included was given; but the limits of these were very imperfectly known, especially where a large portion was waste. Each Zamíndár held a warrant, or 'sanad,' under which the Emperor or his deputy had created the 'estate'; and that specified the revenue that was to be paid, and declared the Zamíndár's duties; but the limits of the estate were only indicated by the string of names of villages or parganas.

[1] I say 'occupied parts,' for at that time a majority of the districts, especially those near the hilly tracts, had large areas still waste, but nevertheless forming part of the Zamíndárí, or at least claimed as such. Lord Cornwallis stated that one-third of the Company's possessions was waste at the time when the Settlement work began. The object of the Settlement of 1793 was to recognize *all the land*, waste or culturable, in each Zamíndárí, as the property of the Zamíndár; but no doubt at that time there was very little certainty as to what was really included in the estate. See *Fifth Report*, vol. i. p. 18.

§ 9. *The Property made transferable.*

It is hardly needed to remark that the 'property' granted to the Zamíndárs was made transferable, which, it was expressly stated, it previously had not been. The 8th Article of the proclamation sets forth—

'That no doubts may be entertained, &c., the Governor-General in Council notifies to the Zamíndárs, &c., that they are privileged to transfer to whomsoever they may think proper, by sale, gift, or otherwise, their proprietary rights in the whole or any part of their respective estates without applying to Government for its sanction to the transfer; and that all such transfers will be held valid, provided that they be conformable to the Muhammadan or Hindu law . . . and that they be not repugnant to any regulations now in force which may have been passed by the British Administrations, or to any regulations that they may hereafter enact[1].'

§ 10. *Selection of Zamíndárs.—Joint Estates.—Refusal of Settlement.*

Some curious restrictions were at first placed on the selection of persons to be Zamíndár-proprietors. It was at one time attempted to exclude from Settlement not only minors and females incompetent to manage their estates, but also persons of 'notorious profligacy' or 'disqualified by contumacy.' These grounds of exclusion, being of course impracticable to prove satisfactorily, and being sure to give rise to great scandals, owing to the necessity of an inquiry in Court, were ultimately given up[2]. As regards estates of minors and others unable to take care of their own rights, they were placed under the Court of Wards, and managed on behalf of the incompetent owners.

When there were several shareholders in an estate, there was at first a rule to make them elect a manager. This

[1] The subject is further mentioned in the preamble to Reg. II of 1793.

[2] See Reg. VII of 1796. Reg X of 1793 (Section 5, clause 4) had attempted to lay down the method of charging, defending, and establishing such objections.

failed, and after a time the law was altered, and they were left to manage as they pleased, but were held jointly and severally responsible for the revenue. The law, however, permitted a partition and a complete severance of responsibility if the sharers wished it.

When there were cases of doubtful or disputed boundary, possession was looked to; and if possession could not be ascertained, the estate was held by the Government officers (held 'khás' as the revenue phrase is) till the dispute was legally settled.

If the Zamíndár declined Settlement (i.e. objected to pay the amount assessed and the proper authorities refused to reduce it) the lands were farmed or held khás, and the ex-proprietor got a 'málikána,' or allowance of 10 per cent. on the Government assessment.

I may add that such refusals were rare, for though some refused the terms for the decennial Settlement, they accepted when the proclamation of perpetuity was issued.

§ 11. *Dependent and independent Taluqdárs.*

The Regulation prescribed that the Settlement was to be made with 'Zamíndárs, taluqdárs, and other actual proprietors'; that implies that the Zamíndárs were not the only persons entitled to be recognized as proprietors.

I have mentioned that there were grantees of the State called taluqdárs. These were sometimes separate grants, outside and 'independent' of the Zamíndár's estate[1], in which case they paid revenue direct to the treasury. Sometimes, being of an inferior order, they were found inside the estate, and were then 'dependent' on the Zamíndár, and paid through him. Rules were laid down for determining when the taluqdár was to be settled with separately as proprietor, and when he was considered as subordinate to the Zamíndár.

[1] Called also 'Huzúri' taluqas, i.e. paying revenue direct to the Huzúr, or headquarters of the Government authority; or 'khárija,' i.e. outside, or without, the Zamíndárí estate and control.

This was a matter of no little importance. Every one who could get himself treated separately, became an independent proprietor with his revenue settled for ever. A taluqdár who could not establish his right to be separate, though he might have substantial privileges as to his tenure and the non-enhancement of his rent, still was only a subordinate—a raiyat, or as he is now called, a 'tenure-holder.'

The Regulation also mentions that there were taluqdárs who had purchased or obtained their title by gift from the Zamíndár. These were independent; so were persons who held grants direct from the Government, also taluqs which had been created before the Zamíndárí. A rule was also made that if the Zamíndár was proved to have exacted more than was due, any taluqdár might ask that his estate should be separated. On the other hand, leases granted for clearing waste, and called 'jangalbúri-taluqs,' were treated as only subordinate.

As to the origin of these various *taluqs*, I must defer details till we come to Chap. III. Sec. iii, where the matter is regarded from the tenure point of view, whereas here we are dealing with the question of Revenue Settlement only.

There were also grants known as 'aímá' (of which hereafter). If these had been granted free of all payment, they were treated as independent properties; but if only granted at a quit-rent, or with the annexed condition that the holder was to clear the waste, they were subordinate tenures.

When the taluqs were granted by the Native Government under the denomination of 'muqarrarí' or 'istimrárí' (or both terms together), they were independent. Of these terms, the former means 'fixed' as regards the rent or revenue, and the latter 'firm' or 'in perpetuity' as regards the tenure.

Such a grant implied that whether the grantee were or were not proprietor, the whole rent or assessment would go to him, and only the fixed (muqarrar) proportion be passed on by him to the Treasury. This sum of course was much

less than the full assessment. Here clearly the grantee was independent of any Zamíndár. If his grant was not istimrárí, in perpetuity, but only for life, then on its expiry the succeeding holder would still be entitled to separation, as clearly he had not had anything to do with the Zamíndár, but only with the authority which made the grant.

It will be remembered that there are tenures under these same names 'muqarrari,' &c.—but *granted by the Zamíndár*, not by the State: in that case they are only subordinate tenures, though the *rents* may be 'fixed,' and the right to hold be 'in perpetuity.'

The Collector's duty is limited to determining the question whether the 'taluq' ought to be independent or not. He had nothing to do with the validity of the title itself if that was disputed[1].

It was hoped that the process of inquiry would be terminated with the Settlement, but it seems that for some years after, people kept on filing applications for separate recognition, and it became necessary to give a year's grace for such applications, after which no further requests would be listened to[2].

These remarks will not make clear the *nature* of the tenures spoken of, but they are intended to indicate how that besides 'Zamíndárís,' there were *many other* estates

[1] Of course if a Zamíndárí estate was held jointly and the sharers separated, each would become a separate independent proprietor.

Mortgagees in possession were settled with, the mortgagee taking the place on redemption.

The Settlement was also always made with the person *in possession*; a claimant out of possession must go to the Civil Court, and, if successful, the Settlement would be transferred to him.

[2] Harington mentions that about three thousand taluqs were separated by him in the Zamíndárí of Rájsháhi alone. A summary inquiry was made in every instance as directed, in the presence of the Zamíndár's *vakíl* (law-agent), and one appeal only is known to have been afterwards made to the Civil Court. When the Zamíndár had previously engaged for the revenue of his Zamíndárí, including the taluqs, he was allowed an abatement to the amount separately assessed on the latter as previously stipulated with him. Of course, all this applied only to taluqs existing or created before the Settlement. Any *new* taluq would only be treated as separate if properly registered and applied for under Regulation XXV of 1793, which provided for the partition of Zamíndárí estates and the allotment of the *jama* on the divided portions. If this was not done, Government would take no notice of the taluq, if the estate were sold for arrears. See also *Fifth Report*, vol. i. p. 34.

which were treated as entitled to separate Settlement, and their holders to be (equally with the greater Zamíndárs) 'actual proprietors.'

§ 12. *Basis of the Assessment.*

The Settlement rules of 1789–93 laid down separate principles of assessment for Bengal, for Bihár, and for Orissa. In Bengal and Orissa the actual revenue of the preceding year, or some year nearly preceding (which was to be compared with the accounts, and tested by the information which the Collector had acquired), was to furnish the standard of assessment. In Bihár, the standard was to be the average produce of land in any ordinary year, which would give a fair and equitable assessment. If any land had paid the same revenue for twelve years past, that was to be accepted as the Settlement rate.

With the single exception, then, of Bihár, where in many cases former accounts were not forthcoming, and where consequently an estimate of the produce of an ordinary year had of necessity to be made, there was nothing required as the basis of assessment, but a reference to old accounts, with such adjustment and consolidation of separate items and abolition of objectionable ones, as the declared principles of the Government rendered necessary.

I may repeat that, in order to determine the assessment of each estate, no inquiry was made (as under the later Settlement procedure) either what the value of the estate was, or what the produce was, or what the 'rents' were as paid by the raiyats. Reference was simply made to the old records of the lump assessments under the native rulers; and these were roughly adjusted in cases where such adjustment was needed, and the Zamíndár or other owner was directed to pay this sum.

The following description occurs in an article in the *Calcutta Review* by Mr. Thornton, reprinted in 1850:—

'The Collector sat in his office in the sudder (headquarter) station, attended by his right-hand man, the kánúngo, by

whom he was almost entirely guided. As each estate came up in succession, the brief record of former Settlements was read, and the dehsunny (dah-san, ten years) book, or fiscal register for ten years immediately preceding the cession or conquest, was inspected. The kánúngo was then asked who was the Zamíndár of the village. . . . Then followed the determination of the amount of revenue. On this point also, reliance was chiefly placed on the *daul*, or estimate, of the kánúngo, checked by the accounts of past collections and by any other offers of mere farming speculators which might happen to be put forward.'

Such an assessment must have been almost pure guess-work; for, as the *Fifth Report*[1] says,—

'The lights formerly derivable from the Kánúngo's office were no longer to be depended on: and a minute scrutiny into the value of lands by measurements and comparison of the village accounts, if sufficient for the purpose, was prohibited by orders from home.'

The *Report* goes on to explain how Mr. James Grant's *Analysis of the Finances* raised expectations, and how Mr. Shore's Minute (June 18, 1789) removed many misconceptions; and it continues:—

'A medium of the actual produce to Government, in former years, drawn from the scanty information which the Collectors had the power of procuring, was the basis on which the assessment of each estate, whether large or small, was ultimately fixed.'

By such a process, the assessment was not so likely to be fixed at an excessive rate, as the rights of individuals to share in the profits left by its moderation, were to be overlooked.

Scrutiny was, as I have said, prohibited, for fear of making the Zamíndárs distrust the promise of a Permanent Settlement, and think that the information supplied would be used to enhance the revenue afterwards. The evidence adduced by Dr. Field[2] proves that, even so far back as the

[1] Vol. i. p. 22.

[2] Field, p. 469 note.

time of Warren Hastings, the orders to collect information contemplated that it should be general; there was not to be any 'vexatious' extraction of details. The influence of this fear can still be clearly traced in Regulation VIII of 1800 (Secs. 3 and 7)—the first Regulation for compiling a formal register of revenue-paying and revenue-free estates (for the Collector's purposes). The Regulation explains how the information is to be acquired, and prohibits inquiry into rents and measurements of individual 'málgúzárí' (revenue-paying) lands.

It is evident also from what Hastings wrote in 1776, that the revenue accounts exhibited by the kánúngos were generally believed to be much better kept and more reliable than they really were. It was believed that we had only to go to the *pargana* abstracts (checking them, when necessary, by reference to the village rent-rolls) to get all possible information. But, in fact, nothing about the real value of estates was found out; only the attempt was made to distinguish the revenue figures from the abwábs or cesses which had overlaid them[1].

§ 13. *Origin of the Revenue Accounts and Registers.*

Before we can understand the nature of the pargana and village accounts of revenue which existed, we must take a brief retrospect of what the native system had been in Bengal.

In a general chapter (V) we have already gained some knowledge of the Mughal system of administration, and also of the Settlements made under Akbar. It may therefore be at once stated that it was under Rájá Todar Mal that the first Settlement of Bengal was made about 1582 A.D. The assessment was exclusive of Orissa, and some of the territories in Eastern Bengal that were only added to the province at a later date.

We have no evidence of any formal change in this assess-

[1] See Field, pp. 483–4. Whole sets of accounts were often fabricated to suit particular purposes.

ment till A.D. 1658, when Shuj'á Khán, Súbadár of Bengal, revised it by raising the total from nearly 107 lakhs of rupees to about 131 lakhs. The next rise was under Ja'far Khán (surnamed Múrshid Qulí Khán). This revision is curious, because it exhibits one of those changes which are always observable in the Mughal kingdoms. An energetic ruler soon feels the loss to the treasury which contracts with Zamíndárs and others cause. They save trouble, but they intercept too much of the income. Ja'far Khán, therefore, put aside the Zamíndárs and collected by his own 'ámils and officers[1]. About this time other countries in Orissa and Eastern Bengal were annexed, and came under assessment. Shuj'á-ud-dín, who succeeded, raised the assessment in 1728, to over 142 lakhs. But in his time (as indeed in his father's) the impost of abwábs or 'extras' had begun. We then find the assessment continually raised: the last assessment before cession to the British power, was Qásim 'Ali Khán's, which was said to be over 256 lakhs; but there is some doubt whether this amount was ever realized[2]. It was calculated that the regular assessment had increased about 33 per cent., but that the increase of the Zamíndárs' exactions from the raiyats could not be less than 50 per cent.

