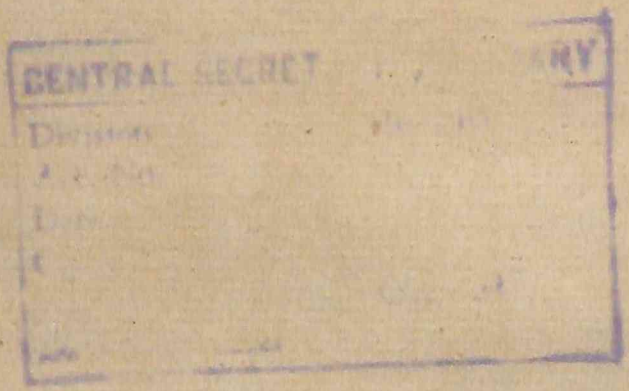

STRIKE BUT HEAR.

A

TREATISE ON THE RENT QUESTION

IN

BENGAL.

BY

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ZEMINDAR

Mymensing.

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APPENDIX.

The law relating to distraint is considered as a hard measure and open to be abused by the Zemindars. The Behar Zemindars have been charged with the abuse of the power given to them by the law relating to distraint; but as far as my experience of Eastern Bengal goes, I can safely assert without fear of contradiction that the law of distraint, on account of the sympathy of the Moonsiffs for the ryots and the lying propensity of the latter, has become quite useless.

95 per cent of the ryots either resist distraint or forcibly, or clandestinely remove the distrained property, and when they do so, zemindars very seldom succeed in getting them punished under section C, I, of Act VIII (B. C,) of 1869.; because in such cases the villagers generally appear and give evidence in favour of the accused ryot. The witnesses for the zemidars are disbelieved on the ground that they are the servants of the zemindars and do not reside in the village where the occurence took place. Whenever a charge under section C, I, is brought against a defaulting ryot, he denies every thing from the beginning to end, and his allegations are supported by the evidence of the other ryots of the village who have a common cause to oppose the zemindar in the recovery of his rents. But when a combination is formed by the ryots to withhold the payment of their rents, no servant of the zemindar ventures to go to the village for the purpose of distraining the crops,

Section 74 of Act VIII (B. C), of 1869 affords facilities to the defaulting ryot to remove the distrained property to the prejudice of the zemindar; when the defaulter receives notice of the distraint, he generally comes first in the field to reap the crops, and it frequently happens, that fights take place no sooner zemindar's men and the ryot meet in the field: defaulting ryots very seldom care to obey the distraint made by the zemindars, and whenever the ryots are detected in the act of removing the crops they generally become desperate and assault the zemindar's men seriously, and sometimes these fights end with serious consequences. To remedy these evils I would propose the following alterations in the existing law for distraint.

(1.) The District and Sub-Divisional Officers should be authorized, on application from the zemindars, to distrain the crops through the agency of the regular police.

(2.) The order of distraint and demand for the arrear should be issued simultaneously.

(3.) The officer issuing the distraint should be authorized to punish the defaulter for disturbing the distraint.

(4.) One application should be allowed against any number of defaulters in the same or contiguous villages.

(5.) The officer entrusted with the distraint should be authorized to compel the attendance of the defaulters to reap the harvest ; and they should also be requested to come forward with their friends to reap the harvest as they always do in the reaping season ; if they neglect to do so, the officer entrusted with the distraint should be allowed to hire labourers, and he should report about the storing of the crops to the officer in charge of the nearest police station, who should proceed to the spot and sale the crops within 10 days of the storing of the crops.

CHAPTER I.

Perhaps Chapter V. of the Bill is intended as a punishment the Zemindars of Behar who, it seems, have committed the npardonable crime of protecting their own interests by not llowing a new right of occupancy to spring up on land and in persons other than those protected by the Code of 1793. Our rulers might have as well made a law prohibiting all the Banks of India to sue their debtors within the prescribed period of limitation, for it weighs very hard against the poor debtors to be thus sued and sold off in auction for the realization of money borrowed by them. I admit I have put an extreme case, but the principle is the same. If the zemindars can be blamed for not allowing a right of occupancy to spring up on their lands, bankers can then be equally blamed for not allowing their numerous bonds to be barred by limitation. In both the cases no t reason can be assigned for such legislative interference, pt the sentimentality of our Rulers. Has the Government uired whether the present mode of letting lands by short term ases and of not keeping the same lands under the same ryot or a period sufficient to create the right of occupancy, was introduced in Behar since the passing of Act X. of 1859, or om a time long before that period? I think if the ryots of Behar were resident ryots in the same sense as the Bengal ryots occupied the identical plots of land for years and sometimes for generations, the Behar landlords could not have introduced a new system so easily and rendered it universal within the last twenty years. When we look to the vast number of men, women and children that annually emigrate to Assam, it is not unreasonable to suppose that the Behar ryots have not the same attachment for their hearth and home as the Bengal ryots have. I need not dwell any more on the subject; I leave it to the Zemindars of Behar to defend their own cause. About $\frac{3}{4}$ of the lands in

Patna and Gya Districts are cultivated by opium. Government is yearly increasing the price of opium, of course with best of motives *i. e.*, simply to deter people from opium eating. Cannot the cultivators expect a little increase in the price they receive from Government?

Now let me proceed to consider the injurious effects of this Chapter (V) as far as Bengal proper is concerned. I would ask my readers to consider Chapter V of the Bill and they will be able to see how it would affect the Zemindar in the cases put below by way of illustration.

I. A, B and C have a village called Rampore appertaining to three different estates but included within the same exterior boundary of the Survey map. Shaik Tamiz lived for 8 years in that part of the village which belongs to A and had 4 Cottahs of land only, and for another 3 years and odd months, held 4 Cottahs in B's village. In July 1883, without changing his residence, takes 3 years lease for 30 Bighas of land from C, which were before under the cultivation of different resident ryots but Master Tamiz on the 3rd of March 1883 gets a right of occupancy over that land to the exclusion of the resident ryots, and poor C for no fault of his own is deprived of the possessory right of these 30 Biggahs of lands.

II. A, B, C and D had their *Zemindaree* partitioned in 1854. Shaik Tamiz held 2 Cottahs of land under A in village Rampore, in 1860 removes his *Baree* to Shampore some forty miles from the first village and takes 3 Cottahs of land from B and then in 1882 he again removes his *Baree* (house) to Krishnapore some thirty miles north of Shampore and erects a hut there in the Zemindary of C. In Pous 1882 some of the old resident ryots of Jadubpore belonging to D gave up about 30 Biggahs of land which Shaik Tamiz takes on a terminable lease of 2 years but on the 2nd of March 1883 he becomes an occupancy ryot with all the advantages conferred on that

favoured class of tenants; so without even an warning D is deprived of the 30 Biggahs of land and the resident ryots also lose their lands for ever. I think it is needless to multiply instances showing the injustice of the rule contained in Chapter V of the Bill. According to the common law of the Zemindars, lands wanted by resident ryots can not be given to or retained by, non-resident ryots. Such is the effect of Chapter V that persons who were squatters according to their own conduct, will suddenly acquire a right which could only be acquired by grant or prescription. A very high officer observed "as soon as this Bill becomes law the Zemindars will lose every bit of their cultivated lands." According to the provisions of the present Bill, lands given to Shaik Tamiz on the 1st of March will become, notwithstanding any contract to the contrary, his absolute property on the 3rd day of March 1883. I do not see the justice of the rule according to which a settled ryot shall, notwithstanding any contract to the contrary, acquire a right of occupancy over every plot of land found in his possession on the 3rd of March 1883 (*vide* Section 45 and 47). Our rulers tell us that they simply want to restore the ryots to their former position. Admitting for arguments' sake that *Khoodkust* ryots of old, acquired right of occupancy over land as soon as they cultivated them, may I ask whether any instance can be shewn in which a Pycust ryot even claimed any such right? The distinction between the Khoodkust and Pycust ryots depended on whether the ryot resided in his own holding or not. If the Bill aims at the restoration of the former state of affairs, then why it takes away the distinction between the two classes of ryots which has all along been observed in Bengal? Pycust ryots had to give up their lands for the benefit of the Khoodkust ryots and new resident ryots, who wanted lands for cultivation; in fact Pycust ryots held lands at the mercy of the resident ryots, whether old or new, and they had to give up their lands when Zemindars required them for new ryots; and nobody can

deny that this was the common law of Bengal prior to the passing of the Act X of 1859. Unless Lord Ripon means to confer to the ryots some rights which the peasantry of Bengal may have enjoyed some thousands of years ago, I do not think the ryots would be benefitted if they are restored to what were their actual effective and recognized rights in 1793, and in the preceding 700 or 800 years. Lord Ripon is of opinion that the rights of the Bengal peasantry have been gradually curtailed since the Permanent Settlement. But what are the facts which led his Lordship to come to this conclusion, we are really at a loss to understand. Can it be supposed for a moment that at a time when the Mogul Government had lost all its prestige and power, when every powerful man who could collect a few hundred men, aspired to create an independent Raj for himself, when Houses like Burdwan, Nattore and Dinajpore openly defied the puppet Nizam of Bengal, when the pettiest land-holder exercised the powers of an autocrat, the ryots of Bengal had greater rights than they possess now under the all powerful British rule !!! I have every reason to believe that the privileges given to the *Khoodkust* ryots by the Code of 1793, at any rate the provisions regarding the Pergunnah rate were entirely new and were legalized for the benefit of the ryots who were found residing in their holdings from a time long before the Permanent settlement.

CHAPTER II.

Khoodkust Ryots.

It may be safely asserted that up to 1845 the Courts and the people of Bengal were equally ignorant of any right of occupancy except that recognized by the Revenue Sale law of the same year Act I of 1845, as existing in the *Khoodkust* ryots, who having held by themselves and their ancestors from before the Permanent settlement were in 1845 also called *Kudim* or

old ryots, and whose pattahs were not to be cancelled by the Zemindar except where they paid less than the Purgunnah rate, or when the pattah had been improperly obtained. Since the Permanent settlement, some other ryots also obtained a right of occupancy by prescription and sometimes by the application of the doctrine of acquiescence; as for instance, when Zemindars allowed the ryots to dig tanks and plant valuable orchards. But this right was not judicially recognized until 1845. Before 1859, a ryot whether *Kudim Khoodkust* or modern *Khoodkust* had a right of occupancy only over the land which he acquired from the Zemindar along with his *Bastu lands i. e.* when the ryot first settled in the village, and this right Zemindars considered themselves morally bound to allow to the ryots on the ground that the said lands were given to them as an inducement for changing their homesteads, but the right of occupancy which accrued to modern *Khoodkust* ryots depended upon their paying the rent demanded by the Zemindar. They could not be ousted from their lands if they agreed to pay the rent demanded of them, they could not acquire a right of occupancy over lands subsequently acquired by them. As to these lands they were looked upon as *Pycust* ryots, and had to give up those lands for the benefit of the new settlers and other necessary purposes of the Zemindar. These distinctions were legally taken away by Act X of 1859, and 12 years right of occupancy was created, according to this rule of the law, a ryot acquired right of occupancy by holding the same land for 12 years. But I do not think any one has ever heard of such a right of occupancy as contemplated by the new Tenancy Bill. According to the framers of the Bill every settled ryot of a village or estate, as defined in Section 45 shall acquire right of occupancy over every bit of land held by him after the 2nd day of March, 1883. A and B two brothers had a big Purgunah situated in Dacca and Mymensing. A and B partitioned the Purgunah in 1854, (see Section 43) A obtained that part of

the Purganah which is situated in Dacca, and B obtained the portion appertaining to Mymensing. Shaik Tamiz held a cottah of land since 1854 in A's Zemindary. On the 3rd of February 1883 he takes a lease for 100 Biggahs of land in B's Zemindary, with this express stipulation that in March 1884, he shall give up the land so acquired by him, but on the 3rd March 1883 he acquires a right of occupancy over that 100 Biggahs of land. Thus it will be seen that our rulers by a stroke of their pen, without even an warning, deprived B and his resident ryots from the use and occupation of 100 Biggahs of land for ever and Shaik Tamiz without spending a cowrie for the improvement of the said lands and being a squatter, according to his own showing, suddenly becomes a land-holder and not only this, Shaik Tamiz and his descendants, notwithstanding any contract to the contrary, will acquire a right of occupancy over every bit of land which may be found in his possession since the 3rd of March 1883, till doomsday. Shaik Tamiz will acquire a right of occupancy over lands held by him even for a day ; for Section 47 does not prescribe any definite period for the acquisition of the right of occupancy for the settled ryots ; so they will, after the 3rd of March 1883, acquire right of occupancy over lands as soon as they enter into them as ryots. It will be seen that this Chapter of the Bill will injure the very class of ryots, viz, real *Khoodkust*, for whose benefit it is sought to be enacted, for at the expiration of the period of the lease these 100 Bigahs of land might have been divided between the resident ryots of the village. Now Shaik Tamiz will live in the District of Dacca and sublet these 100 Bigahs of land to those *Khoodkust* ryots at rack rents and after the expiration of the term of the lease he will be able to extort highest *Nuzur* by way of bonus for resettlement of those lands. Where lies the justice of this arbitrary distribution of private property, we are really at a loss to understand. Philanthropy is, indeed, a good thing so long as one's purse is not touched.