There can be no doubt that for many years of the later rule, assessments were habitually increased, not by a Settlement or any new land valuation, but by imposing cesses which were openly added to the payments required from the Zamíndárs or other collectors. The local kánúngos doubtless long preserved the original or last regular land-assessment,—spoken of as the 'túmár' or ''asl'; as well as the subsequent reassessments; and they had also the 'taksím' or division of the total sum over the villages. But the progress of events destroyed the practical use of such

[1] He employed Hindus always as his Revenue officers. He divided the country into thirteen collectorates called 'Chaklá,' and the officers put in charge afterwards became Zamíndárs in many instances. The whole history of the assessment is stated in Shore's Minute, §§ 13-39 and § 63 (*Fifth Report*, i. p. 103, et seq.).

[2] Minute, 18th June, 1789, § 141.

accounts. Warren Hastings, no doubt, was quite right when he wrote—

'Under the old Government, the distribution was annually corrected by the accounts which the *Zamindárs* or other collectors of the revenue were bound to deliver into the office of the *kánúngo* or king's Register, of the increased or diminished rents of their lands and of the amount of their receipts: but the neglect of these institutions, the wars and revolutions which have since happened in Bengal, have totally changed the face of the country, and rendered the *túmár* rent-roll a mere object of curiosity. The land-tax has therefore been collected for these twenty years past (i.e. since 1756) *upon a conjectural valuation of the land formed by the amount of receipts of former years, and the opinions* [estimate or '*daul*'] of officers of the revenue; and the assessment has accordingly been altered almost every year.'

This account is also borne out by the *Fifth Report*[1].

Hence in the decennial Settlement, as Mr. Thornton described, the estimates were really based on the payments made by Zamíndárs in past years, increased or diminished according to the opinions of such local experts as were at hand.

It will appear hereafter how very uncertain were the raiyats' payments, owing to this system. The idea that the whole body of raiyats had any guarantee under native rule for payment at fixed rates for ever, or that the law, when the Permanent Settlement was made, could have easily defined such rates and made them permanent too, is quite untenable. The custom varied from place to place and pargana to pargana, according to the character and influence of the revenue-collectors.

I do not say that it would not have been impossible to ascertain the traditional 'túmár' rates of Akbar's, or some other later Settlement, but would those rates have been reasonable at the close of the century?[2] Had the task been

[1] Vol. i. p. 19, at the bottom.

[2] Mr. Phillips gives a perfectly accurate account of the Zamíndárs' dealings with the raiyats at p. 171. For whatever the Zamíndárs' *sanads* required, the raiyats were annually

seriously undertaken, it would have been necessary, as was found in the Central Provinces, to *fix* the *raiyats'* rates on the basis of local inquiry by a Settlement officer after a survey and registration of fields; and such a proceeding no one could have dreamt of in 1790.

§ 14. *The Síwái or Abwáb.*

This is the place to introduce a description of the additions by which the native Governments were accustomed to raise the demand from the Zamíndárs. The *cesses* were called 'síwái' (*lit.* 'extra,' 'besides') or 'abwáb' (plural of 'báb,' the *heads* or subjects of taxation[1]). Sometimes the Arabic term ḥubúb (plural of ḥab) is used. The common Hindí or Bengálí name is 'máthaut.' They were calculated on the same principle as the *jama'*, at so much per bíghá, or so many seers in the maund of grain. The ruler's local deputy levied them on the Zamíndár, who was authorized to levy them on the cultivators. When such extras got numerous and complicated, there would be a sort of compromise; the account would be re-adjusted so as to consolidate the old rate and the cesses in one; and this would become the recognized rate, till new cesses being imposed, a new compromise was effected[2]. In this way, therefore,

settled with (*Land Tenure by a Civilian*, 1832, pp. 65, 66). There were lists kept by the patwárís and kánúngos, of village and pargana rates, called 'raibandí' or 'nirkh.' But then the abwáb or cesses were added, and from time to time consolidated with the original rates. See also p. 178, where Mr. Justice Campbell, describing the system of additions, is quoted. On the subject of the practical existence of the old Akbarian assessment, I may refer to the undeniable authority of Mr. Shore's Minute quoted in the *Fifth Report*, vol. i. p. 139 (Minute, § 218). 'The assal jumma established by him does not now anywhere exist.'

[1] They were called after the name of the ruler inventing them, or after the nature of the tax. Thus we find the first cess imposed by Ja'far Khán called 'khásnavisí, a tax to support the Government writers of 'sanads,' &c.; 'nazarána muqarrarí,' a rate to enable the Deputy or Governor to send his customary annual present to the Emperor; the 'faujdárí, to maintain police; zar-i-máthaut,' comprising several items; 'chauth-Maráthá,' a tax to meet the loss caused by the cession of part of Orissa to the Maráthás, &c., &c. An elaborate account of cesses will be found in Phillips, p. 176 et seq.

[2] See Mr. Justice (Sir G.) Campbell's judgment in the great Rent Case, *B. L. Reports*, Supplementary volume, p. 256.

the revenue would periodically rise, and the rates exacted from the cultivators rise also, with more than corresponding frequency. The revenue actually realized was thus composed of the '*asl jama*' *plus* these extra charges (síwáí), and was collectively called the 'mál.'

The Zamíndárs naturally enough, not only raised the rents of the *raiyats* to a sum sufficient to cover the whole assessment, but imitated the example by levying private cesses for their own benefit, in addition to the 'mál.'

§ 15. *The Sáyer.*

Besides the land-revenue there were other imposts only indirectly connected with the land, and called 'Sáír,' or, according to the Bengálí writing, 'Sáyer.' These were taxes on pilgrims, excise, transit and customs duties, taxes levied on shopkeepers in bazaars (ganj) and markets (hát), tolls, &c. They amounted usually to about one-tenth of the land-revenue; they also included charges on the use of the products of the jungle (*ban-kar*), on fishing (*jal-kar*, produce of water), and on orchards and fruit-trees (*phal-kar*[1].)

It is easy to understand, then, that the total revenue which each Zamíndár had to account for to the State consisted of two kinds,—the 'mál' (above described) and the 'sáír.'

The sum under each head payable in total for the different 'mahál's' or estates included in the Zamíndárí, was placed on record, and noted also on the *sanad* of appointment.

[1] The *Fifth Report* (vol. i. p. 26) describes the *Sáyer* as consisting in 'land customs, duties and taxes, and *whatever was collected on the part of the Government* and not included in the "Mehaul" (meaning "mál" or land-revenue.)' But the Sáyer also included the charges on produce above mentioned. I may here mention that (as regards the mistake of mahál for mál in the extract) that the report (the original as well as the reprint which exactly follows it) is *full* of mistakes or misprints of native terms. Many of them are quite unrecognizable.

§ 16. *Disposal of these items at Settlement.*

The British Government abolished all extra cesses or 'abwáb' as they existed when its rule began; and naturally it required the Zamíndárs, under penalty, to abstain from levying such cesses from the raiyats.

As to the *sáyer* dues, those which were in the nature of separate taxes—excise, and the like—the Government took into its own hands, severing them entirely from the land-revenue account. Others, which were oppressive, as transit duties, taxes on pilgrims and the like, it gradually abolished. Such dues of this class as represented payment for the use of produce of land or water, the Government handed over to the landowners to augment their legitimate profits.

The good intentions of the Government as to freeing the raiyats from liability to vexatious cesses imposed by the Zamíndárs for their own benefit, were never carried out, at least fully. Even at the present day such cesses are paid by the raiyats, partly under the inexorable bond of custom, and partly from a sense of helplessness. For though the authorities would at once decide against the exaction, still the Zamíndár could always either conceal the fact or colour it in some way, or else make things so unpleasant for the raiyat, that he would rather pay and hold his tongue[1].

[1] The private cesses, as distinct from the authorized cesses of old days, were legion. A few names will sufficiently indicate their nature; thus, we find the 'mángan,' a benevolence to assist the Zamíndár in debt; 'nájái,' a contribution to cover the loss when some of the cultivators absconded or defaulted; 'porvani' or 'parbani,' a charge to enable the Zamíndár to celebrate 'parva,' or religious festival days. There were also levies for embankments (púlbandi), for travelling expenses of the Zamíndár, &c., &c. As regards the modern levy of cesses, I cannot do better than quote from the Administration Report of 1872–73. Those who care to go into more detail will also find, following the extract I make, a list of cesses, showing the variety and ingenuity which their levy displayed.

'The modern Zamíndár taxes his raiyats 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

The Regulation XXVII of 1793 gives a somewhat detailed account of the abolished *sáyer* duties[1]. It refers to the *Ayín-i-Akbari* (vol. i. p. 359), as showing that Akbar had rescinded some, and that 'Alamgír (Aurangzeb), 'the last Emperor who maintained the full authority of the Mussulman government,' abolished seventy others. The abolition of all transit duties and marriage taxes, having been at an early time of the Company's administration enjoined (viz. in 1772), was to be maintained. But so anxious were the Government not to injure the Zamíndárs,

lawyers. The milkman gives his milk, the oilman his oil, the weaver his clothes, the confectioner his sweetmeats, the fisherman his fish. The Zamíndár levies benevolences from his raiyats 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 visits his estates; he levies black-mail on them when social scandals transpire, or when an offence or 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 raiyats' crops. The abwáb, as these illegal cesses are called, pervade the whole zamíndári system. In every zamíndári there is a náib; under the náib there are gumáshtas; under the gumáshta there are piyádas or peons. The náib exacts a 'hisábána' or perquisite for adjusting accounts annually. The náibs and gumáshtas take their share in the regular abwáb; they have also their own little abwáb. The náib occasionally indulges in an ominous raid in the 'mofussil' (the plain country away from the town or headquarters). One rupee is exacted from every raiyat who has a rental, as he comes to proffer his respects. Collecting peons, when they are sent to summon raiyats to the landholder's cutcherry, exact from them daily four or five annas as summon fees.' (P. 23. *Body of the Report.*)

On the other hand, it should not be forgotten that all this need only continue as long as the people themselves choose; but in fact it is the ingrained custom and is submitted to as long as it is kept within customary limits. Every petty native official is born to think that 'wasíla' (pickings and perquisites) are as much a part of his natural rights as air to breathe or water to drink. Nor will the public seriously object as long as he does his duty fairly. When he tries to take too much and does 'zulm' (petty tyranny), the people will turn on him, and a conviction for extortion is more or less attainable, according as the culprit still has friends or is generally in the black books.

There is also a bright side to the question: an amicable understanding with a raiyat for some cesses will often obviate a good deal of litigation about rent enhancement. This was the case in Orissa. In Macneile's *Memorandum on the Revenue Administration* (1873), an interesting notice of the subject will be found. The people complained of certain cesses, and the Zamíndár immediately responded by bringing suits under the Rent Act for enhancement, and by *measuring their lands* (see p. 408).

[1] See Markby, Appendix, pp. 144–148, and authorities quoted.

that where the remission of *sáyer* caused a real loss (by taking away from them the tolls on roads and ferries, or the taxes on bazaars and markets established on their lands), they were compensated.

§ 17. *Other Allowances.*

There were other charges and allowances to be taken into account in the process of consolidating the Zamíndárs' revenue liabilities into one sum. Allowances which had been made *to* the Zamíndár, for expenses of collection, office charges, and the like, were of course duly considered and deducted in making up the totals, where the expense would continue to fall on the Zamíndár. Other payments which he formerly had to make and received allowance for, were now made by the State direct, so that no deduction had to be made on account of them. Thus the payment of pensions and allowances to Muhammadan law-officers called Qázís, other pensions, and the salaries of *Kánúngos*, were now to be paid direct by the treasury, and the Zamíndár was not concerned.

Nor under the revised arrangements, was it necessary to make the Zamíndár any allowance of land free of revenue as remuneration of office—he had now become proprietor of all, and his remuneration was amply secured in other ways. Such lands as were formerly held as nánkár, or by other similar name, were not excluded from assessment[1].

§ 18. *Resumption of Invalid Revenue-free Holdings.*

When the calculation of the assessment on each estate was, so far, provided for, there was still another important and very troublesome matter to be disposed of. If in any Zamíndárí, a large portion of the land was held 'revenue-free' by landholders on the estate, owing to royal favour

[1] But if the Zamíndár refused to engage, he would continue to hold such land revenue free, if he could show a good title (Reg. VIII. 1793, secs. 37-39).

and grant, it is obvious that the Zamíndár could not be called on to make good the revenue to the treasury. But in some cases the Zamíndár himself had made such grants, and then he had to make good the State claims as a matter of course; the grant he made operated against himself, not against the State.

It was however known that in the disordered state of the late Government, a great number of claims to hold revenue-free were really invalid, and so the land was liable to be assessed, or as it is technically called, 'resumed.' This subject demands a somewhat fuller notice. It may now seem a matter of dry detail, but at the time it affected the livelihood of many hundreds, or indeed thousands, and involved a vast amount of Government revenue.