It will not be out of place to give here a short history of the right of occupancy as created by Act X of 1859. If we search the published Reports for over fifty years after the Code of 1793, no traces are to be found of the right of occupancy in any one but the *Khoodkusts* ryots of 1793.

The decisions from 1793 to 1845 show no vestige of any thing like a claim even by any tenant to any right in the land-owner's soil to be acquired by any inherent power of growth or extension, by long occupation, or by the law of limitation. On the other hand many of the cases are totally inconsistent with the possibility of any such right having accrued, grown, or extended since 1793. In 1823 a case was decided in the Sudder Court by Mr. C. Smith and his brother Judges who had begun their Indian career before or soon after the Code of 1793 came into operation, and to whom, therefore, the real sense and meaning of the policy of the Permanent settlement had come down as a familiar fact. They ruled that the fact of a tenant having held his land at the same low rent from 1785 to 1819 did not deprive the landlord to enhance the rent. (3 Sel. Rep. 221.)

It may safely be asserted that before the year 1845, the Courts and people of Bengal were equally ignorant of any right of occupancy except that recognized by the legislature in the Revenue sale law of the same year (Act I of 1845) as existing in the *Khoodkust* ryots who having held by themselves and their ancestors from before the Permanent settlement were, in 1845, also called *Kudim* or old ryots and whose Pottas were not to be cancelled by the Zemindar except when they paid less than the Purganah rate or when the Pottah had been improperly obtained.

In 1845 questions began to be raised in Sudder Court on the 12 years Law of limitation, both as to whether after taking the same rent for more than 12 years the landlord could raise it, and as to whether after a tenant had cultivated the same land for more than 12 years, his landlord could eject him. In 1859

Baboo Krishna Kissore Ghose late Senior Government Pleader of the High Court, whose character and long experience in the Sudder Court, gave the weight of authority to his words, is reported to have stated in the course of his arguments that this question of limitation as between landlord and tenant, where there was no adverse holding, was never mooted before 1845. The Judges of the Sudder Court from 1845 to 1856 were, however, more indulgent to the arguments in favor of the ryot and against the Zemindar. On the point of limitation, however, barring the right to raise the rent, the decisions were conflicting, but ultimately it was settled that limitation did not apply to raising of the rent.

As to eviction, the question first arose in cases where the Zemindar sued to evict his tenant from land held in excess of the area held under his lease. In 1846 the Sudder Court decided that 12 years law of limitation prevented such evictions after 12 years holding (S. D. D. 1846, P. 358.) This decision published in Sudder decisions was constantly quoted and ultimately amplified, till it led to the theory of 12 years holding giving a right of occupancy, subsequently enshrined in Act X of 1859. In 1849 two Sudder Judges out of three laid down the same doctrine under the same circumstances on the authority of the case decided in 1846. (S. D. D. 1849, p. 413). In 1856 it was finally held by the Sudder Court that the tenant may acquire a right of occupancy by prescription.

Thus here for the first time, 53 years after the Permanent Settlement, we have the idea propounded that right of occupancy could have grown up, since the code of 1793, on land and in persons other than those protected by the terms of the code. In other words it was now decided for the first time that the remaining lands beyond that held by the protected ryots which by that code were given to the Zemindar "as actual proprietor of the soil and *to be let by him in whatever manner he may think proper*"

had, by the virtue of that very Code, passed out of his control and absolute disposal, by the stealthy growth of the right of occupancy. The theory seems to have been, that if a Zemindar might have raised his rent or might have evicted his tenant 12 years before and had been kind enough to content himself with the old rent and let the tenant stay on; he should be held to have debarred himself thereby from ever afterwards resorting to his undoubted right. It has become too much the fashion now to assert that the Code of 1793, creating the Permanent settlement, did not define the rights of the actual cultivators of the soil, and that the extent of their rights was left to be determined by the subsequent generations of officers. It is true that the Code of 1793 is wisely silent as to any theoretical and obsolete rights in the peasantry of Bengal, but it can be clearly seen that it deals with all the actual known rights then practically owned by them. In 1793 the Ryots of Bengal possessed lands under the name of either *Khoodkust* or *Pykust* Ryoti-tenure, and these facts were known to the framers of the Code and they did their best to protect these rights consistently with the recognized customs of the country. As to any other hidden rights of the Bengal peasants, a well-known writer on the rent questions, writes thus "what were the actual peasant rights "in Bengal both at the perpetual settlement and up to Act X? "This lies at the root of the subject, as being the natural develope- "ment of the existing progress of Society, and as such the "surest guides to our future legislation. The answer will also "enable us to meet the arguments of those who cannot deny "our abstract of the Code of 1793, and of the subsequent judicial "interpretation, but who resist the inevitable conclusion by saying "that some rights of occupancy have, notwithstanding, all along "existed and been claimed by the Bengal peasant, and that "therefore the mere silence of the Code of 1793, on the sub- "ject is not conclusive as to the rights of the peasantry. Comments "have also been made to the effect, that the Code of 1793, means,

by the general term *Khoodkust*, any occupancy rights which "might afterwards be found to exist and which the despatch of the "Court of Directors of 29th September 1792 said "were not and "could not then be ascertained" and that the Code consequently "was so framed as to leave peasants' rights for future recognition, "when the Revenue Officer should be able to discover them. "It is also said that Permanent settlement of Bengal deprived "the Government of any further interest in the Bengal land "tenures, and that consequently the officials never made any "further enquiries as to the peasants' rights in Bengal. Such "undoubtedly has been the official theory of late years and "particularly since Holt Mackenzies' Act, as applied in the "North-Western Provinces, had led to the discovery and to the "record of peasant rights there.

"The inference therefore arose that similar peasant rights, "had all along existed in Bengal and that inference was, as we "have shown, first judicially recognized in 1856 and then "legislatively enacted by Act X of 1859. As this argument of "the hidden rights of Bengal peasants will no doubt bear strongly "on any alteration of Act X, we shall first of all consider "what degree of truth may underlie it.

"The first point, that naturally excites wonder is, that if "such rights really existed as then acknowledged facts, previous "to the Code of 1793, there should be any doubt about them. "If the French were to conquer England and Ireland and then "enquire as to our landed tenures, there could be no doubt that "they would immediately discover the rights of copyhold "tenants in England, and the tenant right of the North of Ireland. "But if philanthropists among them were to contend that "the land did not, of right, belong to the present English and "Irish land-lords, but to the peasantry, because the Saxon "Franklin had been deprived of his rights by the Norman con-"queror and because the Celtic landowner had been unjustly

ejected by Strongbow's followers, by the English of the "Pale, and by the crown grantees under the Tudors and the Stuarts, "no doubt the French would have much difficulty in ascertaining "whether these rights did or did not exist. They would, of course, "find plenty of claimants both in Ireland, and some parts of "England, who would loudly proclaim and in some cases even "prove their ancestors' proprietary holdings and who would be "discreetly silent as to the means by which those holdings or at "least the proprietary right therein, had passed to their present "land-lords. Some Cynic might perhaps object, that if the "rights claimed were more, or other than mere rights of property "which by one means or another had passed to the present land-"holders, these rights would at least have a name and some late "recognition in the public life of the people whose conquest has "just been effected, and that, if actually existing, there could be "no doubt about the fact and no difficulty in ascertaining it.

"Now this was exactly the case in Bengal before the perpetual "settlement. Mr. Grant and the other supporters of the peasants "right to be declared the landowners instead of the Zemindar, "set up the same antiquated claims on behalf of the Bengal "peasant. They were obliged to admit that, in the actual state "of things, as we found them, such rights were at least dormant "if not obsolete, but this of course was attributed to the usurpa-"tion of the Zemindars. The East India Company was urged "by them to act on claims of right, instead of on existing facts "and to declare the peasants of Bengal, the landowners, dis-"missing Zemindars, whom they called tax Collectors, with some "pecuniary compensation.

"A policy of the same kind was initiated in Oudh by Lord "Dalhousie on the annexation of that country, when "his officials began ripping up titles and taking the land "from its actual possessors to restore it to claimants, alleging "that they or their ancestors had been wrongfully dispossessed.

"As the time of this change in Oudh was favorable to revolt, "the rebellion broke out there with the completeness and un- "animity, which we all remember, and was only stayed by "Lord Canning's proclamation of general confiscation, and by "the Oudh leaders being informed that this was merely a means "of the setting the proceedings of Lord Dalhousie's revenue "officers, aside, and of thus restoring the estate to the actual "possessors at the time of the annexation. Since this had been "carried out and the country has been remade into large land- "lord estates, Oudh has not only been peaceful, but is one of the "most rapidly progressive of our Indian Provinces.

"But Lord Cornwallis, backed by Lord Teignmauth, then "Mr. Shore, and by his other eminent followers, was too wise to "act on antiquated claims instead of on existing facts, and "therefore he made the zemindars, landowners instead of the "peasants, while at the same time we recognized such rights in "the peasantry as had an actual existence and a name. Altho' "the Court of Directors in deciding between the supporters of "peasantry and the supporters of the zemindars as landowners, "might say that the rights of the ryots were not and could not "then be ascertained, there is no reason to believe that Lord "Cornwalis and his supporters had any doubts as to their "then existing rights, whatever opinion might be entertained as "to the former rights of which they had been deprived during "the 800 years of the Mussulman conquest. The existing rights "then claimed were all comprised under the two heads of "Khoodkust and Pykust ryot, and till Act X. of 1859, neither ryot "nor Zemindar in Bengal knew of any other ryoti tenure than "some form of one or other of these two genuine terms. Till "the Perpetual Settlement, the officials in Bengal performed for "Government much the same duties as the Dewan or Head "Steward now does for the Zemindar landowner and to them "those terms, with all the incidents attaching thereto must have "been much more familiar than they could possibly be to the later

" officials who only dealt with the Zemindar and the expression of
" whose ignorance culminated in the doctrine that a Khoodkust
" Ryot's tenure grow.

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

"Khoodkust Ryoti tenure where the advantage of fixity to the "peasant was made to correspond with the land-lord's security "by the tenant's continued residence and cultivation, and to cease "with the tenant's removal. Under this tenure the peasant had "no power of under-letting or otherwise alienating any portion "of his land-lord's land in his occupation, but merely had a "permanency as long as he afforded to his land-lord a corres- "ponding security by his continued residence and cultivation.

CHAPTER III.

We have shown that the framers of the Code of 1793, took every possible care to protect the then existing rights of all tenants, which could be then ascertained by them, and that lands not occupied by any of the protected tenants were given to the Zemindars, as an inducement to accept the settlement at a fixed revenue, which they could hardly pay during several years to come.

It is now contended that some such right as that which we usually term a right of occupancy did originally belong, and ought now to be recognized as belonging to all Ryots in Bengal, except those whose occupation of the land is merely of a transitory nature. When our rulers have started with this idea to pass a law for the benefit of the tenant, it is no wonder that they should consider themselves justified in recognizing this right of occupancy as belonging to all such tenants, as may be shown to be settled ryots as defined in Chap V of the Bill, and thereby show to the world that they are lenient towards the Zemindars, for according to their opinion, this right could have been given to all ryots. Mr. Harrington who is justly looked upon as an authority in rent questions observes:—

"In Bengal and other provinces there are no such little republics or village communities without a Zemindar, Talukdar, or other superior land-holders and (here) as justly observed by Mr. Rows at the time when (these provinces were ceded to the East India Company, the country was distributed among Zemindars and Talukdars." Mr. Mackenzie in introducing a small bill to render the right of occupancy transferable, observed "I am perfectly willing to admit that the rule of prescriptive occupancy introduced by Section 6 of Act X of 1859 had the effect of conferring valuable right upon a class of ryots, who under the law as it stood up to that time and under the custom of the country had practically no rights. "I am ready to admit that the section is *based* upon a misconception and is justified by reference to a supposed state of things in the N. W. Provinces, which had no existence in Bengal. But those who press this argument, too often forget that inasmuch as the only other priviledged ryots recognized by Act X., are those who have held or claimed to hold at fixed rates from the Permanent Settlement, it is clear that all the vast body of Resident cultivators who had right of occupancy in the soil (perhaps the Mover means by virtue of the regulations creating the Permanent Settlement, but who were not protected absolutely from enhancement of rent, are now comprehended under the terms "ryots having rights of occupancy." I believe myself that the margin of squatters and tenants at will incorporated with this class by the operation of Section 6, is in most districts so small as to be actually inappreciable". From this supposed state of facts the Hon'ble Mover on the one hand tells us that the right of occupancy given by Section 6 was not a hardship upon the Zemindars, for it gave the right to the very persons who had that right by virtue of Lord Cornwallis' Great Code. It is true that to some of them this right was given for the first time but their number was so small "that in many districts it was inappreciable."

And secondly when most of these ryots have a right of occupancy from so long a time as Permanent Settlement, Zemindars have no ground to complain, if these rights are now rendered transferable.

With due deference to the Hon'ble Mover's opinion, I take the liberty to say, that the number of the Khoodkust ryots *i. e.*, resident ryots or their descendants, who held land at the time of the Permanent Settlement was so small at the time of the passing of the Act X of 1859, that it would not be an exaggeration to say, that one in a hundred, could not claim to hold that position. This fact may be made as clear as day light, simply by enquiring into the facts what was the population of Bengal in 1793, and what was the area and quantity of land under cultivation at that time. Before believing that very few ryots, had for the first time obtained the right of occupancy under Act X, one must believe that the quantity of land under cultivation in 1859, was very little in excess of what was under cultivation in 1793, and that during these two periods the population was almost the same. To make out a case for a ryot that he had right of occupancy under the regulations of 1793, it will not be sufficient that his grand-father was a resident cultivator in village Rampore, but it must be shown that the particular plots of land now held by him were actually held by his grand-father as Khoodkust Ryot at the time of the Permanent Settlement, and are not included in the remaining lands given to the Zemindar to be let by him in whatever manner *he may think proper*. I do not think any evidence is necessary to show that at the time of the Permanent settlement only a very insignificant part of each Pergunnah was under cultivation. Within the last 20 years, more than $\frac{1}{3}$ of Pergunnah Alapsing, and half of Pergunnah Mymensing, have become cultivated. Was not only ten per cent of the gross collections given to the Zemindars at the time of the Permanent settlement? So may not a very fair idea be formed of the quantity of lands under cultivation

at the time of the settlement, from the amount of Sudder *Jamah*, each Pergunnah pays to the Government? I do not think any one will urge, that the Zemindars obtained their profits simply by enhancing the rate of the rent, and not by the extension of the cultivation of the fallow lands, which were given to them by the Great Code of 1793 to be used by them in whatever way they liked.

It will be seen that even according to Mr. Mackenzie, the right of occupancy, as given by the Act X of 1859, is altogether a new right. The idea of making right of occupancy universal, did not occur to our rulers, when the bill was first introduced; but they are now so much influenced by that idea that Hon'ble Mr. Reynolds would not allow any Zemindar to grant a right of occupancy to his ryot. "The occupancy right cannot be granted by land-lord, (perhaps the word "land-lord" was used by mistake) for it is not his to grant, it is essentially inherent in the status of the resident cultivators." Englishman, March 16, 1883. Supplement.

Now the friends of the ryots may fairly ask the Zemindars, whether after the working of Act X for so many years, they wish to take away the right of occupancy from all ryots, save those who can come within the category of the *Kudim Khoodkust* of Bengal Ragulations. On the other hand, it may fairly be asked by the Zemindars, whether it would be just to create a right of occupancy as contemplated by "The Bengal Tenancy Bill" *i. e.* a right of occupancy by a touch of the land, unless the Government wants to introduce a revolution shocking to all ideas of right and property. I think it may, without creating any ill feeling on either side, amend the law relating to the acquisition of the right of occupancy in the following way.

I. Let there be a right of occupancy for the resident ryots by holding the same lands of their village for 12 years. A

village divided between two or three Zemindars should be considered as two or three villages for the purpose of this rule, unless the ryot can show that he held the land under his occupation prior to the division.

II. When a Zemindar grants a lease to a ryot comprising lands for *Bastu* as well as for cultivation, the ryot should get a right of occupancy over the lands comprised in the lease immediately on his erecting a house and residing there with his family. When such ryot is obstructed, he ought to be allowed to sue for enforcing the contract. To all other lands subsequently acquired by such ryot in the same village, let him acquire a right of occupancy by the rule of 12 years prescription. As to this kind of land a ryot could never acquire a right of occupancy prior to Act X of 1859. He was looked upon as *Khoodkust* ryot, with regard to land given to him as an inducement for his coming and settling in the village as resident cultivator; but to all other lands subsequently acquired by him, he was looked upon as *Pykust* ryot. But on account of the supine negligence of the Tesildars, ryots were generally allowed to amalgamate the subsequently acquired lands with those of the Khoodkust tenure, and in course of time by paying the rent under one heading, so mixed up the tenures, that it became difficult for the Zemindars to distinguish the new from the old one. By this means the resident ryot who had acquired land subsequently, acquired the status of a Khoodkust tenant over that land also. A purely Pykust ryot was first to be ejected, before the extra lands *i. e.* subsequently acquired by Khoodkust ryot, could be taken from him. Pykust ryot could never acquire a right of occupancy by holding the same land for 12 years. Extra lands belonging to the Khoodkust ryots could also be taken from them for the benefit of the new settlers or other resident ryots, when the growing necessities of the family needed more lands.

III. Ryots of one village should not acquire a right of occupancy in another village. This right is looked upon with very great jealousy by the ryots themselves. Many people consider that the Zemindars have no rule to guide themselves in the management of their Zemindaries. They evict their tenants and enhance their rents at their own caprices. But on enquiry it will be seen, that like the 12 Tables of the Romans, the Zemindars have certain traditionary rules which were invariably observed in letting out their lands. These rules will go to show, that they were the bye-laws of the great Code of 1793, and had for their object the extension of the cultivation of the fallow lands of the country, as aimed by the Regulations creating the Permanent Settlement.

Rule (I). No Zemindar would oust a *Bastoo* ryot from his homestead land.

(II). No Zemindar would evict a ryot from any portion of his *Nej Jote* or *Jeerat* lands, except on any of the following reasons:—

(1). That a ryot from another village wants to come and settle with the intention of cultivating certain quantity of fallow lands, provided he gets some paddy lands. In this case every ryot having extra lands *i. e.* lands which he lets out on *Adhi* or *Bhag Jote* system, or *Jeerat* land *i. e.* those subsequently acquired and contiguous to the new comers' *Baree* or fallow lands, must each of them give up a portion of such lands to make up the quantity of land required by the new ryot, and if necessary, any plot of the *Jeerut Jote* or whole of it must be given up.

(2). *Bheetee* ryots, who have extra *Jotes* under their cultivation paying low rents, must give up such *Jotes*, if new ryots come to settle in the village. Under all circumstances, on the coming of a new ryot, the old ryots must make room for him unless it creates very great hardship upon the old ryots.

(3). Competition is allowed with regard to *Jeerat Jote* or extra Jote lands among the old resident ryots.

Explanations.

(a). Lands appertaining to the Jote attached to the Baree of a ryot is called *Nij Jote.*

(b). Lands appertaining to a vacant Baree or having no Bhetee is called *Jeerat Jote,* whether held at full rate or quit rent.

(c). On the coming of a new ryot wishing to take up fallow lands, paddy lands must be selected, first from the Jeeruts paying quit rents and then from those paying full rates, and lastly from Nij Jote.

(d). Applications of ryots for Baree and Jote must be discouraged, when they can not be supplied with lands, except from Nij Jotes. Such applications are granted only on the ground of extreme necessity.

CHAPTER IV.

Another charge brought against the Bengal Zemindars, is that they have deprived the old *Khoodkust* ryots from their right of holding their lands at the Pergunnah rate. Apart from the question about the existence of any uniform rate in any Pergunnah, and whether the said rate could be enhanced by the Zemindars, I proceed to show that the ryots themselves lost that right (if any) by their own act.

Perhaps it will be conceded that excepting the lands occupied by the protected ryots, the remaining lands were given up to the Zemindar, to be let by him in whatever manner he may think proper (Section 52 Regulation VIII 1793.) Now as these remaining lands gradually began to be fit for cultivation and produce greater quantity of crops than the old lands, old ryots gave up their old lands and took up these new lands, according to the terms

demanded by the Zemindars: ryots paid higher rents for their own advantage. So on the other hand the lands given up by the old ryots, having remained in an uncultivated state for few years, attracted other new ryots, who gladly gave higher rents for them. So with the increase in the price of the produce and population, the value of the land also increased. It was the natural consequence of the operation of the rules of demand and supply. Trevor J remarked "To suppose that a Pergunnah or local rate could be permanently fixed in amount when the circumstances of the country were improving, is to suppose an impossible state of things" F. B. R. 211-226. Now to make amends for the past and to punish the Zemindars of Behar the framers of the Bill want to make right of occupancy inherent in the status of every resident cultivator, who has only to plough the land and immediately acquire a right of occupancy over it with the power of transfer. We have heard people say "such a thing can be obtained for asking," but this right of occupancy can be obtained not only without asking but notwithstanding any contract to the contrary. We are further told that Act X of 1859, has for the first time given us the power of enhancing the rents of our Ryots on the grounds stated in the 2nd and 3rd clauses of Section 17 of the said Act (See Section 18, Act VIII of 1869 B.C.), and that under the Permanent Settlement Regs, the Zemindars had no power to enhance the rates of rents payable by Ryots, and that the Pergunnah rate was fixed by authority what the Zemindars could not alter or vary. It is true that the rent of *Khoodkust* Ryots could only be enhanced under certain grounds stated in Section 60 Regulation VIII of 1793; but the rent of all other lands, which were cultivated since Permanent Settlement could be enhanced by the Zemindars without assigning any reason whatever: the ryots held these lands as tenants at will. Under the

plenary power which the Zemindar possessed of letting his remaining lands there was no necessity for providing any special grounds for enhancement. Zemindars were not bound down to any particular grounds for enhancing the rent of those lands. So it will be seen that with regard to the *remaining lands* the power of the zemindar was curtailed, and one universal rule for enhancement of rent of all kinds of lands was provided by Section 17, in accordance to the grounds stated therein only that the zemindars, can enhance the rent. As for enhancing the rent under the 2nd and 3rd grounds stated in section 17 of Act X of 1859, (see Section 18 Act XVIII of 1869 B. C.) it is hardly necessary to observe, that according to the intricate rules of calculation introduced by the High Court, enhancement of rent by a suit in Court has become an impossibility, (see W. R. Vol. VII. P. 94).