When a Government is strong, it is very careful about titles assigning the revenue of lands away from the treasury, and about granting lands to be held revenue-free. It was no doubt reckoned a pious duty to make such grants for mosques, temples, schools, dharmsálas (or rest-houses), or to the families of reputed saints or men of eminent piety and learning. But it is also an easy thing, when the treasury is empty through waste and corruption, to assign revenue-free lands to favourites or to persons to be rewarded, who ought properly to have received cash pensions or life-grants. In short, though there is a legitimate use of revenue-free grants which the oriental mind approves, still it is easy to abuse the institution and to forget that in all cases they mean freeing one set of persons from taxation at the expense of others who have, in the end, to make up the loss. In the decline of the Mughal empire, not only were such grants multiplied, but a great many of them were made by subordinate officials who had no real authority: not only so, but a considerable number of grants were held under no authority at all, or were supported by forged title-deeds.

It was therefore necessary in the proclamation of 1793, to announce that a scrutiny of revenue-free claims would be made. 'The Governor-General in Council will impose such

assessment as he may deem equitable, on all lands at present alienated[1] and paying no public revenue, which have been, or may prove to be, held under illegal or invalid titles.' The grants are spoken of as 'lákhiráj' grants; and the lands were 'lákhiráj' lands. The name is derived from two Arabic words, 'lá,' the negative, and 'khiráj,' revenue or land-tax.

These grants had been either made by royal authority (bádsháhi), in which case they were dealt with under Regulation XXXVII of 1793, or 'hukámi' (incorrectly hukmí), i. e. made by authorities other than the king, called in the Regulations 'non-bádsháhi,' and these are dealt with in Regulation XIX of 1793. It was the latter class that were the most likely to be doubtful in origin; properly speaking, they were all invalid. The Regulation recites that if a Zamíndár had made such a grant (in past days) it was considered void. On the subject of grants assumed to be made by 'officers appointed to the temporary superintendence of the collection of the revenue, under pretext that the land was for pious or charitable uses,' some were no doubt *bonâ fide*; but, says the preamble, '*in general*, they were given for the personal advantage of the grantee, or with a view to the clandestine appropriation of the produce to the grantor,' or were given for a money consideration to him. Government settled the Zamíndár's estate *jama'* without reference to such grants and exclusive of them. Consequently it was at liberty to 'resume,' i.e. to impose an assessment on, all that were invalid. In determining to do this, Government generously enough said *that if the grant was less than* 100 *bíghás in extent, the assessment would not be for the benefit of Government but for the estate* —would be in fact claimable as *rent*. It is said that both these Regulations failed,—as might be expected in the

[1] This phrase 'alienated' is commoner in Bombay and Madras than elsewhere; it refers rather to the *alienation* of the revenue from the treasury than to the land itself. Of course Government might have land at disposal, and grant both it and the revenue due on it; and in that case 'alienation' would be used in an ordinary sense. But where the land did not belong to Government, 'alienation' referred to giving up the revenue demand, and the consequent lien or ultimate title, which Government has over, or to, all land whatsoever.

absence of a survey and any sufficient land records; for I suppose that by 'failing' it is meant that the claims did not come to light. The law was accordingly revised by Regulation II of 1819, and again by Regulation III of 1828. This latter enactment appointed a Court of 'Special Commissioners'; and after they had done what they could for many years, they were abolished by order of Government in 1846. The more modern procedure of Registration and Certificate, which will be described in the sequel, have at length done everything that is wanted.

The Zamíndárs who were thus empowered to 'resume' all the petty estates for their own benefit, were long loath to do so. No doubt where the 'mu'áfi' was for a pious purpose, it would have been contrary to the public feeling to resume; but if many were created, as asserted, either as a means of raising money or otherwise irregularly, it is not so easy to see why they should have been tenderly dealt with; at a later date, when the Zamíndárís changed hands, successors were not so particular, and resumption suits became common [1].

§ 19. *Principles of Resumption.*

In order to simplify matters, *all* grants made previous to the 12th August, 1765 (date of grant of the *díwání*),

[1] See this explained in Markby, p. 7. I take occasion to observe that I do not quite follow the learned author in his remark that the Regulations gave an extraordinary facility to the estate-holder to resume, or that they laid the burden of proof on the persons claiming to hold free in a manner contrary to the usual rule; but perhaps the remark is due to the confusion, which undoubtedly is traceable in the law, between *assessing* revenue or *rent* (as the case might be) and *ejecting* the claimant from the land. As far as the claim to rent is concerned, the rent was only what had before been the State revenue demand; every acre of cultivated land is bound to pay this; consequently, everybody asserting a grant or claim *not* to pay, is surely most naturally the person who has to take the burden of proof and produce his exemption. It may be that he has no grant, but has been allowed to go free so long, that now it would be hard to charge him; but that is a matter of the nature of his title; it is beside the question of who should take the burden of proof in the first instance. On the other hand, if it was a question of ejecting from the *land*, then the burden is, of course, the other way. The man in possession on an apparent title is to remain until some one else proves his superior title or proves that the other has no business there.

were recognized as valid without question, by whatever authority they might have been made, and whether in writing or without it: the only condition was, that the claimant (or his predecessor) should have actually, and *bonâ fide*, obtained possession of the land so granted previous to the date mentioned, and that the land had not already been declared liable to pay revenue by the officers, or under the orders, of Government.

Grants subsequent to 1765, and before the date of the decennial Settlement (taken as December 1st, 1790[1]), were invalid (with a few unimportant exceptions). So also were grants *after* December 1790.

The provisions of both Regulations refer only to the revenue question, not to the right in the soil, which, if disputed, could be settled in the Civil Court.

§ 20. *Terms of Settlement for such Lands.*

When a grant lapsed to Government or was resumed, the Settlement was to be made, *in perpetuity*, with the person entitled to hold the land, which became an independent 'taluq'—a separate proprietary estate.

In the case of grants made between 1765 and 1st December, 1790, Section 7 of Regulation XIX of 1793 contemplated certain differences as to amount of assessment, which are rather complicated; and it is now of no importance to go into them. These rules applied also (Section 8) to grants resumed in favour of Zamíndárs, but with certain directions as to ascertaining the revenue without expense to the grantee.

The Government seems to have been more anxious to facilitate the resumption by the *landholders* of the invalid lákhiráj grants of less than 100 bíghás, than it was to secure *to the State* the larger invalid grants. Section 10 invalidated *all* grants since December 1790; so that if the Zamíndár himself, or a predecessor, had made the grant, he

[1] 1198 Fasli era of Bengal (see Book I, chap. i. p. 13).

could undo his own act[1]. The grant was invalid as regards the revenue (become the *rent*), and as regards the soil also, if it purported to include the latter: 'and no length of possession shall be hereafter considered to give validity to any such grant.'

§ 21. *Procedure.—Limitation.*

The Settlement-holder (or manager, should the estate happen to be held '*khás*') was empowered to levy rent (or to eject an unentitled holder of the land) without any action in Court or notice to any Revenue Officer; but this applied only to invalid grants dating *after* 1790. In order to assess, or to eject from a grant *previous* to 1790, a regular suit was at first required (Section 11).

Section 30 of Regulation II of 1819 endeavoured to facilitate resumptions of grants previous to 1790, by saying that the application to resume might be presented direct to the Collector, or if presented to a Civil Court, should be referred to the Collector for an opinion; but this was found inconvenient and was repealed in 1862 (Bengal Act VII).

It should be remarked that the landholders at no time largely availed themselves of the summary power given in Section 10 of Regulation XIX of 1793, but preferred to resort to the Civil Court even when the practice of resumption became more general[2]. In consequence, Section 30 of Regulation II of 1819 was frequently misapplied: it was not intended to apply to cases under Section 10 of Regulation XIX (regarding which no suit at all was needed, and therefore if one was filed it was the landholder's own pleasure); it was designed to facilitate inquiry as to grants *before* 1790, for which a suit *was* needed; but it got applied

[1] The motive for this was the principle—which is not unknown in other revenue laws—that the revenue-payer ought not to be allowed (or encouraged) imprudently to give away his lands free of the revenue (which now became his *rent*), and so *contract himself out of the power* of meeting his own revenue engagements to the Government.

[2] See Markby, p. 8, and the cases there quoted.

to both, till the Privy Council ruled that it could not legally be so.

The power given under Section 10, above referred to, was, however, taken away by Act X of 1859, and the landholder was required to file his suit, which, however, lay to the Collector as a Revenue Court: and when this Act was repealed by Act VIII of 1869, the reference was re-transferred to the Civil Court, as in all other matters.

It was also ultimately ruled by the Privy Council, that notwithstanding the terms above quoted, the Government right to resume was subject to the *law of limitation*, and that, by parity of reasoning, so was the Zamíndár's[1]. The modern limitation law (1877, Act XV) sets the question at rest, since Article 130 of Schedule II expressly gives twelve years as the limit for a private resumption suit; and all suits by the Secretary of State are limited to sixty years.

§ 22. '*Thánadári Lands.*'

Among other '*resumptions*' it may be proper to mention that the Zamíndárs were relieved from the responsibility of maintaining police forces, and so lands held free under the name of 'thánadári,' to provide for them, were resumed and assessed. The 'chákarán' lands held for village service—i.e. for village watchmen or 'chaukidárs' and 'buláhirs'—are not included in this. Sec. 41, Reg. VIII of 1793.

§ 23. *The Waste Lands.*

Although we gather, from the early reports and histories, that, at the date of the Permanent Settlement, a very large proportion of Bengal was uncultivated and covered with jungle, the matter attracted no definite attention.

[1] This was because, in the limitation law then in force (Regulation II of 1805), it was provided that 'nothing . . . in *any part of the existing* Regulations' should be held to authorize a suit barred by the various periods prescribed; so that the terms quoted above, out of Section 10, Regulation XIX of 1793, were over-ridden.

Perhaps it was less prominent in the central districts that formed the important revenue-paying tracts.

At all events, it was assumed that the boundaries of Zamíndárís or other estates were known. And all that was within the boundary belonged to the proprietor, whether waste or cultivated; so that many fine 'sál' forests and other such lands have become included as private property, though, in the absence of any detailed survey or register of fields, it was quite impossible, in most cases, for any one to tell whether the waste was *really part of* the 'estate' or not.

That *some* waste was so, goes without saying; for the extension of the Zamíndár's income, by bringing under the plough lands that were uncultivated, was one of the means most frequently spoken of, by which his wealth was to be assured.

I do not find any mention of 'excess waste lands' (i.e. not included in any one's estate) till Regulation II of 1819. Even then nothing is said about the want of title of persons who had squatted or occupied; only it is said such lands were liable to be assessed to revenue. The Regulation referred especially, as instances of such lands, to—

Reg. II of 1819 sec. 3.

(*a*) lands cultivated in the Sundarbans[1] (these were chiefly on the higher parts of the delta—better protected from inundation, and probably extensions or encroachments from the permanently cultivated estates inland);

(*b*) 'chars' and islands formed in rivers; and other alluvial accretions since the decennial Settlement;

(*c*) lands which did not come under the Settlement specially let out on clearing leases by Collectors.

The assessment was to be on the 'principles of the General Regulations,' and therefore permanent (see Section 6 of Regulation I of 1793).

[1] A vast tract of forest intersected by myriads of tidal streams and creeks, and forming the southern or delta portion of the districts of 24-Pergunnahs, Khúlná and Bákirganj, between the main mouth of the Húghlí on the west and the Megná river on the east.

The matter was better provided for at a later time. Regulation III of 1828 recites in the preamble that—

'Commissioners have likewise, from time to time, been appointed, under the orders of Government, to maintain and enforce the public rights in different districts, in which extensive tracts of country, unowned and unoccupied at the time of the Permanent Settlement, are now liable to assessment, or, *being still waste, belong to the State.*'

This is the first legislative declaration I have found on the subject of the title to waste lands (see Chap. V, p. 236). And while it also follows from this that all lands 'owned' and occupied were liable to be assessed (and that permanently), no *others* could claim a Permanent assessment. In other words, the benefit of the Regulations extended to estates then occupied, even without title, not to all that might thereafter be created by new occupation and cultivation.

We shall have occasion to notice how waste lands were disposed of in several instances in the sequel. Here it is sufficient to notice what the Settlement Regulations intended on the subject.

§ 24. *Résumé of the Zamíndár's Position under the Permanent Settlement.*

The result of these various provisions may now be summarized.

(*a*) The Zamíndár was only required to pay *one* sum, with no extra cesses on the land.

(*b*) The '*abwáb*' were abolished; and he was not allowed, in his turn, to levy such charges on his *raiyats*.

(*c*) The 'Sáyer' were not charged in the revenue: some items were left to benefit the estate, others were abolished, and others (excise, road-tolls, &c.) were taken out of the land-revenue account altogether and separately collected by the Government.

(*d*) The Zamíndár was not allowed to have any deduc-

tions from his sum total on the plea of private lands revenue-free as 'nánkár' or subsistence allowance.