Now I proceed to consider the question whether a Zemindar can enhance the rent of *Kudim Khoodkust* ryot, beyond the Pergunnah rate. I hope it will be conceded that their rents, when happen to fall below the prevailing rate of the Pergunnah can be enhanced. It must be admitted that under the Regulations of 1793, a Zemindar could not enhance the rent of any individual Khoodkust ryot, without raising the rate of the whole village or Pergunnah, as the case might be. He could, no doubt, enhance the rate of the Pergunnah by a general measurement of the Pergunnah or village for the purpose of equalizing and correcting the assessment. (see Section 60 Re. VIII of 1793). This section, no doubt gave the Zemindar the right of enhancing the rent, as the productive power of the land increased. If we go through the minutes and correspondence of 1793 as recorded and made by the authors of the Permanent Settlement, it will be seen that their utmost desire was to put a check upon the imposition of *Abwabs* only, which were probably belived to be something essentially distinct from rent. They were probably accepted to be

akin to taxes as understood in England, and as such the imposition of *Abwabs* was looked upon with great jealousy. The right of the zemindar to receive rents from all ryots, according to the capability of the land, was never questioned. Lord Cornwallis, in order to show that the interference of the sovereign power with the right of the Zemindars to impose taxes was not in consistent with their proprietory right, observes, "If Mr. Shore means "that after having declared the Zemindar proprietor of the soil, "in order to be consistent, we have no right to prevent his im- "posing new Abwabs or taxes on the lands in cultivation I must "differ with him in opinion, unless we suppose the ryots to be "absolute slaves of the Zemindar. Every biggah of land "possessed by them must have been cultivated under an "express or implied agreement, that a certain sum should be paid for each biggah of produce and no more." His lordship, after expressly declaring that the Zemindar could not impose taxes or *Abwabs* upon the royts and that government had an undoubted right to abolish such taxes as are *Oppressive*, proceeds " Neither is, prohibiting the Land-holder to impose new Abwabs or taxes on the lands in cultivation, tantamount to saying to him, that he shall not raise the rents of his estates. The rents of an estate are not to be raised by the imposition of new Abwabs or taxes on every biggah of land in cultivation" Then further on, His Lordship observes " the rents "of an estate can only be raised, by inducing the ryots to "cultivate the more valuable articles of produce and to clear "the extensive tracts of waste land, which are to be found in almost every Zemindary in Bengal "

In the great rent case, the Hon'ble Justice Trevor observes, "to suppose that a Pergunnah or local rate could be permanently fixed in amount when the circumstances of the country were improving is to suppose an impossible state of things. The

proportion of the produce calculated in money payble to the Zemindar represented by the Pergunnah or local rate, remains the same ; but it will be represented, under the circumstances supposed, by an increased quantity of the precious metals" See F. B. R. P. 211-226. If we go through the Regulations creating the Permanent Settlement and the regulations subsequently passed for the easy recovery of rent as well as for the protection of auction purchasers, it will be seen that the authors of those Regulations always assumed the existence of an inherent power of enhancement of rent of all lands in the Zemindars and other actual proprietors of the soil, and therefore it was thought necessary to make special rules for the protection of those tenure holders who were considered entitled to protection from further enhancement of rent.

The restriction imposed upon the power of the Zemindars by Sec, 2 of Reg. 44 of 1793 was intended for their benefit. It gave them the power of letting their lands to their best advantage after every ten years.

It must be conceded that before the Permanent Settlement and during the Mogul Government, the Zemindars enjoyed almost all the powers of an independent tributary prince. It was the aim of the Permanent Settlement to give to the Zemindars the benefits of a fixed revenue, and in consideration of it take away all those powers and put the Zemindars down to the level of ordinary subjects so every power which has not been expressly taken away by the law must be assumed to be still existing in the Zemindars. The Regulations no where forbid the Zemindar to raise the Pergunnah rate ; but they are declared competent to raise the same upon a general measurement of the Pergunnah, for the purpose of equalizing and correcting the assessment."

CHAPTER V.

Ryot's occupancy right in the land has been made heritable like any other immovable property ; whose any other immovable property ? Perhaps those of the Ryots. (1.) Suppose a ryot died intestate, leaving no other immovable property of his own. excepting the ryoti tenure (2). Suppose a ryot died, having for the first time purchased a Taluk ; if he is a Mahomedan, his son will say, as they have no other immovable property, their *jote* must be distributed according to their common law ; on the other hand daughters and other heirs, will invoke the Mahomedan law.

In the second case, the son will say, that Section 50 cl,E. & G. of the Act (now Bill) assume, that other immovable property has been inherited in the family of the intestate ryot according to some law, and renders the ryoti tenure heritable according to it ; but they had no other immovable property or it has never been inherited, so let all kinds of their property be inherited according to their common law, which excludes daughters and other heirs. If our rulers intend to introduce the law of the intestate, it would then be necessary for them to introduce many important changes in the common law of inheritance, prevailing among the Mahomedan and Hindu ryots of Bengal. I would take the case of a Mahomedan first.

According to the common law, prevailing among the Mahomedan ryots, the daughters are generally excluded from inheritance ; sons take the whole property ; but when there is no son the daughter who lives in her father's house, takes the whole property to the exclusion of other daughters *e., g.* Shaik Nojeeb dies, leaving three sons, and three daughters living with their husbands in three different Pergunnahs far off from their father's house. The lands left by their father were partly covered by grass jungles, and crops of some portion used to be destroyed by inundation. The brothers by their own and hired labor, made the entire

quantity of the lands fit for cultivation, and paid their rents regularly to the zemindar for several years. After the expiration of 11 years, 11 months and 29 days, the daughters institute a regular suit for possession and *Wasilat* against their brothers, and obtain a decree according to the terms of the plaint. By this decree the poor brothers are ruined, and the zemindar is placed under the necessity of seeking for half of his rent from three of the non-resident female ryots ; but the dispute does not end here. Some enemy of these unfortunate brothers, takes a sublease from the sisters, and by constant quarreling, compels them to quit the village altogether. So a tenure, which now entirely devolves upon the son or sons of the ryot, will be divided among dozens of claimants to the injury of the ryots and the Zemindar equally. Daughters, living with their fathers, will also be sufferers by the introduction of the Mahomedan law. Among the Hindoo ryots also, there is a common law of their own which materially differs from the Hindoo law as administered in Bengal. According to the Bengal School barren daughters, childless widowed daughters, and daughter's who are mothers of daughters only, are excluded from inheritance ; so brothers and sisters can never be heirs to each other ; but these rules are not observed among the Hindu ryots, and these daughters succeed to their father's property to the exclusion of the relatives, who, but for this common law, would have taken the property left by the deceased ryot. When I say that under the common law, daughters excluded by Hindu and Mahomedan law, inherit, I mean that they inherit other than the landed property left by their father, and having inherited the same according to the said common law, they are allowed, in order to make up the period of 12 years necessary to constitute a right of occupancy, to take into account the holding of their father, as provided by section 6 Act VIII of 1869. In the case in 7 W. R. 528. Peacock, C. J. observed

"There are many holdings which are heritable by custom or otherwise quite apart from the effect of a right of occupancy. In order to make up 12 years necessary to the acquisition of a right of occupancy, the holding of the father or other person from whom a ryot inherits (when he does inherit or in any case in which he is entitled to inherit) may be taken into account, but it does not follow that a holding which was previously non-heritable becomes heritable as a consequence of the acquisition of the right of occupancy." Now, a distant relative of a deceased ryot is not entitled to succeed by inheritance when the Zemindar had, on the death of the ryot, made arrangements with another ryot (8. W. R. P. 60) The framers of the Bill, by one stroke of their pen, make destitute many sonless widows and at the same time deprive the Zemindars from their right of getting back their lands for want of descendants in the direct line. It seems therefore, that the framers of the Bill have one object in view, *viz*, destruction of the Zemindary right. So long as they are successful in their aim, they do not care to see who else is affected by their destructive measure. The introduction of Hindoo and Mahomedan law will seriously affect the agricultural population of Bengal. If, however, the framers of the Bill want to make the right of occupancy heritable, they should adopt the rule laid down in Section 9 of the N. W. P. Rent Act, which provides that no collateral relative of the deceased who did not then share in the cultivation of his holding, shall be entitled to inherit. It seems that the author of this act had carefully studied the common law of the peasantry. It has been admitted that the right of occupancy, as given by Section 6 of Act X of 1859, was based upon a misconception and was justified by reference to supposed state of things in the N. W. Provinces which had no existence in Bengal. The ryots of the N. W. Provinces enjoyed the right of occupancy from a time

Section 9. N. W. P. Rent Act.

long anterior to the introduction of Act X of 1859 ; still the authors of the N. W. Provinces Rent Act of 1873, did not think it proper, to make the right of occupancy heritable and transferable like other landed property in that Province.

CHAPTER VI.

Whether right of occupancy should be transferable or not.

So much has been said in support of the either side of this question that I do not like to advance the arguments already urged. Suppose that the ryots will be benefitted on obtaining the privilege of selling their right of occupancy; but why should they be vested with that privilege the first time to the prejudice of the Zemindars? Why do you rob Peter to pay Paul? It is contended that the Zemindars cannot be prejudiced on account of the right of transfer being given to the ryots. If this right is given for the first time to the ryots, a right of pre-emption is also given to the Zemindars, by the exercise of which they can prevent the encroaching of objectionable tenantry in their Zemindary. But who would like to invest money for the purchase of a property which he cannot use or enjoy with freedom? Section 56 of the Bill provides that when the land of the occupancy ryots comes to the *Khas* possession of the land-holder, he must not let it at a rent higher than what he was receiving before his purchase or before the land had devolved on him by lapse or relinquishment; but the person to whom it is let, will get it with a right of occupancy; we really cannot understand why this limitation is imposed upon the Zemindars. If it be to discourage the purchase of the right of occupancy by the Zemindars, why then is the right of pre-emption given to them ? Any other purchaser of occupancy holding, will have the right of using it in any manner and letting it at any rent he chooses, but when the occupancy

holding comes to the possession of the Zemindar, these rights must be denied to him. We cannot understand why our rulers add insult to the injury. I do not know why the framers of the Bill can not even bear the idea of allowing the Zemindars to buy their own property. The public can easily see with what inimical feelings against the Zemindars, the Bill has been framed.

CHAPTER VII.

Enhancement of the Rent when table is not in force.