(*e*) Nor to claim deductions on the ground of grants of land revenue-free made by the former Government or by its officers, unless these were valid on the terms prescribed by law. All others were 'resumed' and assessed. This did not affect the Zamíndárs if the 'resumed' grant was over 100 bíghás, because such were treated as *separate estates* and assessed. But, as regards smaller grants, the Zamíndár got the benefit of the resumption, and it was left to him to resume or not, under the prescribed procedure, as he chose.

(*f*) The Zamíndár was not allowed deductions for pensions, pay of *Qázís*, or of *Kánúngos*, or for police lands—because the State no longer required him to meet any such charges.

§ 25. *Profit left to Zamíndár.*

The Settlement thus made with the Zamíndárs for one consolidated lump sum of revenue, was supposed, *in theory*, to represent nine-tenths of what they received directly in rent from the raiyats, the remaining tenth being allowed to them for their trouble and responsibility[1]. In reality,

[1] See Regulation VIII of 1793, Section 77; and Whinfield's *Revenue Law and Practice of Bengal* (1874), p. 11. That was also the theory under the native rule. The Zamíndárs were to pay in the whole of their collections, less only a percentage allowed them for the trouble (called mushahará), together with some allowances (called 'mazkúrát'), for charitable and religious purposes—to keep lamps at the tombs of saints, to preserve the 'qadam rasúl' or foot-prints of the Prophet, to give khairát or alms to the poor, to pay the village or minor revenue officials, to support the peons or messengers, to keep up the office, &c., &c.

If anything is wanting to show how utterly unlike a 'landlord' the Zamíndár *originally* was, this will supply the want. He got *nothing in the nature of rent from the land*. The raiyat took the balance of its yield after paying the Government share (the balance to him being often small enough), and the Zamíndár had to account to Government for the whole of his collections, getting back only such allowance as the State made him to keep up his office, &c., and to remunerate him for his trouble. Whatever he made

the Zamíndár, when made landlord, got all the increase of rents (as the raising of rents gradually came to be understood), and, in any case, he got the *benefit of all extension of cultivation*, as well as all the 'sáyer' items from fisheries, fruit, grazing, &c., and the benefit of all invalid grants (under 100 bíghás) which he chose to resume. And with all these sources of income, it very soon came to pass that the revenue payment was nothing at all resembling nine-tenths of the total receipts from the estate.

§ 26. *Settlement Arrangements regarding the Zamíndárs' dealings with the Raiyats.*

The Settlement procedure certainly involved very little action with reference to the raiyats,—the great body of agriculturists,—now reduced to a secondary position under the Zamíndárs. The Regulations may be said to have hoped much and provided little. What they did, however, though it might, in some respects, be conveniently noticed here, had better be passed over, for the reason that I must recur to the subject (of landlord and tenant) at a later stage, and it is an object to avoid repetition. I will therefore simply reserve the provisions of the Regulation regarding raiyats or tenants to a subsequent chapter.

§ 27. *Registration of Landed Estates.*

It will next be asked, what attempt was made to prepare registers of estates and records of other rights under the Permanent Settlement?

As there was no survey or demarcation of estates, the only thing that could be done was to prepare a descriptive register, showing the names of estates and the villages, and local subdivisions of land included in it. Regulation

for himself was derived from revenue-free land,—that held as 'nánkár,' or from the levy of unauthorized cesses. In time, it is true, he *came to get* something very like rent. When the later Native rulers contracted with the Zamíndár for a fixed sum, this soon came to be regarded as something apart from the total rents paid in by the raiyats.

XLVIII of 1793 contemplated a general register of estates paying revenue immediately to Government. Each estate was to be described by name, and it was to be mentioned whether it consisted of a *village*, a *tappa* (group of villages), or a *pargana*; whether it was a *jágír* grant, or a *taluq*, or any other special form of grant (of which we shall hear when we come to the chapter on Tenures). If the estate had been partitioned, the shares were to be specified. And should portions of estates lie in different districts, the term 'qismat' (section or fragment), was to be prefixed.

The registers were also supposed to show the local name and the (nominal) area of each village and *pargana*, with the names of the landlord, farmer of rent, &c.

The registers were to be renewed every five years; and a register noting intermediate changes in the proprietorship, partitions and other like occurrences affecting the estates, was to be kept up.

To facilitate this work, the Civil Courts were to send copies of all decrees which affected land, and the Board of Revenue were to notify sales made under the Revenue Recovery laws. Registrars of deeds were also to send notices, and proprietors were to give due information of transfers of property, failing which they became liable to penalty.

Separate registers were kept up of revenue-free estates, and of those which, being invalid, were resumed and assessed to revenue.

These rules were first revised by Regulation VIII of 1800, which mentions the failure[1] which had occurred, and

[1] I do not mean, by the failure of the early records, to imply that the authors of the Settlement purposely neglected the work. On the contrary, 'The original intention,' says Sir G. Campbell, 'of the framers of the Permanent Settlement, was to record all rights. The kánúngos and patwáris were to register all holdings, all transfers, all rent-rolls, and all receipts and payments; and every five years there was to be filed in the public offices a complete register of all land-tenures. But the task was a difficult one: there was delay in carrying it out. English ideas of the rights of a landlord and of the advantage of non-interference, began more and more to prevail in Bengal. The Executive more and more abnegated the functions of recording rights and protecting the inferior holders, and left everything to the judicial tribunals. The patwáris fell into disuse, or became the mere servants of the Zamíndárs: the kánúngos were abolished. No record

directed, among other changes, that the registers should be kept by *parganas*. There is no occasion to go into detail, as the rules have long since been repealed. They never were, or could have been, fully carried out, so impossible is it to manage Records of rights without a survey.

§ 28. *Registration of Under-tenures.*

But no registration of under-tenures, or record of the nature and extent of the rights of cultivators and lessees subordinate to the landlords, was made. And this was a serious want, because after all the 'taluq' grantees and others had been 'separated' (and so recorded as estate-holders on their own account), there must have remained a large number of '*dependent*' taluqs, 'muqarrari' and 'istimrárí' lessees, and others (of whom we shall afterwards hear), whose rights were certainly above those of tenants, and ought therefore to have been recorded. The Settlement Regulations, however, though by no means ignoring such rights, or wishing to destroy them, thought it enough to assume that there were fixed terms of the grant by which the tenure originated, and to declare these binding. The want of proper authoritative registers of such tenures and their holders long continued; and it is only of late years that the registration has been put on a better footing. A notice of the present practice, however, belongs to a later stage of our study.

§ 29. *The means of recovering the Revenue.—Sale-laws.*

I have already alluded to the first indication of the SALE LAWS. The Government had dealt liberally with the Zamíndárs; it had given them a valuable property, and secured them by a permanent limit to the State revenue demand. It was, therefore, thought only fair that, in

of the rights of the raiyats and inferior holders was ever made; and even the quinquennial register of superior rights, which was maintained for a time, fell into disuse.' (Sir G. Campbell's *Land System of India—Cobden Club Papers*, p. 148).

return, the State revenue should be paid with the unfailing punctuality required to meet the pressing needs of the treasury; and it was held, without question, that if the landlord did not or could not, pay, he must be removed at once, by the sale of the whole or a part of the estate, as circumstances should indicate. In those early days, the Revenue instalments were payable *monthly*; and it was held that failure to pay any month's due justified an immediate sale[1]. But in 1799 the rule was relaxed. Regulation VII provided that no sale should take place till the *end of the year*, and thus give more time. And, as the landlord was dependent on the recovery of his rents for his ability to pay, a summary power of distraint for rent was given him. The sanction of the Board of Revenue was also required before a sale was ordered; and only such part of the estate as would suffice was actually sold. Interest was not charged on arrears; and this is still the law.

The law of summary distraint was oppressive to the raiyats, but we are not concerned with that here, but only with the law for recovery of arrears of revenue and its effect on the system. As the revenue got lighter and lighter, and the landlords had more and more power against the rent-payers, it is hardly to be wondered at that the provisions against revenue default should have been made more stringent. The next Regulation of importance was Regulation XI of 1822, which made it no longer necessary to issue process of attachment or try any arrangement for direct collection, before putting up the estate (or part of it) to sale.

This law lasted till 1841, when Act XII replaced it; this in its turn was repealed in 1845; and Act XI of 1859 began what I may call the 'modern sale law'—to which reference will be made in the chapter headed 'Revenue Business and Procedure.'

[1] Kaye, p. 185. As a matter of fact, the first Regulation, XV of 1793, prescribed the ordinary process against debtors, viz. the imprisonment of the person, and the sale of his property. Regulation III of 1794 abolished the imprisonment of the defaulting proprietor, and substituted a power of immediate sale of his estate.

§ 30. *Voiding of existing encumbrances when the Estate was sold.*

One feature of the sale law, which was early allowed to be necessary, deserves to be mentioned. Besides the under-tenures, which existed in the shape of dependent taluqs and other privileged holdings, it became the custom with the landlords to divest themselves of the trouble of management, by farming out portions of their estate. The detail of this will appear later on, but it is obvious that the result was to create, on most estates, numerous under-tenures. All these were so many encumbrances on the estate; and if, when the landlord's interest was sold for arrears, all these remained valid, the net interest saleable would, in all probability, not fetch enough at auction to realize the arrear. As early as Regulation XLIV of 1793, we find that when an estate is auctioned for arrears— Reg. XLIV of 1793, sec. 5.

'all engagements which such proprietor shall have contracted with dependent taluqdárs whose taluqs may be situated in the lands sold; as also all leases to under-farmers, and *pattás* to raiyats [with certain exceptions] . . . . shall *stand cancelled* from the day of sale, and the purchaser . . . . shall be at liberty to collect from such dependent taluqdárs, &c., whatever the former proprietor would have been entitled to demand, according to the established usages and rates of the pargana, &c., had the engagements so cancelled never existed.'

This did not apply to absolute alienations (e.g. to reverse a sale actually made), nor to leases to Europeans, of lands for dwelling-houses, gardens, or manufactories; nor did it interfere with the assessment imposed by the Permanent Settlement[1].

But this wholesale avoidance of contracts made by the defaulting landlord, was soon recognized to be excessive. We gradually find new Regulations softening the terms.

[1] So that, when the estate was sold, the Collector could not offer it at a new assessment, otherwise the Permanent Settlement would, in many instances, have been got rid of.

First, Regulation I of 1801 protected arrangements that might have been concluded during *the year previous* to the date of sale. Next, Regulation XI of 1822 modified the general rule. It no longer provided that such leases, &c., '*stood cancelled*,' but only that they *were* '*liable to be annulled*' by the purchaser: and it was also expressly allowed that five classes of persons who had an heritable and transferable interest, or raiyats who had a right of occupancy, could not have their engagements annulled. This was perhaps *implied*, but not stated, by the earlier law.

The Sale laws of 1841 and 1845 are very much the same in these respects, but expressly declare the right of the purchaser to enhance the rents of all under-tenures and (after notice given) to eject tenants, subject to exceptions, five in number.

Nothing further was changed till 1859. The only interest these earlier provisions now have is as illustrating how the revenue system grew, and how ideas regarding sales, under-tenures, and enhancement of rents, were gradually modified. But it is to be remembered that titles to existing property may still depend on the laws which were in force at the time when the sales, under which they arose, took place, and therefore the early laws cannot be omitted altogether from notice.

How many difficulties have arisen out of this principle of sale, and the necessary 'clear title' which goes with it, and how those difficulties had been met, belongs to a later section, where we shall deal with the modern law in its practical application.

§ 31. *Effects of the Permanent Settlement and its Laws.*

Having now taken a general retrospect of the principles and practice of the Permanent Settlement, as regards the persons settled with, the nature of the revenue, the method of its assessment, the treatment of the waste land, the registration of estates, and the recovery of arrears of reve-

nue, we may proceed to make a general retrospect of what the effects of the Settlement have been.

The decennial Settlement, made permanent in 1793, extended to Bengal, Bihár, and Orissa—the Orissa of these days being (I may repeat) the tract between the Rúpnarain and Subarnrekhá rivers, now in the Midnapore district [1].

In general terms, it may be said that it disappointed many expectations and produced several results that were not anticipated. It has been stated that, at first, the revenue levied from the Zamíndárs and others made proprietors, was heavy; but as the effects of British peace and security made themselves felt, and as the value of land and its produce rose, and waste lands were brought under the plough, the assessments became proportionately lighter and lighter [2]. And it must be borne in mind that every estate at the time of its original assessment contained considerable,

[1] The land-revenue, though permanently fixed in 1793, was liable to be increased by causes which had nothing to do with the assessment of the original estates; for example, the Zamíndárs were relieved of police charges, and the lands held free for the purpose would be called in and assessed as the arrangements were completed. Then the gradual resumption of invalid revenue-free tenures caused an increase, as well as the assessment of land held in *excess* ('taufír' in revenue language) of the proper estate (Reg. II of 1819): and there were other causes. This is exclusive of the revenue of temporarily settled estates, or lands held by Government. The Permanent Settlement Revenue was about R. 2,85,87,722. In 1828-29, the demand had risen to Company's R. 3,04,27,770, in 1846-47 it was R.3,12,52,676, and in 1848-49 R.3,40,96,605. In 1856-57 it appears at the slightly reduced figure of 3,37,38,783. In the following year it rose to R. 3,39,10,632. In 1882-83 it was R. 3,62,78,355: the increase during the ten years previously had been more than a lakh a year. In 1888-89 the permanently Settled Revenue was R. 3,22,90,777 (*Rev. Adm. Rep.* p. 2). These figures are calculated for the whole of the districts in the old Permanent Settlement, excluding Chota Nagpore (Chutiyá Nágpur), which had not then been settled (*Report*, 1883).

[2] The revenue assessed in 1790-93 being, as just stated, Company's R.2,85,87,722, or under three millions of pounds, the Zamíndárs were estimated to get, as their profit, a sum equal to about a tenth of the total assessment. They no doubt got more; but even if we say a fifth, instead of a tenth, the rental or profit would be under a million. At the present day, judging from the valuation for road-cess (made in respect of the rent paid to landlords by tenants and tenure-holders of all classes, *plus* the value of land in the direct possession of the proprietors), a fair estimate of the rental made it thirteen millions, and it must have largely increased since that date. The revenue they pay now is about three and a-quarter millions. So that even on the rule of 'half-rental assets = the revenue' prevalent in Northern India, they pay less than half (probably less than one third) of what other landowners have to pay.

often very large, areas of culturable waste of great value; and as this was entirely unassessed, all the immense subsequent extension of cultivation was so much clear profit to the owner[1].

Before, however, these changes began to tell, the assessments were heavy enough to necessitate diligence and prudence; and the landlords were not able at once to keep pace with the inflexible demand. The consequence was a very widespread default. As just now explained, the law practically stood to enforce a *sale* of the estate (or part of it), directly the owner was in arrears, and it followed that large numbers of estates were put up to sale.

'In 1796–97,' says the late Mr. J. Macneile[2], 'lands bearing a total revenue of Sicca[3] R. 14,18,756, were sold for arrears, and in 1797–98 the *jama*' of lands so sold amounted to Sicca R. 22,74,076. By the end of the century, the greater portions of the estates of the Nadiyá, Rajsháhí, Bishnpur, and Dinájpur Rájás, had been alienated. The Bardwán estate was seriously crippled, and the Bírbhúm Zamíndárí completely ruined. A host of smaller Zamíndáris shared the same fate. In fact, it is scarcely too much to say that, within the ten years that immediately followed the Permanent Settlement, a complete revolution took place in the constitution and ownership of the estates which formed the subject of that Settlement.'

One effect of the 'Sale Law' was to reduce very greatly the size of the Zamíndáris, for up to 1845 they were sold piecemeal. The making into separate estates of taluqs, the owners of which established a claim to be dealt with sepa-

[1] Government, no doubt, afterwards resumed, and assessed separately, some large areas of waste, but it was waste improperly or fraudulently annexed to the estate. Many, if not most, estates had a great deal of waste which was confessedly included in their boundaries.

[2] *Memorandum on the Revenue Administration of the Lower Provinces of Bengal* (Calcutta, 1873), p. 9.

[3] The 'Sikka' was the first rupee struck (in 1773) by the Company at Murshidábád, but still bearing the name of the Mughal Emperor Sháh 'Alam. In Regulation XXXV of 1793, it was enacted that this coin was to be legal tender, and was to bear the 19th year of the Emperor's reign for uniformity sake. Speaking roughly, three 'Company's rupees' equalled two *sikka*. The sikka contained 176·13 grains Troy, and the rupee afterwards introduced in 1835 as the 'Company's,' 165 grains, of pure silver.

rately from the Zamíndárs, and the effect of partitions, had also tended to the same result. The tendency to *subdivide* estates is also great, and especially in Bihár. In twenty years, the number of estates was doubled in Patna division, and in Tirhút (Muzaffarpur and Darbhanga districts) was more than trebled. Taking the figures for 1882–3, out of a total number of 110,456 estates borne on the roll of 39 districts of Bengal proper and Bihár, 457, or 0·41 per cent. only, are great properties, with an area of 20,000 acres or upwards: 12,304, or 11·1 per cent., range from 500 to 20,000 acres; while the number of estates which fall short of 500 acres, is 97,695, or 88·4 per cent. of the whole [1].

In Chittagong, however, the estates were always small, and in Bihár there never were any very large Zamíndárís.

§ 32. *Districts affected by the Permanent Settlement.*

The Permanent Settlement extended over the following districts in Bengal, as the districts are now constituted:—

BENGAL.

Bardwán.	Nadiyá.	Maimansingh.
Bankúra.	Murshidábád.	Faridpur.
Birbhúm.	Dinájpur.	Bákirganj.
Hooghly (Húghlí).	Málda.	Chittagong (Chátṭágráoṅ).
Howrah (Haura).	Rájhsháhi.	Noacolly (Nawákháli).
24-Pergunnahs.	Rangpur.	Tipperah (Tiprá).
Jessore (Jasúr).	Bogra (Bagurá).	Dacca (Dákhá).
Khúlná.	Pabná.	

BIHÁR.

Patná.	Darbhanga*.	Purneah (Parniya).
Gáyá.	Sáran.	Bhágalpur.
Sháhábád.	Champáran.	Monghyr (Munger).
Muzaffarpur*.		

* These two form the old Tirhút District.

SANTÁLIA.—Part of the Santál Pergunnahs adjoining the Regulation Districts.

ORISSA.—Mednipur (Midnapore), except one pargana which was settled along with Kátak (Cuttack).

CHOTA NAGPORE (Chutiyá Nágpur). Parts of all the districts.

[1] *Report*, 1883, p. 4.

Some estates in the Mánbhúm, Singbhúm, Lohárdagga, and Házáribágh districts (now in the Chutiyá Nágpur Division) came under Permanent Settlement, though they are 'non-Regulation districts,' because they were then included in collectorates which formed part of the Bengal or Bihár of that date.

The part of the Jalpáigúrí district south-west of the Tísta river, also was permanently settled under the same circumstances. A glance at the 'Settlement map' annexed to this volume will show the whole matter.

A portion of Sylhet was permanently settled, but the Settlement did not extend to Jaintiya, nor did it touch anything but the lands under cultivation at the time. This district will be alluded to under the head of Assam, in which province it is now included. Part of Goálpárá (also in Assam) was included in the Permanent Settlement[1].

§ 33. *Proportion of Permanent and other Settlement Revenue in Bengal.*

It may also be convenient here to notice the proportion of Bengal revenue which is permanently settled to that obtained from estates not so settled. The total land-revenue, as stated in the Board's Report 1888–9, is, in round numbers, R. 3,81,00,000, of which R. 3,23,00,000 comes from permanently-settled estates and R. 58,00,000 (or 15·2 per cent. of the whole) from estates which are temporarily settled, and from estates of which the soil is owned by Government, *together*.

[1] The results of the Settlement, and the condition of the tenants under it, both in Bihár and Bengal, as questions of social economy, are well stated in Mr. (now Sir H. S.) Cunningham's *British India and its Rulers* (p. 166 et seq.). Such questions, interesting as they are, are evidently outside the scope of a Revenue manual, and I can only make this brief reference to the subject.

CHAPTER II.

THE TEMPORARY SETTLEMENTS, INCLUDING THE RENT-SETTLEMENTS OF GOVERNMENT ESTATES.

SECTION I.—INTRODUCTORY.

§ 1. *Lands not Permanently Settled.*

IN this chapter we have to treat of two different classes of lands, which must not be confused together: (1) lands held by persons recognized as proprietors, but not under the Permanent Settlement law; (2) lands which do not belong to proprietors, i.e. in which no proprietary right other than that of Government exists.

In the first class there is, of course, a Settlement of land-revenue, only that it is not under the Permanent Settlement Regulations, but under later laws which contemplate the assessment being raised periodically, and the making of a Revenue-survey and record of the rights of all parties.

In the second class there is properly no *Settlement of land-revenue*, because Government being itself the owner, the *revenue* is merged in *rent* taken by the Government as owner. Nevertheless 'Settlement operations' are spoken of as applicable to both classes of estates, under a view of the matter which I will presently endeavour to make clear.

In the first class of lands,—proprietary estates temporarily settled,—the law is chiefly contained in Regulations VII of 1822 and IX of 1833, and some special Acts which will be noticed more in detail hereafter.

In the second class, or Government estates, two methods

of management may be adopted: either the tract is kept 'raiyatwár,' i.e. Government deals as landlord directly with its tenants[1]; or a farmer or some kind of middleman (who is in no sense a proprietor) may be employed on certain terms, to collect and pay in the rents of the tenantry, for which he receives a certain emolument by way of deduction from the collections. The present tendency is, however, against the employment of such persons; it is preferred to deal direct with the tenants[2].

The origin of these two classes of lands has to be explained.

§ 2. *Temporarily-settled Estates.*

To this class belong—

(1) Territory annexed by treaty or conquest at a date subsequent to 1793. In these Government recognized existing proprietary rights, but the Permanent Settlement Regulations did not apply; as (speaking in general terms) in the districts of the modern Orissa (Katák, Bálásúr, and Púrí). To this we may add districts exempted, for special reasons, from the operation of the Regulations;

(2) Resumed and lapsed revenue-free (lákhiráj) lands,—not in permanently-settled districts, but held by persons who are recognized as proprietors[3];

(3) Alluvial accretions to temporarily-settled estates, which, under the law, may belong to the estate-owner, but be liable to pay revenue.

[1] The student will mark this, and not confuse the 'raiyatwárí tracts' of modern Bengal Reports with the raiyatwárí districts of Bombay, Madras, &c. In the latter, Government treats the raiyats *not as its tenants*, but as individual proprietors—whether called in law 'proprietors' or 'occupants'—and assesses their holdings to land-revenue properly so called. The term 'raiyatwárí tract' in the eleven Bengal districts in which it occurs, means that there is no proprietor but Government, and that Government acts directly as the *landlord*, taking *rent* from the tenants, which rent it enhances, &c., just as any other landlord does under the law.

[2] See post, § 6, page 449.

[3] Invalid or lapsed revenue-free holdings *in a permanently-settled district*, when 'resumed,' are entitled to be permanently settled, but no others.

§ 3. *Government Estates.*

To this class belong—

(1) *Waste lands.*—In the first place the Permanent Settlement Regulations extended only to estates of Zamíndárs and other actual proprietors *as they existed at the time.* These estates, no doubt, were very loosely defined, and all included a good deal more land than was actually cultivated at the time, and were intended to do so; but there were districts in which the area of waste was so large that no claim to it was made, not even by squatters or persons encroaching beyond their own adjacent estates. This is notably the case in such districts as Goálpárá and Sylhet (described under Assam) and Chittagong; and again in the tract known as the Sundarbans between the mouths of the Húghlí and Megná rivers (part of the districts of the '24-Pergunnahs,' Khúlná and Bákirganj), in the 'Dáman-i-koh,' or hilly tract of the Santál Pergunnahs. In all such waste lands, until (under 'Waste Land Rules') Government leased or granted the proprietary right, the ownership remained vested in the State.

(2) When estates or parts of estates were sold for arrears of revenue and Government bought them in, either because no bidders appeared, or because satisfactory terms were not offered [1].

(3) Thánadári lands, or lands formerly allotted to Zamíndárs for keeping up 'thánas' or police stations. The Zamíndárs were exonerated from this duty, and the lands were resumed by Government. Reg. I of 1793, sec. 8, cl. 4.

[1] At one time it was supposed that if Government parted with the proprietary right in estates originally permanently settled but sold for arrears, the proprietor so acquiring was only entitled to a temporary Settlement: but this is not so. Whenever sold, the purchaser would acquire a Permanent Settlement right under the Regulations. See *Boards Rev. Rules*, vol. ii.

(4) Islands and 'chars' formed in rivers or on the sea-shore—not being accretions by alluvion to existing estates, which by the law or custom (Reg. XI of 1825) belonged to the estate to which they accreted—were liable to a separate Settlement. With such a vast river-system as Bengal possesses, this head is not devoid of importance.

(5) Lands escheated in default of legal heirs or claimants.

(6) Lands forfeited for any State offence, e.g. the Khúrdá estate in Púrí.

(7) Lands which were acquired by conquest in cases where the lands were not already owned, and the Government did not see fit to confer any general proprietary title: as, e.g. the Dwárs of Jalpáigúrí and the Darjíling District [1].

§ 4. *Official Classification.*

The existence of these variously-originating estates necessitated a recognized official classification. Such a classification was adopted under Sir G. Campbell's administration in the district Revenue Rolls for 1876–77 [2]:—

CLASS I. (All) permanently-settled estates—

(1) At the decennial Settlement (1789 to 1791);

(2) Resumed revenue-free settled permanently;

(3) Estates formerly the property of Government, but the proprietary right in which had been sold to private persons subject to revenue fixed in perpetuity.

(4) Ditto, ditto, subject to a revenue liable to periodical revision [3].

[1] I need hardly add an eighth class—Land acquired under the Acquisition Act—for such lands will usually be applied to a special purpose; but such lands are sometimes taken, and not being needed, are either re-sold or kept as Government lands.

[2] And lands were described according to it in the Board's Report, 1874-75. See *Report*, 1883, p. 3.