Unless the rent is left to be determined by the rules of demand and supply, it is very difficult to frame a rule which will be conducive to the interest of both the parties, the Zemindar and the ryot equally. However extortionate a Zemindar may be, he cannot get more than the market value for his land; it is useless for him to demand higher rent for his land which the ryots cannot afford to pay. If the rent be left to be settled by competition, no one would offer a higher rent for lands without keeping a good margin for his profit. No body can blow hot and cold together. Zemindars are told (at least they were told before) that they are the proprietors of land, but in the same breath a hundred and one limitations are imposed upon their right of settling their rents according to their own choice. Consider for a moment that if the legislature were to pass a law to the effect, that the jewellers of Calcutta shall not be entitled to demand more than three hundred rupees for a diamond ring of a specified quality and size from the *Koolin Brahmins* of Bengal, so much from the *Soodras*, so much when there is a competition between two persons of different castes, so much from a pure *Koolin* and so much from a *Bhonga* Koolin, the public would then very easily be able to see how this rule operates. According to Sections 62 and 75 of the Bill, both in the preparation of the table of rates and the enhancement of rents,

the enhanced rent shall not, in any case, exceed one fifth of the estimated average annual value of the gross produce of the land in staple crops, calculated at the price at which the ryots sell at the harvest time. I do not know, whether our rulers have learnt the fact, that the *Khudkust* ryots of Bengal pay for their holdings a higher rate of rent than the rate paid by the *Pykust* ryots. Apart from the question, whether one fifth would be fair rent or not, let me proceed to cite an instance to show how injuriously *this rule of one fifth* will operate against the Zemindars. The ryots of Pergunnah Mymensing having heard that a law will soon be passed, limiting the rents of the Zemindars to one fifth of the gross produce, as stated above, have combined together not to pay their rents unless Zemindars would consent to take Rs. (3-6) per *araha* or about 13 as. per Biggah, which they say is equivalent to one fifth of the produce. They are eagerly waiting for the passing of the Bill into law, when they hope either to set up claims of abatement in rent suits, or institute suits for abatement of rent. One Moulvie Hamidudeen has put up this idea into their heads and reaping a good harvest out of their credulity. Some of the pleaders of the Mymensing bar expect about 20,000 *abatement* suits after the passing of this Tenancy Bill. All the ryots will have one common object in these suits; so there will be no want of witnesses to substantiate the claims for abatement advanced by them. They will not pay their rents until the final decision of these suits, and in the *interim*, Zemindars shall have to pay their revenue and cess from their own pockets as before. When the mere name of the Bill has produced such an impression in the mind of the ryots, I cannot imagine what will be the fate of the Zemindars when it is passed into law. I think the whole of the Bengal peasantry, will rise up in a body and institute suits for abatement with the hope of substantiating their claims by perjured witnesses.

If it be thought inexpedient, to leave the rent to be settled by competition, why not half or one third of the gross produce of all sorts of crops be given to the Zemindars, as now obtained by them on letting out lands in *Bhagjote* system? Rent in money was substituted for rent in kind as the country progressed in civilisation and prosperity. It was found, as a matter of fact, by Mr. Harrington, that at the time immediately preceding the Permanent Settlement, the rents paid by the cultivators were usually equivalent to half or a little more than half the produce. (Harrington Vol. III, page 324). During the reign of Alladin and of Moorshedkooly Khan the same rule prevailed. It is still extant in Behar and in some parts of Bengal, where rent is received in kind.

According to section 74, the rent of a ryot can be enhanced on the ground that the rate of rent paid by him, is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the vicinity. The word vicinity is very general and vague; it admits of different interpretations according to the bent of the mind of the judge. Suppose a plot of land is surrounded on all sides by very fertile lands belonging to a helpless widow, who cannot fight with her tenants and therefore contents herself by receiving whatever rent they choose to pay her. There also may be lands belonging to a Zemindar who, without enhancing the rent of the land, receive *Abwabs* and *Khurchas* from the ryots who gladly pay them in consideration of the low rent for which they are allowed to hold them. If these lands are taken as exemplar fields, it will simply be ruinous to the Zemindars who seek to enhance the rent of their lands on the ground, stated in clause (1) Section 74 of the Bill. In such cases we ought to seek for the exemplar lands elsewhere, where the rent is fairly settled. The surrounding lands may also be owned by turbulent Ryots

persistently resisting the claims of the Zemindars for a fair enhancement: lands of such ryots also, should not be taken as exemplar.

CHAPTER VIII.

Of rent payable in kind. According to the existing custom of the country when the Zemindar takes the risk of cultivation in *Bhagjote* system, he gets one half of all the crops, and in some rare cases, he takes $\frac{3}{4}$ and the ryot gets only $\frac{1}{4}$ of the crop. But when the ryot takes upon himself the whole risk of cultivation, he gives to the Zemindar a specified quantity of all the crops, which generally amount to one third, and in rare cases, to one half the produce. Now, by one stroke of their pen, the framers of the Bill have robbed the Zemindars of their share of the produce and given them to the ryots. According to Section 81, the right of the Zemindar to receive half the share of all the crops, is taken away for the benefit of the ryots, who did not even ask for it; he is also allowed to pay his rent in money which shall be fixed at the descretion of the court, according to the prevailing rate payable by the same class of ryots for land of similar description; (*Vide* Section 81 and 82). I shall very inadequately express the extent of distress which the rules, contained in Sections 81 and 82, will bring upon the petty Talukdars, if I were to say that they will be simply ruinous to them—they (the Talookdars with their families, will have to starve unless they will be able to secure their daily bread by begging.

CHAPTER IX.

Rules to enhance money rent. I would not object to enforce the rule laid down in Section 76, when the enhancement is sought under the grounds stated in clauses 2nd and 3rd of Section 74.

But there are ryots who pay very low rent on account of the helplessness of the Zemindars. They not only pay low rent themselves but dissuade other ryots also to pay it at the prevailing rate of the neighbourhood. I know of instances, in which these wicked ryots succeeded not only in avoiding enhancement, but in reducing the rate also of the whole village by inducing other ryots to prove the rate according to their allegation. When they see that one man has succeeded, the entire body of the ryots decline to pay rent at the prevailing rate of their village, but offer to pay at the rate decreed in the rent suit—which means the rate admitted by them. I know several villages, where ryots reduce their rent every second or third year. When the rents of these ryots are enhanced under the 1st gronud, I do not see under what reason sympathy can be shown towards them. It is enough that they were allowed to withhold the payment of their just rent for so many years. I know of ryots who have reduced their rent, since the passing of Act X of 1859. If their rents are enhanced according to the prevailing rate, they will have to pay four times the rent they now pay. They sometimes dispossess a poor ryot from a plot of land, and as soon as it comes to their possession, they begin to pay rent at their own rate. Unless the framers of the Bill make another classification for these *Juburdast* ryots, there is no earthly reason why the benefits of Section 76 should be awarded to them. If in the case of these ryots, rent can not be enhanced beyond double the rent previously paid by them, it would then follow, that in many cases, the enhanced rate will not exceed half the prevailing rate. Section 76 has fixed the maximum rent, but the minimum should also be fixed. When enhancement is sought on the 2nd ground, *viz.* for the increased productive powers, the enhanced amount shall not be less than half the rent previously paid, and when enhancement is sought on the 3rd ground, the rent enhanced should not be less

than one fourth of the rent previously paid by the ryots; but there should also be corresponding precise rules for the reduction of rent. A sudden reduction of rent, on the ground stated in Section 79, may tell against a Zemindar in the same way, as a sudden increase, against the ryot. Section 79 provides, that the Court may direct for such reduction of rent as it thinks fair and equitable; but like Section 76, no limit is imposed upon the discretion of the Court.

CHAPTER X.

Rules regarding Pasture lands. Section 80 provides, that Sections 62 to 79 shall not apply to land *fit to be used*, or which in accordance with the local usage is used, only as pasture; but when such land is held at a money rent by an occupancy ryot, the landlord may, subject to any contract between the parties, institute a suit to enhance the rent on the grounds mentioned in clauses A. and B. Section 80. When a Zemindar institutes a suit for enhancement of rent against a ryot, on hearing about the institution of the case, he will cease to cultivate his best lands, and when they are sufficiently covered with grass and other jungles, he will ask the Munsiff Baboo to come and see for himself, whether or not some of his lands are fit as pasture, and it will then be alleged, that if the said lands are *fit to be used as pasture*, the provisions regarding enhancement do not apply to them. The words "only as pasture" refer to lands so used in accordance with the local usage.

CHAPTER XI.

Sections 59 to 61 ought to be purged out of the Bill altogether. They interfere with the freedom of the ryots to contract with the Zemindar. If the ryots are to be considered as sentient beings capable of performing other worldly affairs, why

should they be considered worse than babies as far as Zemindars are concerned? A plot of land may be very necessary for a ryot, and it may be advantageous for him to get it even by paying double the rent, but under Section 59 clause 2, a revenue officer shall not register such *Kabuliat* and thereby give to it the legal force of a contract. According to Section 61, clause (I) when a Ryoti-land, which had previously been held by a tenant at money-rent, comes to the *Khas* possession of the Zemindar, he shall not be able to get from a settled ryot a rent higher than what was paid by the previous tenants. So far as settled ryots are concerned, a kind of *Mockrooary* tenure is created for them over all the lands. By clause 2, a revenue officer is not to register any contract by which a ryot engages to pay a rent more than one fifth of the estimated average annual value of the gross produce of the land in staple crops, calculated at the price at which the ryots sell at harvest time. So it will be seen that the Bill attempts to put the Zemindars under every possible disadvantage, and every section of it breathes an inimical feeling against them. I think the ryots themselves could not have conceived of such one-sided legislation.

Of the preparation of the table of rates and produce &c. The provisions of Section 62 would have been greatly beneficial to the Zemindars, if there had been a provision in the Bill for the speedy realization of their rent, at least during the pendency of the enquiry. The entrance of a revenue officer into a Zemindary with the intention of preparing the table of rates, would be a signal to the ryots to stop payment of their rents. They will in one voice declare, as they are doing in Pergunnah Mymensingh in the District of Mymensingh, that they will not pay their rents until the rate is settled.

By Section 62, the power of selecting assessors is entirely left with the Local Government. The Local Government will generally

be influenced in the selection of the assessors by the opinion of the District Magistrates, who will very naturally select them from some of his energetic Deputy Magistrates having little or no experience in the zemindary matters. There should be an express provision in the law to appoint one half of the assessors from the zemindar class, and the other half from the officials and pleaders, or other persons taking interest for the ryots.

We have shown the way in which the Tenancy Bill gives to all settled ryots the right of occupancy over every plot of land found in their possession after the 2nd of March 1883. After this sweeping confiscation of private rights under the garb of legislation one would naturally expect, that the remaining lands must have been entirely left under the disposal of the Zemindars. But alas! this consolation too is denied them. According to Section 90 of the Bill, an ordinary ryot, notwithstanding any contract to the contrary, shall not be ejected from the Ryoti land by his landlord, except as provided in clauses A, B, and C of the said section, *i. e.* for using the land in a manner which renders it unfit for tenancy, or for breach of any contract which renders the ryot liable to be ejected, or in execution of a decree of ejectment passed on the ground that the ryot has declined to pay the enhanced rent when demanded by his landlord, as provided in Section 119 of the Bill. In a suit instituted for ejectment of the ryot on the ground that he has declined to pay the enhanced rent, the Court may pass a decree for ejectment on condition that within 15 days from the date of decree, the landlord shall deposit in Court such sum (if any) as may be declared by the decree to be payable to the ryot as compensation for improvements, and a further sum as compensation for disturbance equal to ten times the yearly increase of rent demanded. I, as a Zemindar, let out 50 Biggahs of land to A, an ordinary ryot or who is not at all a ryot of mine, at

a very low rent with this express stipulation that after the expiration of 5 years he shall have to give up the land to me. The ryot takes the lands with his eyes open. His holding for 5 years sufficiently compensates him for the troubles he took for the improvement of the lands, but still at the expiration of those 5 years, I am not only placed under the necessity of a protracted litigation, but am compelled to pay the compensation equal to ten times the yearly increase of rent demanded, or in other words I am required to buy my own property.