[3] As a subhead of Class I, No. 4 seems a little contradictory: I sup-

CLASS II. Temporarily-settled estates, the property of private persons—

(1) Settled for definite periods, including (of course) such estates, when—

(2) Farmed
(3) or managed direct. } Owing to refusal of the proprietors to accept the terms of Settlement.

CLASS III. Estates the property of Government, however acquired, and whether settled (i. e. the rents are made over to a responsible collector, who is allowed a remuneration), or whether managed direct: but this class has been for convenience subdivided so as to give a further—

CLASS IV. 'Raiyatwári tracts,' i.e. large Government estates with an area of not less than 5000 acres, where the Government deals direct with the cultivators, settling and recording their rents, and collecting them itself.

A glance at the table of estates and revenue at pp. 470–1 will show how these are distributed.

The orders contemplate the 'Daman-i-koh' of the 'Santál Pergunnahs,' being classified as a single raiyatwári tract.

The Khúrdá and Noánand estates in Orissa are, however, entered as Government estates under Class III, because, though in some respects raiyatwári (all rents and rights being recorded), the collection is managed by responsible 'sarbarákárs,' who are allowed a sort of Settlement.

Government lands called 'Jalpái' lands in Midnapore[1] are not treated as 'raiyatwári' unless the tract is 5000 acres or over—notwithstanding that the raiyats pay direct.

In Chittagong, farms of circles, and 'nauábád' taluqs or holdings, are in Class III, because they are Government property as far as the right in the soil is concerned.

pose it refers to cases where the Settlement has been made once for all, but at progressive rates.

[2] Mentioned in the chapter on Tenures. They cover 76.835 acres (*Statistical Acc., Bengal, Midnapore*—vol. iii. 86–100). They are lands for producing the fuel used in boiling brine to make salt. Government resumed these lands under the Salt laws, and compensated the owners or holders.

§ 5. *Certain Districts without any Revenue System.*

In concluding this introductory explanation, I should take occasion to observe that I omit from consideration certain territories which are under Government control in the Political Department, and have no regular revenue-system. Such are—

(1) The portion of the Chittagong district known as the Chittagong Hill tracts.

(2) The portion of the Tipperah (Tiprá) District known as Hill Tipperah belonging to the Mahárájá of Tipperah.

(3) The Chiefships known as Tributary or 'Peshkash' States of Orissa.

(4) Chiefships in the Chutiyá Nágpur Division (those of the old 'South-West Frontier Agency').

§ 6. *Policy as to Retention or Disposal of Land.*

It will next be asked, Under what principle does Government sell or retain and farm or manage direct, the lands which became Government estates? To this question I can best reply by an extract from the Report of 1882–83 on the Land system in Bengal, Bihár, and Orissa (p. 6):—

'The Government estates were originally either permanently settled or sold outright. The policy was changed in 1871, since when, temporary Settlements only have been allowed, and, where sales have been considered expedient, the estates were first settled for a term of years, and then sold subject to a revision of the Government revenue on the expiration of the term of Settlement. The above procedure, however, appeared to be of questionable legality, and in 1875 the Government, at the suggestion of the Board of Revenue, ruled that an estate should be considered as qualified for direct management—

(1) If it was of sufficient extent and cultivation to support a tahsíldári [special collecting] establishment;

(2) If, though not yielding a revenue sufficient to cover such expense, there was reasonable expectation that its gross rent could be increased by improvements, extended cultivation, or otherwise, to that amount;

(3) If, though not sufficient in extent or rental alone, to find employment or funds for a separate establishment, it was so situated as to be capable of being incorporated with one or more similar 'khás-mahál,' so as to form a compact tahsíldári circle[1];

and that smaller isolated estates might still be retained under direct management, if their situation near the headquarters of a district or a subdivision was such as to allow of their proper supervision by the Government officers. Smaller estates not admitting of such supervision were to be sold after survey and Settlement, in which the rights of all classes of cultivators were to be recorded; and the estates so sold, were to be transferred to their new proprietors, with the revenue fixed in perpetuity, except in Orissa (a temporarily-settled province), where the sale should be made subject to revision of the *jama'* on the termination of the general Settlement of the province. The above orders are still in force. Farming is adopted only in very exceptional cases, or as a last resort, when every other mode of disposing of the estate has failed. Direct management, though more troublesome, and probably not less expensive, is preferred to farming, because it enables Government officers to gain a practical knowledge of the progress of agriculture, of the extent to which the productive powers of the land have developed, and of the increased money-value of the produce, which, in Bengal, it is difficult to obtain in any other way.'

[1] I may repeat the explanation that, in revenue language, when any land was managed directly by the Collector's establishment (without a farmer or lessee) it was said to be held 'khás.' Government estates were therefore called 'khás mahál,' and the term is commonly used in Revenue Reports.

Section II.—The Temporary Settlement Law and Procedure.

§ 1. *Origin of the Settlement Law.*

When the first extensive additions to the Company's territory occurred on the annexation of the 'Ceded' districts (1801) and the 'Conquered' districts (1803), the Permanent Settlement and its methods had already come into discussion in connection with the Madras Settlements, as I have stated at length in the chapters devoted to Madras. Both the Ceded Provinces in the North-West, and Orissa, presented special features which did not invite a repetition of the Permanent Settlement; and notably there were few, if any, 'Zamíndárs' of the Bengal class. I will state presently some particulars about Orissa, but here I only wish to touch on certain salient points.

The result of the discussions, and of Mr. Holt Mackenzie's[1] Minute, was the passing of the Temporary Settlement Regulation, No. VII of 1822, which applied to the 'Ceded and Conquered Districts'—the Orissa Districts (called in the preamble 'Katák, Patáspúr, and its dependencies') being among the latter. Now this law, instead of proceeding to an estimated lump-sum Settlement without survey or inquiry into details, expressly directed a survey and an inquiry into the rights in every village and field, which was to be followed by a valuation of the 'net produce' of land —i. e. (briefly stated) an inquiry into the actual produce on various lands, of various crops. From the gross produce valued in money, the cost of production, wages of labour, &c., were to be deducted, and the result was the *net* produce, of which a certain fraction, never fixed by law but

[1] This eminent civilian was, if I may say so, the prophet of the Temporary Settlement system of Upper India (and Orissa), as Mr. Shore had been in 1788-89 of the Zamíndárí Settlement of Bengal. Mr. H. Mackenzie's great minute of 1819 in the North-Western Provinces, did for the system there, what Mr. Shore's minutes of 1788-89 did for Bengal. (See the chapter on N. W. Provinces Settlements.)

determined on principles of fair dealing and expediency by the executive power, was to be taken as the State share or land-revenue. But (as more fully detailed in the chapter on the North-Western Provinces Settlement, vol. ii) the task of finding this 'net produce' of every field proved an impossible one; and by Regulation IX of 1833 it was abandoned in favour of one which aimed at determining the 'net assets.' This practically meant (or rather came to mean as experience widened) the total receipts from the land in the shape of *rents*. Putting it shortly, all modern methods of Temporary Settlement which trace their origin to the Regulations of 1822–33, tend more and more to aim at discovering what is the *actual rental* of land, correcting the sum total of rents paid, by adding in the estimated rent (calculated on the *data* afforded by the neighbourhood) of lands which are enjoyed rent-free or are cultivated by the proprietors themselves. In other words, the ascertainment of the *income from rental* and personal enjoyment of cultivated lands, is the basis of Settlement. Now, in Bengal, for temporarily-settled districts, a certain proportion of this 'corrected rental' is the *land-revenue*. But in Government estates, the State as landlord, has also to fix the whole *rental* which it takes as owner. In both cases, therefore, a *public officer has to ascertain the rent*; and it matters very little whether it is only ascertaining what that rent is, with a view to taking a portion as revenue, or whether it also involves (in disputed cases), adjusting, equalizing, raising or reducing, rents, with a view to taking the whole as landlord[1]. A rent-inquiry of some kind is at the basis both of temporary Settlements and of managing Government estates.

The reader will then understand why we are able to put these two dissimilar classes of estates under one chapter, and why 'Settlement operations' are conveniently, if not quite logically, spoken of as applicable to both.

[1] Or the whole rental less such percentage as it allows in case a middleman is employed to collect the rents.

§ 2. *Settlement and Rent-settlement Law.*

The law for the *Settlement of Rents* is now contained in the tenth chapter of the Bengal Tenancy Act (General), Act VIII of 1885[1], and, when that Act does not apply, in other Acts, as will be presently noted.

The same principles apply to the adjustment of rents in Government estates and raiyatwárí tracts, as in those cases, in private estates, in which the Tenancy law contemplates the interference of public authority to settle rents.

And for all matters connected with the *Settlement of the Land-Revenue*, other than the adjustment of rents, Regulation VII of 1822 (amended in 1825) and Regulation IX of 1833 are still the law, except for the 'Scheduled districts,' in which there are special laws for the Land-Revenue administration.

Act VIII of 1885, sec. 189.

Rules under the Tenancy Act (which have the force of law), and instructions as to Settlement issued by the Board of Revenue, are the natural and necessary supplement to both kinds of Settlement law.

The Tenancy Act of 1885 does not, however, apply (unless extended specially) to the districts of Orissa (Katák, Bálásúr, and Púrí) nor to the 'Scheduled Districts.' Hence, *in those*, we have three sources of rent and Settlement law: (1) the Regulations and instructions above mentioned; (2) Bengal Act VIII of 1879 (not repealed in districts to which Act VIII of 1885 does not apply); (3) any special laws or Regulations relating to particular districts as far as those touch on rent or revenue matters. The law in force under these three heads may be thus exhibited[2]:—

[1] The magnitude of the interests involved, and the contest there was, as well as the bearing of the Act on other laws framed in the Imperial Council, rendered it necessary that the Act should be passed in the Legislative Council of India, and not in the Bengal Legislative Council.

[2] R. and F. Tenancy Act, p. 176. B. Act VIII of 1879 refers to Settlement officers' powers, and will not be confused with VIII of 1869 (the old Tenant Act) still in force in those districts.

Districts.	
Bálásúr, Katák, and Púrí.	Regulation VIII of 1793[1]. (For Katák) Regulation XII of 1805. Regulation V of 1812 (not applicable to Katák); Regulation XVIII of 1812. Regulation VII of 1822 (and amendments in 1825). Regulation IX of 1833. Bengal Act VIII of 1879.
Darjíling, Jalpáigúrí (south of the Tista).	Bengal Act VIII of 1879.
Jalpáigúrí (the Bhután or Western Dwárs).	Bengal Act VIII of 1879. Act XVI of 1869.
Santál Parganas.	Regulation (33 Vict., Cap. 3) III of 1872.
Chittagong Hill Tracts.	Act XXII of 1860. (See Bengal Settlement Manual, 1888, page 4.)
Chutiyá Nágpur Districts— Mánbhúm, Hazáribágh, Lohárdaggá, Singhbhúm.	Bengal Act VIII of 1879; and see Bengal Acts II of 1869 and I of 1879.

Under these laws, according to circumstances, different kinds of Settlements can be made: e.g. if it is desirable merely to settle a lump sum of revenue without recording tenants' rents or rights, it can be done under the Regulations. This is seldom the case. If (as is usually the case) the more complete Settlement with a record of rights and an enhancement of rents (where necessary) is desired, then in districts where the Act of 1885 does *not* apply, the Regulation, aided by Bengal Act VIII of 1879, will give the needful authority. The Act is, in fact, the supplement of the Regulations of 1822–33. The latter only enabled the Settlement Officer to declare what he considered a fair rent, and this was only presumed to be correct till set aside by a regular civil suit; but Act VIII of 1879 empowers rents to be enhanced under circumstances therein stated.

In cases where the Act of 1885 *is* in force, then, if it is desired to have a complete record and adjustment of rents, the Act must be followed; but if it is supposed the en-

[1] Applicable to a number of estates, intermediate between the semi-independent 'Tributary' States or Maháls and the periodically-settled portion. These were granted a Permanent Settlement for special reasons; and they occupy a considerable portion of the districts—Katák especially.

hancement is not necessary, and that Settlement will be made without readjustment of rents, or with such a readjustment as can be made by agreement (e.g. the enhancement not being in excess of two annas in the rupee[1]), then there will be no occasion to proceed to notify the tract under the Tenancy Act, but the old Settlement procedure will suffice.

§ 3. *Certain operations even in permanently-settled Estates.*

It should be remarked that even where no re-assessment of land-revenue is possible, i.e. in permanently-settled districts,—some of the operations of a Settlement may require to be carried out.

The Local Government, *with* the sanction of the Governor-General in Council, may order a survey and a record of rights to be prepared for all lands in any local area. This power has not yet been exercised except experimentally. In time it is to be hoped that every district will ultimately be so provided for[2].

Without the supreme sanction, such orders can be issued in cases where a large proportion of either landlords or tenants desire it and deposit the amount (or security for the amount) of expenses, as directed by the Local Government; or where such a proceeding is calculated to settle or avert a serious dispute between landlords and tenants; or where the estate is being managed by the Court of Wards. This is in addition to its application (before alluded to) to all Government Estates (where, indeed, legal sanction would hardly be necessary); or where a Temporary Settlement of land-revenue is to be made.

Act VIII of 1885, sec. 101.

[1] That being the limit under the Act to which enhancement by contract is valid. (Sec. 29, &c.)

[2] The reader will learn hereafter that in the North-Western Provinces permanently-settled districts (those that belonged to the Benares Province and were ceded in 1795), though permanently settled, have now all been cadastrally surveyed, and a complete record of rights prepared. In Bengal an attempt —which I am afraid I must call abortive—has been made in one of the Bihár districts, but the day *must* come when the work will be carried out.

[3] F. and R. Tenant Act, p. 174, where the orders are quoted.

This remark practically covers the whole ground, because in territories to which the Act of 1885 is not as yet extended, the existing law enables the same thing to be done, at least to a certain extent.

§ 4. *Operations of Settlement.*

In any ordinary Settlement under the Regulations of 1822–33, measurement, I have said, is contemplated by the law; or, if proceedings are undertaken under the Tenancy Act, a survey is specially authorized. There is also a General Survey Act (Bengal Act V of 1875), under which the Lieutenant-Governor may direct that a survey may be made of any lands, and that the boundaries of estates, tenures, 'mauzas' (villages), and fields, be demarcated and surveyed.

The following processes are therefore ordinarily comprised in Settlements of land-revenue, and in other Settlements of rent, so far as may be necessary[1]:—

1. Demarcation of lands and adjustment of boundary disputes.
2. Measurement and testing the same.
3. Fixing and recording of rents.
4. Recording rights and interests in the soil.
5. Settling any provision for police expenses, village patwárís, allowances of the nature of *málikána*, &c.
6. In land-revenue Settlements, fixing the terms of Settlement, and who is to be settled with.

§ 5. *Demarcation.*

The Collectors or the Settlement Officers are empowered, by the Regulations and Acts mentioned, to enforce the attendance of the proper persons to point out boundaries and give the necessary information. They are also empowered to decide boundary disputes generally, on the usual basis of

[1] The student will do well to have for reference the Board of Revenue *Settlement Manual* (Edition of 1888: Calcutta Secretariat Press).

possession, leaving disputes of title to be settled in the Civil Court. But where the proceeding is under the Tenancy Act, the Settlement Officer is wisely endowed with the power of settling disputes of title as well [1].

Act VIII of 1885, sec. 106, 7.

§ 6. *Survey.*

I may take this opportunity of giving a *general* account of the Bengal Survey system. The *Report* of 1883 gives the following account:—

'Almost the whole of these provinces has now been surveyed so as to show the boundaries of each village and estate; but there has been no field-measurement except in a few limited tracts. There is a demarcation department whose business it is to define the boundaries of villages and estates, and to make a compass-and-chain survey of them. The ordinary scale of the maps prepared from this survey is sixteen inches to the mile. All disputes regarding boundaries are decided by the demarcation officers.

'Where the whole of a village belongs to one estate, nothing but the outer boundary of the village has to be defined and surveyed; but, in a very large proportion of cases, there are lands of more than one estate in the village, and the lands of each estate are frequently scattered about the village and not situated in one compact block. Thus, there may be lands of ten estates in a village, but they may be contained in forty, fifty, or even double that number of separate plots. Each of these plots has to be separately defined and surveyed by the demarcation surveyor. It is the extent to which plots of land belonging to different estates are thus intermixed that renders the demarcation of a Bengal district such a lengthy operation. To take Hooghly as an example, there were in round numbers 4000 village circuits demarcated; in about 1000 of these the whole of the village belonged to one estate, and no interior measurements were necessary. In the remaining 3000, no

[1] Act VIII of 1885, secs. 106–7. In Section 108 it is enacted that the Local Government shall appoint a special judge (or more than one) to hear appeals in such cases. Both suits and appeals are heard (speaking generally) under the Civil Procedure Code, and there is a second or 'special' appeal (on a point of law only, with certain special additions, Sec. 109) to the High Court.

less than 80,000 plots had to be surveyed, owing to the intermixture of lands of different estates.

'The demarcation has been followed by a professional survey-staff, whose business it is to make a scientific survey of the village boundaries, and also a map (usually on a scale of four inches to the mile) showing the geographical and topographical features of the country. The whole of the work, both of the demarcation and professional survey, has been carried out at the expense of Government, although the Government derives no additional revenue and no direct advantage from the process. The surveyors, in making the survey of the village boundaries, were guided by the marks put up at time of demarcation at every bend and turn of the boundary. Unfortunately, there were no permanent marks round the boundaries of villages or estates in Bengal, and no provision then existed for compelling landholders to set them up and keep them in order. The consequence was that the marks have been obliterated and the use of the survey for practical purposes has been greatly impaired.'

§ 7. *Special Survey of Alluvial Lands.*

'The surveys of Ganges alluvion and diluvion, in accordance with the provisions of Act IX of 1847, were commenced in the Patna division about 1863, and brought to a close in the Rájsháhí division in 1871–72. The operations were afterwards continued in the Dacca division. The object of the law was to obviate the effects of the changes constantly going on in the banks of rivers and adjacent lands. By these changes large portions of land are often washed away—sometimes suddenly, sometimes by slow degrees—from one side of a river, while an accession of land takes place on the other side. It was thought advisable, for the security of the land-revenue, that some provision should be made for allowing to a proprietor whose estate had suffered diluvion, an abatement of revenue corresponding to the extent of his loss; and, on the other hand, for assessing the proprietor whose estate had gained land, with an additional revenue, proportionate to the amount of his gain. The law accordingly enacts that in districts of which a revenue survey has already been made, Government may, whenever ten years may have elapsed from the date of approval of such survey, have a new survey made of lands on the banks of

rivers with a view to ascertain the extent of the changes since the last survey. Having ascertained, by inspection of the new survey map, which estates have lost and which gained land, a corresponding abatement from, and addition to, the revenue assessed on the estates respectively losing and gaining, is to be made.

'The Settlements made were formerly permanent, except when the proprietors of some of them refused to take the engagement, in which case the lands were let in farm for periods of from three to ten years; but, latterly, orders have been issued by Government prohibiting further permanent Settlements, and temporary Settlements are made.

'In the course of the six years, 1877–78 to 1882–83, the banks of the chief rivers of Eastern Bengal—namely, the Ganges and Megna, with their principal branches down to the Bay of Bengal, the Dhaléshwari, the Brahmaputra, and the southern portion of the Jamuna—were surveyed. The total area of the tracts of country surveyed in Dacca, Furreedpore, Backergunge, Tipperah, Noakholly, and Mymensingh, is 5,682·74 square miles, at a total expenditure of R. 1,59,430. The cost per square mile of country surveyed has therefore been R. 28-6-10. This survey has been made in the same scientific manner as the survey conducted by the Revenue Survey Department, and the accuracy of the work has been tested by connections made with eighteen tower stations of the Great Trigonometrical Survey.

'The total area of land added to estates since the survey of the districts, ascertained by a comparison of the new maps with those of the previous survey, was nearly 479 square miles. Out of this area, 273 estates, measuring 120·5 square miles, have been assessed and settled under the provisions of section 6, Act IX of 1847, yielding an annual revenue of R. 59,461-2, including málikána; 128 estates, measuring 51·2 square miles, with a rental of R. 23,848, are pending Settlement. In 113 cases, 57 square miles, with a rental of R. 45,084, have been left unassessed under orders passed in appeal by the Commissioner or the Board; 151·3 square miles have been left unassessed as being (1) less than ten acres, (2) accretions to temporarily-settled estates which are not liable to assessment until the Settlements of the estates expire, (3) washed away between survey and Settlement, and (4) included in estates sold or permanently settled by Government on a revised

assessment since the first survey of the districts, and therefore not liable to reassessment. In 165 cases, covering an area of 99 square miles, with a rental of R. 48,765, the proceedings have not yet become final, as objection cases are pending before the Superintendent or in appeal.'

§ 8. *Surveying Agency.*

In large areas—generally speaking over fifteen square miles—the area is professionally surveyed under the Survey Department of the Government of India. In areas less than that, the ordinary district staff carry out the detailed work (as more fully described in the chapters on North-Western Provinces). With the aid of skeleton maps in which main points and traverse lines have been laid down for them with scientific accuracy, they survey both the outer boundaries and field- and holding-boundaries, and plot them. With the detailed map, a field-index or register called (as usual) a *khasra* is prepared. This shows the details of area, crop grown, irrigation, and class of soil. The area is given in standard (Bengal) bíghás[1] (of 14,400 square feet or 1600 square yards).

The *khasra* ordinarily names the raiyat working the field, but does not attempt to record his *status* or his rent. In order to group the different fields held by the same man together, the surveyor prepares from the *khasra*, abstracts (called 'khatián' or 'jamabandi') showing this. The record of the *status* and the determination of the *rent payable* come afterwards.

§ 9. *Fixing and recording Rents.*

Assuming that the particular law under which the Settlement is proceeding allows it, the rents will be adjusted, wherever required by the circumstances under which the Settlement is being made. The surveyor hands

[1] And the bighá is divided into 20 cottas (kattha), the biswa of other parts; and that into 20 gandá (the biswánsi of other parts). The gandá contains 4 'kauri.' This last subdivision is equal to 9 square feet or 1 square yard.

over his maps, with the index-register and abstracts, to the Settlement Officer, who has then a basis to work upon. I assume also that the *status* of all existing tenants has been recorded and the incidents of their tenancy. What the status is, is a matter concerning land-tenures and will be described in a later section.

'Generally speaking[1], it may be said that the determination of rents includes the ascertainment of existing *rates* of rent which may be applied to the areas ascertained by measurement' (and of course this may be something different from the actual sums paid hitherto), 'and the enhancements of such rentals as may be legally possible under Bengal Act VIII of 1879, or the Tenancy Act, or other special Act under which the officer is working.

'The first object is therefore the ascertainment of existing facts. For this purpose the Settlement Officer calls the parties together, attests the entries made by the surveyor regarding areas and occupation of lands, and records the *status* of tenants and tenure-holders, and their existing rents. He at the same time disposes of such disputes and objections as may arise.'

§ 10. *Enhancement of Rents under the Act of* 1879.

When Settlements (involving rent adjustment) are being made under the Regulations, supplemented by Bengal Act VIII of 1879, Sections 6 and 7 of the Act explain the grounds of enhancement, which are—(1) that the rate of rent is below that paid by raiyats of the same class for land of a similar description in the vicinity; (2) that increase is justified by an increase in the productive power of the land which has taken place otherwise than at the expense of the raiyat; (3) that the value of the produce has increased otherwise than by the agency of the raiyat; (4) that the quantity of land held is greater than that for which he has been paying rent. In order to legalize an enhancement on these grounds, the record must be published with a

[1] The inverted commas refer to a memorandum prepared by the Director of Land Records and Agriculture, to which I am indebted for much of the information on details in this chapter.

notice to each raiyat specifying exactly the grounds on which the demand is based. The raiyat may, within a period of four months, contest the enhancement by suit in the Civil Court. Under this law, also, the sanction of the superior revenue authorities is required to increase of rates or rentals.

§ 11. *Enhancement of Rents under the Act of* 1885.

Under the Tenancy Act (1885) in Government estates, the landlord (Government) may apply for an enhancement. The application is dealt with as a civil suit. The legal presumption under the Act is that the existing rent is fair; granted then, that the existing rent is ascertained, the claimant must show justification for increase on one or other of the grounds mentioned in Sections 6, 30–37, 46, &c. (as the case may be). These grounds are briefly—(1) that the rate is below the prevailing rate paid for the same class of lands by occupancy raiyats in the village; (2) that there has been a rise in the average local prices of staple food-crops during the currency of the present rent; (3) that the productiveness of the land has been increased by improvement effected by the landlord, (4) or by river action; (5) that the area of the holding has been increased, new land having been brought under cultivation for which rent was not previously paid.

The same principles apply to private estates when an adjustment of rents has been ordered.

§ 12. *Duration of Rents so settled.*

Under the Tenancy Act, 1885, when an *occupancy raiyat's* rent is enhanced, it cannot be again enhanced for fifteen years; and when an *ordinary tenant's* rent is raised, no further increase can take place for five years: it follows that the effect of a Settlement is to fix rents for fifteen and for five years respectively. Act VIII of 1885, sec. 37. Id. sec. 46, cl. 7.

Under Act VIII of 1879, any rent fixed will be for ten years, or for the period of Settlement, whichever expires first. Id. sec. 113. Act VIII of 1879, sec. 13.