We have seen how the present rule regarding the service of notice in enhancement and ejectment suits, is abused by the sympathising Munsiffs. They, as a rule, in order to discourage the Zemindars from instituting these suits, disbelieve the evidence given by them to prove the service of notice. A similar provision is made in this chapter also. When an ordinary ryot does not agree to the enhancement demanded, the landlord may cause to be served on him, through the Civil Court, a notice of the enhancement not less than six months before the commencement of the agricultural year in which he desires the enhancement to take effect. The Ryot may, within one month from the date of the service of the notice, present to the court issuing it, a statement in writing declaring his willingness to pay the enhanced rent. If the ryot neglects to present the petition within the said one month, the landlord may, within 10 weeks before the commencement of the agricultural year next following, institute a suit to eject him. Now, I may assert this without fear of contradiction, that in 99 cases out of a hundred, the Ryots shall appear and deny the service of notice with the same success as they do now. If they have no right to hold the lands after the expiration of the term of the lease, I do not see any reason why they

should not be looked upon as pure wrong doers. I cannot avoid the temptation of recording an annecdote which I have heard from a friend in my district and which runs thus :—

A petty land holder in 24-Pergunnahs, after having instituted suits of ejectment against a Ryot on six or seven occasions, and finding his suits dismissed on the flimsy pretence that the service of notice was not proved, or that it was not sufficient in law, at last in a mood of utter despair, addressed his opponent thus : " Brother ! listen, you have succeeded on all occasions in getting my suits dismissed on the frivolous ground that the service of notice was not proved ; but this time I would stuck up the notice on your own back by ironpegs. You are sure to bring a criminal charge against me, and no doubt I shall be punished for doing so ; but I do not care for it, as thereby I would gain my own object ; for in that case I would be able to prove by your own admission the service of notice beyond a shadow of doubt". However romantic this annecdote may appear, it conveys a world of meaning for the purpose of seeing the existing tendency of our Courts of Justice. It seems the authors of the tenancy Bill could not content themselves by creating a legal disability in favor of the settled Ryots only ; so a disability of the nature contained in Sections 59 & 61 is created in favor of ordinary Ryots also An ordinary Ryot shall not be bound to pay for his holding, a money-rent exceeding five-sixteenth of the estimated average annual value of the gross produce of the holding in staple crops, calculated at the price at which the ryots sell at harvest time. After the second day of March 1883, any contract by an ordinary Ryot to pay higher rent shall not be valid ; perhaps ryots who are paying a higher rent now, shall be entitled to an abatement under the provisions contained in the beginning of Section (119.)*

* This Section alone may give rise to thousands of suits for abatement of rent.

CHAPTER XII.

Sections 14 and 15.

Before giving any opinion on the effects of Sections 15 and 16 of the Bill, let me proceed to state how the presumption from 20 years uniform payment of rent created by Act X of 1859 operated in Eastern Bengal. During the 1st few years of the passing of the Act all the pleaders of the Munsiff's Courts, and the Mooktears, and the retired servants of the Zemindars became *Mokrooridars* by the help of forged *Dakhilas*, and evidence of hired witnesses; then came the second batch, *viz.*, *Mondols* and other well-to-do ryots. Whenever a rent suit was instituted the written Statement was invariably as follows.

1. I hold lands at fixed rates from previous to the Permanent Settlement.

2. I hold *Dakhilas* for 20 years immediately preceding the institution of the suit to prove that during that period my rent has not been changed.

3. My rent is Rs. 5, but the rate claimed by the Zemindar is exorbitant; the rent of every Biggah of land in my village is Annas 2 and not Annas 10 as claimed by the Zemindar.

In suits of this nature the Ryots were successful in two different ways. In some of these suits they succeeded in proving the *Dakhilas* by false witnesses. In others, in which they failed to substantiate the special plea of 20 years uniform payment of rent, the Deputy Collectors, most of whom had identical interest with the ryots, came to the following conclusion. "It is true that the *Dakhilas* filed by the defendant have not been proved, but as the plaintiff has failed to prove his claim by any written *Kabuliat* of the ryot, I can only decree the claim to the extent admitted by him." Thus the Zemindar was thrown under the mercy of the Ryot, who from that date began to deposit his rent in the court until he compelled the Zemindar by the united passive resistance of the whole

village to come to terms. Shaik Tamiz has obtained a great victory over his Zemindar. This news spread like wildfire in his own and other neighbouring villages, and the other ryots came in flocks to his *baree* for *paramarsa*. Every body knew, that Shaik Tamiz and his father Shaik Nozib annually paid Rs. 20 as rent, Rs. 2 as *Dihikhorcha*, Re. 1 as *Patwaree fee*, and Annas 4 as *Bastoo poojah*; but how he could reduce his rent to Rs. 5 was a mystery which was revealed by Shaik Tamiz to his audiance thus: "Brethern, listen, *Lat Suhib* has sent orders to all the *Hakims* to the effect that the Zemindars cannot get any thing in the shape of rent beyond that admitted by the Ryots. All the Ryots are advised to stop payment of rent and to raise up, the same kind of objections in rent suits, as Tamiz did. From that date the ryots combined and each offered to pay the quitrent as suited him best. Now, the position of the Zemindar can better be imagined than described; like most of the Zemindars he had no *Kabuliat* to prove the rent received by him, and as a rule, his *Jama-wasil-bakee* papers will be disbelieved. If he sues the ryots to enhance their rents on the ground that they pay their rents at a rate much below the prevailing rate payable by the same class of ryots, how is he to prove the fact. On the one hand the evidence of his witnesses is sure to be disbelived on the supposition that the Zemindars keep an unscrupulous set of men in their service to prove their cases by giving false evidence, as well as, by preparing false papers; on the other hand the whole body of the ryots will heroically swear, that the prevailing rate is that admitted by the defendant ryots. I need scarcely mention that to enhance the rent of a ryot on the other two grounds provided by Act X of 1859 is an impossibility. Under this critical position the only remedy left to the Zemindar is to bribe off the wicked portion of the tenantry by acceeding to their terms. So the Zemindar in despair sends a messenger to Shaik

Tamiz with proposal of amicable settlement. Shaik Tamiz comes and gives *nuzzur* of a rupee to the Zemindar. At the first instance the Zemindar abuses him as *Baiman* and *Nemokharam* but at the same time he is told that his father was a good honest ryot of the Sircar. Shaik Tamiz, without referring to his fraudulent defence, tells to the Zemindar that the village Tesildar committed great *Zoolum* on him in various shapes, and the reason why he did not come to the *Hoozoor* to complain against the conduct of the Tesildar was, that he the Tesildar had terrified him that if he did come to the Kachary, his *Hoozoor* would kill him as a sacrifice before the Goddess Kalee. Tamiz gets a sanction from the Zemindar to his tenure and rent as admitted by him and decreed by the Court. Some 3 or 4 days after this he returns with all the ryots, and they agree to pay the rents as before. Under this private arrangement Tamiz's *Chacha* (uncle) Shaik Noboo, and brother-in-law Peer Box, who have influence over other ryots equal to that of Tamiz, must get a reduction of 4 annas in every rupee in their rent, and that they will not have to pay any interest in case they fail to pay the rents according to the customary *kists* of the Pergunnah. The Zemindars who cared for their honor and respectability lost much by the wickedness of Shaik Tamiz—type of ryots. On the other hand petty land-holders began to fight with the weapons of the ryots ; most of them, in order to prove their just claims, filed forged *Kabuliats* in rent suits, and attempted to prove them by perjured witnesses. They succeeded in some of these cases and failed in others, but they were eventually ruined by the expenses of the litigation.

In enhancement cases the invariable rule was to dismiss them on some preliminary grounds, such as finding fault with the language of the notice or of the service thereof. Ninety per cent. of these enhancement suits were dismissed ; of the remaining ten, five went up to High Court by way of appeal ; of

these five per cent appeals ninety-five per cent were decreed by the Court ; so the respectable Zemindars seeing all these had resorted to the bribing off their own wicked tenants.

Ryots, who by virtue of Act X of 1859 thus suddenly became holders of transferable interest, and also those who gained right of occupancy, let out their lands to others at exorbitant rackrents to the detriment of the interest of the actual tillers of the soil and of the Zemindars. The Zemindars, having no fallow lands of their own, cannot spare any to new tenants and bring the uncultivated lands under cultivation. It is a known practice in Bengal that if a Zemindar can give a Biggah of good paddy land to a ryot he can undertake to cultivate three Biggahs more of the fallow lands; as I have already pointed out, the Zemindars having no more of good paddy lands at their disposal now, cannot bring in new tenants for the cultivation of these fallow lands. The occupancy holders have become too idle to care for any more lands which require capital and labor to make them cultureable; so the provision of Act X is thus leading to an universal creation of idle middlemen—mere drones living on the market rent obtained from the actual tiller of the soil. Thus a right, which was originally given to the Zemindars *i. e.*, to *let their lands as they liked*, has suddenly been taken away from them, and given to a class of men who are so fast becoming idle and useless members of society. The above remarks do equally apply to Act VIII of 1869 (B.C.) During the months of March and April last, I, in company with a few friends, went out on a shooting excursion in Purgunnah Patiladadho belonging to Moharajah Sir Jotendro Mohun Tagore of Calcutta There I saw a class of occupancy ryots called *Jotedars* possessing hundreds and semetimes thousands of Biggahs of land yielding an income of rupees 300 hundred to 6,000 per annum. I heard that two or three of these jotedars get as much as ten to fifteen thousand rupees a year, but they

had not got a single plough wherewith to cultivate a Biggah of land. They have numerous ryots in their *elecka* living there without any right of occupancy whatever. They are the monarchs of all they survey, there is no law to interfere with any arrangement they may make about their lands. They pay a rent of annas 4 to 10 per Biggah, but they realize from the actual tiller of the soil Rupee 1 to Rupees 2 per Biggah. On enquiry I also found that generally the ryots in the *Khas* possession of the zemindar are happy, and pay rent at much lower rates than their brethren under the *Jotedars*. These men, who according to the old custom of the country could only retain their lands so long as they cultivated them with their own ploughs and lived in their holding, are invested with all the privileges of an absolute owner and can, in the opinion of our Rulers, be trusted with all these plenary powers over their ryots ; but the ancient privileges and rights of men like Moharaja Jotendro Mohun Tagore and Moharajahs of Burdwan and Durbhungah whose ancestors accepted the Permanent Settlement under the express understanding that they shall be allowed to let out their lands as they liked, must be curbed at every step. Has the Tenancy Bill made any provisions for the protection of the ryots living under the occupancy holders of 1859 ?

Now to return to the subject under our consideration *viz.* the presumption arising from the uniform payment of rent for 20 years. I need scarcely mention that under the existing law, a tenant in order to entitle him to the said presumption must prove that his rent has not been changed for a period of 20 years before the commencement of the suit, and then a presumption arises that the ryots held the land at that rent from the time of the Permanent Settlement. This rule of presumption is opposed to all fundamental rules of evidence as being a presumption

based upon presumption. According to the Bengal regulations, a Talukdar had to prove that he held his land at a fixed rent from a time previous to the Permanent Settlement. At the time of the passing of Act X of 1859, it was considered that it would be a great hardship upon the Talukdars, if the Courts were to exact from them that amount of proof after such a lapse of time. It was therefore thought necessary, without interfering with the regulations, to create a presumption in favor of the Talukdars. So it was enacted by Section 15 of Act X of 1859 that the rent of no dependent Talukdar should be enhanced when it is proved that his rent has not been changed from the Permanent Settlement. This fact also was considered as very difficult to prove, so another presumption was allowed to take its place as provided by Section 16 of Act X of 1859 (*vide* Sections 16 and 18 of Act VIII of 69 B. C. Now, instead of the rule requiring the proof of the uniform payment of rent for 20 years before the commencement of the suit, the Bill proposes a modification by allowing the uniform payment of rent to be proved for any period of 20 years. It will simply hold out a premium for forgery and chicanery. As for the provision contained in Section 16 of the Bill, I can only observe that it is unprecedented in the annals of the Indian tenantry. I think no one has ever heard that a tenant can acquire *Mokrooary* right over his holding by paying a fixed share of the produce of the land. If it be thought expedient on political grounds, or for the financial necessity of the Government to destroy the Zemindary Settlement let it be done openly.

CHAPTER XIII.

Recovery of Rent.

It will be seen that the Tenancy Bill is conspicuous for the absence of any provision which would facilitate the easy recovery

of rents from the tenants. Instead of giving any facility for the purpose the Bill virtually takes away from the Zemindars the only privilege which the existing law gives them for recovery of rents by distraint of crops, by making the process much more expensive and tedious. The principle of the old law was that for the punctual realization by Government of its revenue, it was essential that landholders and farmers should have the means of compelling payments by their tenants without being obliged to have recourse to Courts of Justice, and of avoiding the delay and expense attendant upon a law suit for recovery of rent. Regulation 7 of 1799 gave the Zemindar an authority to compel the attendance of a ryot to his *Cachary*, and construction 382 of the Sudder Court declared that the right of compulsion extended to the punishing of the recusant ryots, and that if complaint was made to the Magistrate for wrongful confinement or restraint, he was to decide whether unnecessary severity was used or not. In cases where the Zemindar was not strong enough to compel the attendance of his ryot, he had only to file a petition in the Court stating the amount of arrears due from him, and he could not file his defence without depositing in Court the amount claimed against him. Such a procedure would prevent much of the vexatious opposition with which the Zemindar is met with now a days. Every body knows the rigour of the sale law ; hundreds of its victims can be found in Bengal. If the said law was hard enough for the Zemindar from its very promulgation, its rigour has been doubled by the operation of the Road Cess Act which renders him liable to pay the Cess payable by his ryots. There are many Collectors in Bengal who have made it a rule not to accept the Government revenue from the Zemindar, unless it is accompanied by the Cess payable by him. I hear the Collectors are authorized by the Board of Revenue to adopt this procedure for the realization of the Public Works and Road Cess. Now these

two Cesses combined together have, in many instances, exceeded the Government revenue ; so it can be seen what a large amount the Zemindars are bound to pay to the treasury with clock-work regularity. Does the present law or the bill give any facility to the Zemindars for the recovery of rent? Now as the law stands, a claim for rupees 2 cannot be recovered without undergoing an expense of rupees 10 and the delay at least of a year. The ryots may, if they choose, easily ruin a Zemindar by combining together not to pay their rents ; but to obtain a decree against a tenant for a year's rent only the Zemindar must, under the existing regular process of the law courts, have to spend at least 3 year's rent in the shape of court expenses, and that even with the chance of eventually finding that half the amount of the decree is not recoverable partly for the *bonâfide* pauperism of the ryot, and partly for the fraudulent claims advanced on his property by his friends in order to secure it against the execution of the decree. In these rent suits delay is dangerous. The proverbial improvidence of the Bengal Ryots is too well known to need any comment from me. To remedy this evil I would propose the following measure regarding speedy realization of rent.

1. Whenever a verified plaint is filed by a Zemindar stating the amount in arrear, the rate of rent, and the quantity of land, such plaint should be taken as a *primâ facie* evidence of his claim, and the recusant ryot should not be allowed to raise any objection to it without despositing in court the full amount claimed against him. When such deposit is made, the Zemindar should be allowed to take away the amout pending the final disposal of the case, and if the decission be adverse to the Zemindar the Court may be authorized in that very case to award damages not exceeding the amount claimed, leaving the zemindar to enhance the rent according to the regular

course provided by the law for the enhancement of rents. If, in a suit for arrears of rent, it can be shown by the zemindar, that according to the prevailing rate of the village the recusant ryot ought to pay him the amount claimed, the Court should decree the claim thus advanced leaving the ryot to institute a suit for the reduction of rent on the ground, that notwithstanding the prevailing rate, he has all along been paying the amount admitted by him ; at any rate in such cases the onus of proof should be thrown on the ryot. In a suit of this nature if the ryot succeeds, the zemindar should be held liable to pay damages to him, not exceeding double the amount claimed exclusive of the costs of the suits. In the absence of any contract in a rent suit a presumption ought to arise that the recusant ryot also has been paying the rent according to the prevailing rate leaving him to rebut that presumption by regular suit. Now, a notion prevails among the ryots, that the zemindars cannot recover a rent higher than what is admitted by them ; so in every rent suit the ryots imbued with this idea generally file the written statement reducing the rent according to their own choice. I can cite instances in which the ryots opposed the claims of the zemindars for recovery of rents founded on the registered *Kabuliats* executed by them. When the zemindars have to deal with such a set of gentry, it is not too much for them to ask for a law which would afford facilities for the easy recovery of rents, specially when it is sought with the risk of being saddled with heavy damages. Under the aforesaid circumstances, I do not think that the prayer of the zemindars can be called unreasonable. Now, to return to the subject under our immediate consideration, I would propose, that in a rent suit if a ryot sets up a *Mokrooary* title stating the amount of his rent much less than the amount claimed, the suit ought to be dismissed at once leaving the zemindar to institute a suit for enhancement of rent,

and for declaration that the tenure is not *Mokrooary*. Such a suit should be allowed to be instituted without subjecting the zemindar to the dilatory and vexatious process of serving the ryot with notice of enhancement. The claim in this suit and in that previous to it for arrears of rent should be considered as a sufficient notice. If the ryot had no good title to hold the land at a fixed rent he had no business to set up such a claim in the rent suit. His conduct should disentitle him to all sympathy provided the zemindar succeeds in proving his right to enhance the rent. The utmost leniency that can be shown to such a ryot is to allow him to abandon the tenure and to pay off the zemindar the full amount of arrears of rent admitted by him. Although the zemindar becomes a little loser by this, but he avoids the chance of a protracted litigation. In suits of this nature where the zemindar succeeds in proving his case, the Court should be bound to declare that the ryot has lost all claims to hold the land after the expiration of the period for which the enhancement was claimed, and in execution of the very decree the zemindar should be allowed to eject the ryot. But should the zemindar neglect to eject the ryot within one year, calculated from the end of the year for which the enhancement was claimed, he should be deemed to have forfeited his right to ejectment in execution of the decree. But this penal provision should not be rendered applicable to those *bona fide* Talukdars whose rents can only be enhanced on the grounds stated in Section 51 Reg. VIII. of 1793.

The memorandum of Moharajah Sir Jotendra Mohun Tagore Bahadur K. C S. I. on the subject of affording facilities for the easy recovery of rents is indeed unassailable. No body can deny that collective suits for the realization of rents would be beneficial to the ryot and the zemindar equally. A collective application should be also allowed for distraint of crops. Those who consider

the law of distraint to be hard they know very little about the real condition and habits of the ryots. Distraint saves them from accumulated interest and cost of litigation. Moharjah Sir Jotendro Mohun Tagore Bahadhur made the undermentioned proposals for the easy recovery of rents. "Under the circumstance, a law for the recovery of rent which would be at once cheap, speedy, efficacious, and just to all parties, has become absolutely necessary. Having been invited by His Honor the Lieutenant Governor to suggest a scheme for the amendment of the law in this respect, I venture to submit the following" :—

"Firstly.—Without disturbing the present rent kists or instalments which vary according to local usages, I would declare a specified quarter-day for the payment of the quarter's rent, failing which a suit for arrear shall lie. Where the kists are monthly, as they are for the most part, the zemindar shall be entitled to receive the rent according to monthly instalments, but if the monthly instalments be not liquidated by the quarter-day aforesaid, he shall be competent to institute an arrear suit."

"Secondly.—In default of the quarterly instalment as suggested above, the zemindar or the rent receiver shall be competent to make an application to the Collector, setting forth the name of the defaulting ryot, description of the holding, and the mouzah in which it is situated, the amount of the annual rent, the amount due, and the period for which the same may be due, with a statement of accounts giving details of the Jumma or rent, the instalments in which it is payable, and the amount paid or payable by the ryot up to the end of the quarter. But the application and the amount should be verified by the naib or gomastah as the case may be."

"Thirdly.—With a view to save costs and trouble, the zemindar should be allowed to sue the defaulting tenant collectively, by an application written on a stamped paper of eight annas

value. This sort of collective suit is permitted under the N. W. P. Rent Act, and also under the Agrarian Disturbances Act. I recommend a stamp fee of eight annas for a collective suit in order to lighten the burden upon the ryot."

"Fourthly.—On receipt of the application the Collector should serve a notice upon the defaulting tenant or tenants calling upon him or them to pay arrears due with costs up to that stage, or to deposit the sum in the Collector's Kutchery, if he or they should contest the demand. The notice should state, that if the payment or deposit be not made within fifteen days from date of service of notice, the tenure of the defaulter or defaulters shall be sold by public auction on the day to be fixed in the notice, which should be served by a single peon upon all the defaulters residing or holding land in the same village, firstly, by affixing it in the Zemindars Kutchery if any, in or near the mouzah ; secondly, at the police thannah if any, in or near the mouzah ; thirdly, in some conspicuous part in the village ; fourthly, by proclamation or beat of tum tum in the village ; fifthly, by affixing it on the land on account of which the rent is due. The serving peon shall procure the signatures of three substantial residents residing in the neighbourhood in attestation of the notice having been brought and published on the spot. In case the people of the village should object or refuse to sign their names in attestation, the peon shall go to the Kutchery of the nearest moonsiff, or if there should be no moonsiff to the nearest thannah, and there make a voluntary oath of the same having been duly published. Certificate to which effect shall be signed and sealed by the said officers and delivered to the peon."

"Fifthly.—The sale of tenures should not be stayed unless the arrear claimed be deposited. In case the defendant make a deposit and propose to contest the suit, the Collector should

try it under the procedure laid down in Act VIII of 1869. The zemindar, or the person claiming the rent, shall be entitled to take out the deposited amount, on giving proper security."

"Sixthly.—Should the Collector find that the demand is not just, or is in excess of actual amount due, he should levy a fine upon the claimant, not exceeding twice the amount so claimed in addition to all cost, and should make over the damages so realized to the defendant by way of compensation. Should it appear that the accounts made up for the zemindar have been falsely or fraudulently prepared by the attesting servant of the zemindar, he, the servant should be liable to a criminal prosecution."

"I propose the above procedure for the realization of rent from ryots having occupancy or mookarari rights. I am aware that under the present law occupancy tenures are not saleable or transferable, but in many districts the usage sanctions sale for arrears of rent which is largely resorted to in practice. I would legalize the sale to that extent. The purchaser shall have the same right and interest that the defaulting tenant possessed. I should observe that the existing law enjoins the eviction of the occupancy ryot in lieu of the sale of the tenures, but the Courts are generally reluctant to enforce this provision in as much it throws the ryots adrift. Under my scheme the ryot may, if he likes, buy in his own tenure, or if it be sold to a third party he will obtain a fair value for it."

"It will be observed that I proposed to place the whole procedure in the hands of the Collector. But should the agency of the Civil Court be considered preferable, I would suggest that the proceedings in the Civil Court should take place only when there would be contention, and after the deposit has been made in the Collector's Kutchery by the defendant. The procedure of the Civil Court should of course be the same that has been prescribed in Act VIII of 1869 B. C.'

"*20th August 1876.*"

"*P.S.*—With regard to non-occupancy tenures the preliminary procedure suggested above will apply; in case the arrear adjudged be not paid, the defaulter should be evicted."

CHAPTER XIV.

Khamar Lands.

According to section 5 of the Bill a zemindar, in order to complete his title over his Khamar land, must hold it for twelve years before the commencement of the Tenancy Act, Section 6. "All land which is not Khamar land shall be deemed to be Ryoti-land, and all land shall be presumed to be Ryoti land until the contrary is proved." I think this section takes away from the zemindar all fallow lands and gives them to the ryots, for the words "all other lands are Ryoti-land" are very comprehensive. Section 6 has created a right in favor of the ryots over all lands which have not become Khamar under Section 5 of the Bill. I should therefore consider myself highly obliged if any one of my readers will answer my following queries.