§ 13. *Remarks on the policy of the law.*

In the 'Papers relating to the Bengal Tenancy Act, 1885,' at page 424, the following explanatory remarks are made—

'What has been done has been to give the Revenue Officer in the first instance power to settle all disputes that may come before him. Where no dispute arises, and it does not appear that the tenant is holding land in excess of or less than that for which he is paying rent, and neither the landlord nor the tenant applies for the settlement of a fair rent, the Revenue Officer will record what he finds,—he will not alter rents, and his entries will only have a presumptive value (will be presumed to be true—Section 109—until the contrary is proved) in cases afterwards brought before the Courts. When a dispute arises, or it appears that the tenant is holding land in excess of or less than that for which he is paying rent, or either of the parties applies for the settlement of a fair rent, the Revenue Officer will decide a dispute or settle a fair rent, as the case may be, on the same grounds, by the same rules, and with the same procedure, as a Civil Court. His decision will be liable to appeal to a special Judge, who may or may not be the Judge of the district, and will be subject to a further special appeal to the High Court. In appeal the High Court may settle a new rent, but in so doing, is to be guided by the other rents shown in the rent-roll. In other words, there can be no second appeal to the High Court merely on the ground that the rent has been pitched too high or too low; but if a second appeal is preferred, as it may be, on the ground that the special Judge, owing to some error on a point of law, has (for example) found the holding to comprise more land or less land than it actually does comprise, or has given the raiyat a wrong status, and the appellant succeeds, the High Court can, without altering the rates, reduce or increase the rents, as the case may be.'

§ 14. *Sub-tenants or under-raiyats.*

In addition to settling the rents of raiyats (i.e. tenants not being tenure-holders), the Settlement Officer is bound to record (that is all—for the rent payable is matter of

contract) the rents payable by any sub-tenants, or under-raiyats as the Act calls them.

§ 15. *'Tenures.'*

In many districts the 'sub-infeudation,' which I have before alluded to, has taken place; i.e. the landlord has contracted for the management and collection of his rents with a patnidár or other 'tenure-holder,' and he again with a sub-tenure-holder, and not infrequently he again with a third. Thus there may be quite a chain of interests between the superior landlord and the actual rent-paying cultivator, when rent has been settled in the manner described. And there are other kinds of tenure-holders (not being patnidárs) who are above the grade of ordinary tenants.

The rights of these tenure-holders must be defined and recorded. It may also be necessary to declare them invalid and to set them aside.

If these tenures are found to be binding against the landlord or against Government, it is necessary (unless they are rent-free) to determine the relations in the matter of payments between them and the superior. This is ordinarily done by determining the portion of the total of the cultivating rentals under them which they are entitled to retain and not pass on to their superior or landlord. This deduction must be at least ten per cent., and may be as much more as the Revenue Officer thinks proper under the circumstances of the case (see Section 7).

It is to be remembered that no tenure which has been held rent-free or at a fixed rent since the Permanent Settlement, can now be assessed to rent or enhanced; nor in any case where the facts are such that a suit for resumption in a Civil Court would be held barred by limitation.

§ 16. *Publication of Rent-rolls.*

When the record of rents is complete, if under the earlier law, only so much of it as includes enhancements must be

B. Act VIII of 1879. secs. 9, 10.

published for *four months*, during which period a civil suit to contest the orders may be filed. Under the Tenancy Act, 1885, the *whole* roll has to be published for *one month*, within which objections may be filed (as civil suits) before the Settlement Officer.

§ 17. *Record of Customs, &c.*

In all important Settlements, a record is made of village customs regarding rights of pasture, and waste land, forest, fisheries, and customs as to payment of village officials, and the like.

§ 18. *Assessment of Land-Revenue.*

Where we are dealing with lands that have a recognized proprietor other than the State, there is an assessment of land-revenue, and the Settlement is one strictly so called.

The Government revenue (as above explained) is a proportion of the 'assets,'—i.e. the total rents of raiyat lands, or of tenures which are recognized as binding on the Government[1], *plus* any income from fisheries, jungle, or fruits, or mineral profits (if there are any) belonging to the proprietor.

§ 19. *Proportion of Assets taken by Government.*

The proportion fixed for Settlement-holders (properly so called) is 70 per cent. to Government and 30 to the Settlement-holder.

Where there are, as in Orissa, sarbarákárs or village headmen, who, though Government servants, contract for the revenue of the villages, the amount of the allowance is

[1] Where there are no 'tenures,' the whole rent of the raiyats is taken of course by the proprietors; where there are, the proprietor gets only so much less than the full raiyati rent as the grants of the under-tenure-holders indicate. And if the under-tenures are recognized as binding on Government, the sums received accordingly are recognized as the assets; if the under-tenures are invalid, any deductions are the proprietor's concern. His assets are then regarded as the rents of the raiyats irrespectively of the unrecognizable under-tenure.

regulated by special order of the Board of Revenue in each case.

In Government estates managed direct (khás), or where the raiyats pay direct to Government (raiyatwárí tracts), there is, of course, no question of dividing the proprietary assets between the proprietor and Government, because they are merged in one.

But should Government in any estate make an arrangement for its rental with a tenure-holder, or with one or more of its principal tenants, the rule is to make an allowance of 20 per cent. on the total rental for expenses of collection and farming profits[1].

This is a convenient place at which to offer some remarks on the percentage taken by Government. It should be remarked that the 'proprietor' who gets only 30 per cent., is in reality a person with no strong claims, who is well remunerated by such a proportion of profits. In a letter (N. 1917 Government to Board of Revenue), dated 8th Sept., 1874, it was inquired whether 30 per cent. was not too much, and whether 10 per cent. for expenses of collection and 10 per cent. for profit was not enough. In the Board's office is an excellent printed note (dated 4th June, 1874) on the whole subject. The origin of the percentage was the one-tenth, i.e. 10 per cent. originally allowed (as already stated) by the Native Governments to the Zamíndárs as collectors of the revenue. When the proprietary position of the various kinds of landholder was recognized, naturally it was desired to be a little more liberal, so when Regulation VII of 1822 was passed, section 7 (clause 2) mentions 20 per cent. as the *minimum* profit exclusive of costs of collection. In Bengal 20 per cent. remained the rule, and a circular of 1836 pointed out[2] that the 10 per

[1] It may here be mentioned that when a person entitled to a Settlement refuses the terms, and so the estate is held in farm, 20 per cent. is also allowed to the farmer, and 10 per cent. as málikána to the excluded proprietor for the term of his exclusion. Málikána means anything paid to a proprietor (or oftener ex-proprietor) in recognition of his (lost) right.

[2] The 20 per cent. was supposed to represent 10 per cent. costs of collection *plus* 10 per cent. allowance for profit.

cent. from profits was to be on the balance *after* allowing for 10 per cent. as costs of collection. All this depended on the fact that the so-called proprietor was really a very artificial creation—a mere farmer called proprietor. In other provinces, where the person called landlord was one who had a strong natural right in the land, his profits were larger. He had at first to give 66 per cent. on his assets, very loosely calculated, and when these assets were more closely ascertained his revenue payment was reduced to 45 to 55 per cent. of the *net* assets.

§ 20. *With whom the Settlement is made.*

In temporarily-settled estates there is always some one recognized as proprietor, and he is settled with; and so in the case of resumed or lapsed revenue-free estates. Where it was a Settlement for land that was in excess of the holder's proper estate (in some cases under Regulation II of 1819), the Settlement was made permanent, because at the time no other law existed. But no law declared *all* 'taufír' land to be entitled to such a benefit. Hence, when the Temporary Settlement Law was passed, such lands would be settled under it, and with the person who could prove a title. When it is a Settlement for alluvial accretions to existing estates, which accretions under the law are liable to be separately settled, the Settlement is of course made with the owner of the estate, who is under the alluvion law (Regulation XI of 1825) entitled to the accretions.

§ 21. *Alluvial Settlements.*

I shall not go into details about the special rules regarding 'Deára Settlements,' as they are called—the Settlements of alluvial accretions. They apply to river flats and islands (chars) and to alluvial lands which are not accretions but are the property of Government; they also contain special directions regarding the survey (Deára Survey). They can be read in the Board's 'Settlement Manual,' 1888.

§ 22. *Duration of Settlement.*

For temporary Settlements there is no rule fixing twenty years or thirty years or any other period; the term depends on the circumstances of the estate, and is usually fixed with reference to the period for which occupancy rents are fixed (fifteen years or ten years, according to the law in force). And the periods are further ordered so that they may fall in in successive years in the different divisions, so that Survey and Settlement establishments may proceed from one district to another as their services are required.

§ 23. *Records of Settlement.*

When the record of rents, &c., has been published and has become final, clean copies are prepared for deposit in the Collector's office. Under the Tenancy Act copies or extracts are also given to the landlord and tenants. An abstract or 'tírij' (written also 'terij') is made out, showing, in a convenient form, all the main features of the estate or holding with the owner, tenure-holders, raiyats, &c., and the payments due from each[1].

A general report is then prepared (either for each village or for the whole tract, as may be ordered). It shows—

(*a*) the number of tenants of each class;

(*b*) the area and classification of the village lands according to the Survey and Settlement, and also according to the landlord's own *jamabandi*, if known;

(*c*) the rental according to Settlement and according to the landlord's *jamabandi*, with explanation of increase or decrease, amount of Government revenue, and comparison of rent with revenue;

(*d*) the rates of rent prevailing, with history of past enhancements;

(*e*) proximity to markets;

[1] Called also 'Sadhárán-khatián.' See No. 10 in the Appendix to the Settlement Manual.

(*f*) facilities for irrigation;
(*g*) village customs, including payment of village officials;
(*h*) arrangements made for maintenance of records;
(*i*) other matters deserving of notice which do not find a place in the record of rights.

Besides these particulars, the report will describe the whole tract as regards—

1. General features of the tract.
2. Its fiscal history.
3. Statistical results.
4. Comparison of condition of the tract as regards rentals before and after the Survey.
5. Final results, including approximate division of expenses under the heads of—
   (*a*) Survey.
   (*b*) Record of rights.
   (*c*) Preparation and distribution of records.

The report also makes proposals as to the parties to be settled with, and notices arrangements existing, or to be made, regarding the instalments of rent and revenue, which must be adapted to local circumstances, seasons, and harvests.

§ 24. *Sanction of Settlements.*

When whole districts or large areas are settled, the sanction (as usual) of the Local Government and of the Government of India is required. But many Settlements are of single or limited estates. The following are the powers of sanction in that case:—

Temporary Settlements up to a rental of R. 500 ...	The Collector.
From R. 500 to R. 10,000...	The Commissioner.
From R. 10,000 to R. 25,000	The Board of Revenue.
Also when the Settlement will be permanent under a statutory right	The Board of Revenue.

§ 25. *Supervision.*

The Director of Land Records and Agriculture supervises all Settlements in which the agency of the Survey Department is employed or which are made under the Bengal Tenancy Act; and his services are available for other Settlements at the discretion of the Board. He exercises, in respect of all these Settlements, the powers of a Commissioner, save in matters in which power is by law vested in the Commissioner himself.

§ 26. *Conclusion.*

It may be necessary to repeat here, that for matters of detail, the Acts and Regulations quoted require study, and also the Settlement Manual. The object here (as in the chapter on Revenue business) is not to furnish a complete handbook of details, but an introduction or *general guide to the principles and leading features of the system*,—preparatory to such a detailed study as will be necessary for officers who have actually to take their part in district duty.

§ 27. *General Conspectus of Estates.*

Such being the general principles on which Temporary Settlements are made in tracts owned by private proprietors, and on which Rents are fixed in Government estates (whether raiyatwárí tracts or managed otherwise), it will be desirable, before proceeding to an account of special Settlements in certain exceptional districts, to give some particulars about the general results of Settlements and the distribution of the different classes of estates.

The general map, showing the prevalence of the various Settlement systems, indicates, as far as Bengal is concerned, the Permanent Settlements in one colour, and those districts which are as a whole temporarily settled—i. e. the districts of Orissa—in another colour. An attempt has also been

Division.	District.	Permanent Settlement.		Temporary Settlement.		Government Estates.		Raiyatwárí Tracts.		Remarks.
		No. of Estates.	Revenue in Rupees.	No. of Estates.	Revenue in Rupees.	No. of Estates.	Revenue in Rupees.	No. of Estates.	Revenue in Rupees.	
Bardwán	Bardwán	4838	76,87,377	30	4,609	141	4,631			
	Bankura.....	890		—	.....	19	913			
	Bírbhúm	1001		1	156	1	125			
	Midnapore.....	2696		29	4,82,759	224	48,105			
	Hooghly with Howra	3615		72	5,213	245	38,420			
Presidency	24-Pergunnahs	1588	44,45,113	122	66,521	67*	1,93,484	1	83,322	* There is one Government estate in *Calcutta* included here.
	Nadiya	2197		160	50,262	102	18,667			
	Jessore	2437		50	4,845	95	3,252			
	Khúlná	759		26	7,740	172	1,31,820			
	Murshidábád...	2315		65	29,333	67	27,736			
Rájsháhí	Dinájpur	747	4,84,081	2	8	10	285			
	Rájsháhí	1365		31	2,590	27	14,335			
	Rangpur.....	613		19	2,208	6	354			
	Bogra	670		...	.....	8	38,945			
	Pabná	1714		73	28,335	49	3,099			
	Darjiling	1		...	.....	107	24,990	5	91,799	
	Jalpáigúrí	82		...	.....	...	.....	5*	2,77,144	* The Bhután Dwárs.
Dacca	Dacca	8181	26,42,749	287	39,233	152	37,403			
	Faridpur	5647		153	96,073	164	31,421			
	Backergunge...	3015		212	1,35,091	358	2,34,605	1*	1,02,438	* The Túshkháli estate.
	Mymensingh...	6645		193	63,928	70	19,340			