I. A, a zemindar has taken some 50 Biggahs of land as his Khamar abandoned by his ryots some ten years before the commencement of the Tenancy Act; B, a ryot sues the zemindar to get possession of the said land on the ground that he had no right over it, it is a Ryoti-land and as such belongs to the plaintiff. Is he entitled to a decree?

II. A, a zemindar clears off a large tract of jungle and sowes cotton there; can B, a ryot sue A for those lands, on the ground that he has no right to extend his Khamar lands as "all other lands are ryoti" and as a matter of course belong to the ryots?

III. Suppose B, succeeds in both these cases, can not W. X. Y., and Z, ryots of A come in for their share and sue poor B, for a rateable distribution of those lands, for "all other lands

must belong to all the ryots, and so can not another batch of ryots again sue W. X. Y. and Z, for their share and so on?"

Lands abandoned by the ryots, and all fallow lands as a matter of right belong to the zemindars who can use them in any manner they like. The ryots never dreamt of making any claim to them. Act X of 1859 did not also interfere with the absolute proprietary right of the zemindars over those lands. There is no such thing in Bengal as unoccupied Ryoti-land. But the philanthropic framers of the bill by one stroke of their pen robbed the poor zemindars of their vested rights and made over all the lands to the ryots. I do not know, what earthly reason can be assigned for the spoliation of this private right of the zemindars. It is one thing to make laws for the protection of the ryots in their existing rights, but it is quite another thing to commit robbery upon others to enrich the ryots. I may have put an erroneous interpretation upon Section 6 of the Bill. Some of our friends have tried to point out that the authors of the bill by declaring "all other lands to be ryoti" never intended to give the ryots the privilege of compelling the zemindars to give them lands as suggested by me in question I to III. The Bill wants to put a check upon the power of the zemindars to defeat the inherent right of a settled ryot to acquire a right of occupancy over land as soon as he acquires it as a ryot, on the ground that the said land is included in the Khamar created within 12 years of the Tenancy Act. I may be wrong in putting the interpretation upon Section 6 of the bill as I have suggested by the above questions, but I ask, is there any thing in the bill to prevent a Radical Court to interpret Section 6 of the Bill in the way I have done? The authors of the Bill intended to extend the right of the ryots, and the bill was started with the theory that the land belongs to them. At any rate, the settled ryots will acquire right of occupancy

as soon as lands belonging to Khamar created within 12 years of the Tenancy Act, are given to them.

A, a zemindar cleared off some 300 Biggahs of land in 1880 and manured them well, and did every thing to make them highly fertile, but in 1882, without knowing any thing about the Tenancy Bill, leases them out to some of the settled ryots for three years only ; but strange to say, in 1883 our rulers tell the zemindar that he can not take back the lands he has given to his ryots. The misfortune of the zemindar does not end here, the ryots, who obtained the lease of those lands under a contract to give a specified amount of rent for the period of the lease, shall be entitled to bring a suit under Section 79, for abatement of rent on the ground, that their rent is higher than it ought to be according to the prevailing rate of the adjacent places. By Chapter V of the bill every bit of cultivated land is taken away from the zemindar, who has now left him only the jungles, and lands covered with water which he may bring into cultivation at his own expense and lease out to ryots on advantageous terms ; but this little advantage too must not be allowed him ; some measure must be adopted to deter him from doing so, and therefore Section 6 of the Bill declares "all lands shall be presumed to be Ryoti."

At present zemindars lease out their jungle lands at low rents to the ryots for some fixed term of years, at the expiration of which, a new Bund Bust is made for those lands either with the former ryots or with some new ryots. Will the zemindars now lease out their reclaimed and chur lands to any ryot, much less to a settled ryot, who is to acquire a right of occupancy over lands as soon as he touches them ?

When the whole world has adopted the principle of free trade, our legislature wants to take away the free use of property from one man and gives it to another who has neither the means nor willingness to use it. I think the provisions relating to

Khamar lands in the Bill will put a stop to further extension of cultivation in Bengal.

CHAPTER XV.

The Permanent Settlement.

The advocates of the tenants' rights urge the following grounds in justification of the Tenancy Bill.

1. Zemindars had no proprietary right in the land, previous to the Permanent Settlement they were mere Collectors of Taxes, and that they could be removed from their offices at the option of the Govrnment. If the laws creating the Permanent Settlement gave them any right, that right ought to be curtailed as far as it goes to encroach upon that of the ryots, who were no party to the contract entered into between the Government and the zemindars; and if possible, that Settlement itself should be set aside, as it was a financial blunder entailing heavy loss upon the Government and injuries upon the ryots. The Government reserved to itself the power of enacting such regulations as may be thought necessary for the protection and welfare of the ryots. See clause I, Section 8, Regulation I of 1793.

I need scarcely observe, that according to rules of interpretation all laws and contracts should be so interpreted as one part of them may not be neutralized by the other. If we assume that under Section 8 of Regulation I of 1793, the Government reserved to itself the power of interfering with the rights and privileges of the zemindars given to them by the Code of 1793 and the Sale laws, then what was the good of so solemnly telling them, that subject to the restrictions contained in the regulations, they are to be at liberty to let out their remaining lands in any manner they think proper, and that "no power will then exist in the country by which the rights vested in the landholder by the Regulations, can be infringed or the

value of the landed property affected." Now, I ask the advocates of the ryots to say whether the Tenancy Bill, if passed into law, will affect the rights of the zemindars or not ? The Government, no doubt can enact laws and regulations for the protection of the ryots, but these laws must not be inconsistent with the rights of the zemindars as confirmed to them by the Code of 1793. The reservation clause was simply intended for the protection of the ryots from the imposition of fresh *abwabs* and other illegal acts of the zemindars. Besides, the Government never reserved to itself the power of extending the right of the ryots. At the most, it can make laws for the protection of the ryots in the enjoyment of the rights they actually possessed at the time of the Permanent Settlement. It cannot create any new right in favor of the ryots or restore them to some imaginary rights. If the Government at the time of the Permanent Settlement entertained any intention of interfering with the rights and privileges of the zemindars which were so much reduced by the regulations creating the Permanent Settlement, it ought to have, in clear terms, expressed it at that time or at least during the past thirty or forty years of the Permanent Settlement when the zemindars had to pledge the ornaments of their wives and children and those belonging to their family idols for the punctual payment of Government revenue.

We are now seriously told that the zemindars may be the proprietors of their zemindaries, but they are not the *maliks* of them in the sense in which the said word is understood in India. I shall not be at all suprised in these days of telephonic and telegraphic communications if the future generations of our rulers were to declare, that the past generations of the officials were no doubt owners of their *salaries*, but they were not the proprietors of them in the sense in which the word was used in

India, and so their children have no right to the accumulated wealth of their fathers; they could have only used the money they received as salaries from the public fund, and as servants of the public their savings should be distributed among the deserving members of the public body. The framers of the Tenancy bill, should pause and see how they are endangering the rights of their own descendants by changing the meaning of the words "owner" "proprietor" &c.

What was the position of the zemindars before the Permanent Settlement?

We have no authentic record to show what was the position of the zemindars during the Hindu period, but this much can safely be asserted that before the Mahomedan rule, India was divided into numerous petty principalities of which the rulers were to all intents and purposes independent sovereigns. In Maunoo, and Mahabharat we find the description of kingdoms which do not appear to have been more extensive than many of the zemindaries of the present day; the utmost that can be said is that they were subjects (to a certain extent) to a paramount authority. Mr. Ballie and Golam Hoshen Khan the author of the Syrul Mootakherin were also of opinion that the zemindars of this country held a position identical with, or allied to that of Rajahs. Even during the Mogul period they exercised many of the regal powers which were taken away from them by the laws creating the Permanent Settlement. Zemindaries like independent Raj used to devolve upon the eldest son of the zemindars, and that custom was superseded on the introduction of Hindu and Mahomedan laws by Regulation XI of 1793. Zemindars are spoken of in Histories of India as early as the time of Mohomed Sebuctagin 1030 A. D. We find in Harrington's analysis an extract from the Canongho records, which mentioned of the zemindars of a date so early as 1650 A. D.

The Tucksim Jamah or rent roll of Todermull as given in the Ayan Akbari, puts down a military contingent of infantry, cavalry, elephants, war-boats &c., against the mahals over and above their Sudder Jamah.

Perhaps it will be admitted by the warmest friends of the ryots that this military contingent could never have been supplied by the cultivators of Bengal.

Zemindaries could be bought and sold. Zemindaries used to be sold for arrears of revenue, and the title of the purchasers. in By Sultani, was considered to be of a superior nature. In these sales the defaulting zemindars had to sign a bill of sale which were attested by the Cazy Canongho and other creditable witnesses, and the name of the new zemindar was entered in the Sherista or public records. We find in Harrington's analysis that zemindaries could be acquired by sale, gift, and inheritance. Zemindars were only ejected from their zemindaries for continual default of the payment of Revenue, contumacy, and rebellion. When any zemindary was confiscated for the offence of treason committed by the zemindar, it was generally given to his eldest son or to any other near relative. Zemindaries were never conferred on strangers at discretion to the prejudice of the heirs of the zemindars. It is true, that now and then the principal zemindars applied for Sanads and received them from the Emperor as a mark of distinction; but the inferior zemindars always succeeded to their zemindary according to their laws of inheritance and without any Sanad. If the zemindars were simply Government officers removable at the discretion of their employers, they could never have maintained their position amidst the persecution to which they were exposed, nor saved their lands from wholesale confiscation during the Mahomedan reign in India. It was because of their peculiar relations with the ryots that the

Mahomedan Government hesitated to confiscate the lands, and the British Government also, in its earliest days, thought it expedient not to disturb the zemindars but to leave them contented with their position and bind them to Government by the strongest of the ties,—their own interests. If the acts of sale purchase, gift, and inheritance as enumerated above, do not constitute ownership, I should like to know what else would do? Permanent Settlement was not made with strangers but with the actual proprietors of the land, Section IV, Regulation VIII of 1793. Regulation I and II of 1793 speak of zemindars as actual proprietors of the land, and a malikanah allowance was given to those who declined to accept the Settlement. This argument, that the zemindars were the absolute owners of the land and that they were accepted at the time of the Permanent Settlement as such, is strengthened by the whole pure-view of the Code which is inconsistent with any other view, and by the numerous official complaint of the Code—Lord Hastings Minute December 31st 1819. Permanent Settlement is now condemned as a financial blunder committed by Lord Cornwallis, but the position and the pressing necessity of the Government of that time are often forgotten. Permanent Settlement secured punctual realization of Government revenue and thereby supplied the Government with the sinews of war, to put down Maharattas, Sheiks and other chiefs of India.

When the Permanent Settlement was concluded money was so scarce, and the advantages of the system so great, that the then Maharajah of Burdwan, in order to save his zemindary from public sale, was compelled to adopt the same in his zemindary by granting *Putni* leases. But the Rajas of Nattore, the biggest zemindars in Bengal, depended on Khash collection and thereby fell victims to the sale law. If these two zemindars with native agency

could not recover their rents by Khas Collection, how could Government do it? I think the cost of collection would have devoured every farthing of the money collected. When many of the zemindaries were sold off for arrears of revenue, and the remaining few had to be saved by the sale of ornaments, plates, &c., of the zemindars, I do not think a Temporary Settlement at that time could have secured to Government its main object, *viz.* punctual realization of its revenue; a Temporary Settlement could not have tempted the calculating capitalists of Bengal to invest their money in land. It must be remembered that most of the settlement holders were swept away by the rigour of the sale law, and a new class of zemindars sprang up in their place under the operation of the said law, who having other lucrative avocations of their own, paid the Government revenue punctually in anticipation of a future profit.